

Diversion Process as a Transformative Reform of the Criminal Justice System for Children in Conflict with the Law

Yoga Ristamana¹, Hibnu Nugroho²

Student of the Doctoral Study Program in Law, Faculty of Law, Jenderal Soedirman University,

email: Email: Ristamana1@gmail.com

Faculty of Law, Jenderal Soedirman University, email: Email: hibnunugroho@gmail.com

Abstract

This article examines the important of applying restorative justice principles in Indonesia's juvenile justice system. The principle of child protection emphasises processes that are free from violence on safeguarding children's rights, welfare, development, and overall well-being, including cases involving children in criminal acts. However, the current implementations of diversion and restorative justice often remains limited in its ability to address the underlying systemic and structural issues that lead to juvenile delinquency. These limitations underscore the need for a shift toward transformative justice, which seeks not merely to resolve individual conflicts, but also to confront and remedy their underlying causes. In this context, this article adopts a conceptual approach grounded in doctrinal legal research. The analysis employs systematic and teleological of interpretation to examine the legal norms within the juvenile justice framework. This research uses a normative juridical research design, with data collected through a literature review and analysed qualitatively. The findings of the study show that transformative justice in handling children's cases in Indonesia calls for legal reform through the expansion of the restorative justice approach under the SPPA Law. Transformative justice offers an alternative framework that move beyond a narrow focus on legal sanctions by also considering the child's personal circumstances, including social background and family conditions. As such, this concept supports a more holistic approach to child development and provides a more comprehensive framework for handling cases involving children.

Keywords: *Child Criminal Justice System; Law Reform; Transformative Justice.*

1. INTRODUCTION

Children constitute an integral part of the younger generation and hold a strategic role as human resources and as the successors to the ideals of the nation's aspirations. At the same time, children possess certain characteristics that distinguish them from adults, thereby requiring special attention in terms of guidance, care, and legal protection.¹Such protection is essential to ensure that their physical, mental, and social growth and development can be secured optimally. Accordingly, the state has an obligation to establish a system capable of safeguarding children's rights, both inside and outside the judicial process.²

¹ Ariyunus Zai et al., "Legal Protection of Children in Conflict with the Law in the Juvenile Justice System (Study on the Jurisdiction of the Nias Police)," *Mercatoria* 4, no. 2 (2011): 86–103.

² Anik Iftitah et al., "Legal Accountability of Children in Serious Crimes: Approach, Impact, and Implications in the Juvenile Justice System," *Bureaucracy: Journal Of Law And State Administration* 1, no. 2 (2023): 152–67, <https://doi.org/10.55606/birokrasi.v1i2.592>.

Indonesia has various legal regulations to protect children's rights. One of them is Law Number 35 of 2014, which amends Law Number 23 of 2002 concerning Child Protection. The law underscores the state's obligation to provide legal protection for children, especially those involved in legal cases.³ The state is responsible for ensuring that children receive adequate protection, not only during the judicial process, but also afterwards.⁴

Diversion is one of the mechanisms regulated to protect children who are in conflict with the law (ABH). Diversion is a process that allows the resolution the children's cases to be transferred from the formal criminal justice system to mechanisms outside the criminal court.⁵ This approach aims to provide alternative solutions that are more concerned with the best interests of the child, without having to bring the child into a justice system that tends to be more formal and harsh. Diversion allows for more humane and restorative settlement efforts, which focus on child rehabilitation and reintegration into society.⁶ The implementation of restorative justice in situations involving children in conflict with the law has emerged as an important trend in legal reform, while also sparking conceptual and practical debates regarding its effectiveness in balancing the protection of children's rights, the interests of victims, and the needs of society as a whole.⁷

Law Number 11 of 2012 on the Juvenile Criminal Justice System (SPPA Law) marked an important step in separating the juvenile justice system from the criminal justice system applied to adults. In the context of juvenile justice, the main focus is to maintain the survival and development of children, which should be the main goal when a child is confronted with the law due to criminal law. The SPPA Law replaces Law Number 3 of 1997 concerning the Children's Court, which is considered irrelevant and not in line with the legal values that are developing in today's society. This change marks the arrival of a new era in the law in Indonesia, where the paradigm of the juvenile criminal justice system has shifted. Previously, the prevailing approach tended to be punitive and retributive, under which every legal violation committed by children was expected to be met with punishment based on the applicable legal provisions. Now with the SPPA Law, a more humane and rehabilitative approach has begun to take precedence, reflecting a better understanding of children's rights and their needs in the judicial process.⁸

Diversion, as stipulated in Article 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, aims to prevent children from deprivation of independence and facilitate the settlement of cases outside the judicial process. In this case, investigators have a key role to play in ensuring that diversion procedures are carried out with the aim of reconciling victims and child offenders, as well as encouraging the responsibility

³ Kristiawan Putra Nugraha, "Legal Protection and Human Rights of Child Workers: A Study of Implementation and Challenges in the Context of the Child Protection Law," *Journal of Religion and Human Rights* 12, no. 2 (2023): 192–218.

⁴ Reza Akbar Nugraha et al., "Legal Analysis of Child Exploitation as Street Musicians and Beggars (A Study of Parental Involvement and Responsibility)," *Indonesian Journal of Law and Justice* 1, no. 1 (2023): 1–11, <https://doi.org/10.47134/ijlj.v1i1.1983>.

⁵ Azwad Rachmat Hambali, "The Implementation of Diversion Against Children Facing the Law in the Criminal Justice System," *Scientific Journal of Legal Policy* 13, no. 1 (2019): 1–20.

⁶ I Made Sugita, "The Application of Diversion in the Juvenile Criminal Justice System in Realizing Restorative Justice from a Sociological Perspective," *Satya Dharma: Journal of Legal Science* 5, no. 2 (2022): 187–211, <https://ejournal.iahntp.ac.id/index.php/satya-dharma>.

⁷ Abnan Pancasilawati et al., "Symbolic Restorative Justice in the Courtroom: Navigating the Intersection of Justice and Child Welfare in Indonesian Juvenile Court Decisions," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 2 (2025): 619–37, <https://doi.org/10.24090/volksgeist.v8i2.15328>.

⁸ Budiyo et al., "Kompatibilitas Restorative Justice Dengan Nilai-Nilai Pancasila Dalam Sistem Peradilan Pidana Anak," *Pancasila: Indonesian Journal* 4, no. 1 (2024): 1–10.

of child offenders without having to direct them to a criminal justice system that could damage their future.⁹ This approach emphasizes more restorative justice, with the aim of restoring the child's state of affairs and social reintegration into society.¹⁰ The diversion system therefore emphasizes a form of case handling that seeks to create justice and balance for both child offenders and the victims themselves.¹¹

Restorative justice is an approach to resolving criminal cases involving perpetrators, victims, families of perpetrators and victims, as well as other related parties, with the aim of jointly finding a just solution. Diversion, meanwhile, is a process that transfers the resolution of children's cases from the formal criminal justice channel to mechanisms outside the court system. In accordance with Law Number 11 of 2012 concerning the Child Criminal Justice System, the purpose of diversion is to achieve peace between the victim and the child of the perpetrator. In the context of criminal justice, the focus is now not only on punishment but also on dialogue and mediation to reach a fairer and more balanced agreement for both parties, both victims and perpetrators. In conventional criminal justice, there is a concept of restitution or compensation that provides an opportunity for victims to convey the losses they have experienced. The perpetrator is then given the opportunity to atone for his wrongdoing through various mechanisms, such as compensation, peace, social work, and various other agreements.¹²

Although diversion is already regulated in the law, its implementation in the investigation process often faces a number of challenges. According to Article 6 of Law Number 11 of 2012 concerning the Juvenile Justice System, diversion must be sought at the level of investigation for criminal acts that are threatened with imprisonment of less than 7 years and are not included in the category of repeat criminal acts. The settlement of criminal cases involving children may prioritize restorative justice through diversion, with the aim of achieving justice for all parties and restoring social relations in accordance with the law. Article 1, Paragraph 6 of Law Number 11 of 2012 emphasizes that restorative justice is the settlement of criminal cases by involving the perpetrators, victims, families of each party, and other interested parties to jointly find a fair solution. This process emphasizes restoration rather than retaliation.¹³

One of the concepts that has attracted attention in criminal law reform efforts in Indonesia is "transformative justice".¹⁴ This concept was first introduced by a Canadian legal reformer, Ruth Morris, in the 1990s as a critique of the concept of restorative justice. Historically, the term restorative justice itself was coined by Albert Eglash in 1977, who sought to distinguish three forms of criminal justice: retributive justice, distributive justice, and restorative justice.¹⁵ Morris argues that although restorative justice is superior to the retributive justice system and can create peace among individuals, the concept is

⁹ Rabiyyatul Adawiyah Harahap, "The Implementation of Diversion in the Juvenile Justice System from the Perspective of Restorative Justice in Islamic Law," *Ar-Risalah Scientific Journal: Islamic Media, Education and Islamic Law* 22, no. 1 (2024): 51–67.

¹⁰ Yayan Agus Siswanto et al., "Preventive Efforts as a Form of Legal Protection Against Crimes of Sexual Violence in Children," *Collaborative Journal of Science* 7, no. 5 (2024): 1651–1667, <https://doi.org/10.56338/jks.v7i5.5313>.

¹¹ Monica Sri Astuti Agustina et al., "Legal Review of the Application of Diversion in Cases Involving Children Who Use Drugs at the Tulungagung District Court," *Journal of Legal Science* 12, no. 1 (2022): 79–93.

¹² Erwinda Dekaria Agustiana Putri and Pudji Astuti, "Factors Hindering Diversion For Children In Conflict With The Law At The Blitar District Court," *Novum: Legal Journal* 7, no. 1 (2020): 178–188, <https://ejournal.unesa.ac.id/index.php/novum/article/view/31316>.

¹³ Irfan Ramli et al., "Case Discontinuation Based on Restorative Justice in Criminal Theft Cases in Sorong City," *Journal of Law Justice (JLJ)* 1, no. 2 (2023): 89–108, <https://doi.org/10.33506/jlj.v1i2.2868>.

¹⁴ Karmila Damanik and Junaidi, "The Concept of Peace in Conflict (Analysis of Western and Islamic Political Thought Theory)," *Santhet: Jurnal Sejarah, Pendidikan Dan Humaniora* 8, no. 2 (2024): 1–8, <https://doi.org/10.36526/js.v8i2>.

¹⁵ Eddy O. S. Hiariej, *Principles of Criminal Law* (Yogyakarta: Cahaya Atma Pustaka, 2016).hal.19

still not sufficiently capable of encompassing socio-political and economic aspects of society.¹⁶ Although there is no universally accepted definition of transformative justice, the Canadian Law Commission describes it as an approach to conflicts resolution that acknowledges and addresses the diverse impacts arising from conflict. This approach also utilizes the chances that arise from conflicts by gathering those involved into a collective process that fosters healing and development. Transformative justice provides a framework for addressing disputes by recognizing the full range of damage caused by conflict and by using conflict as an opportunity to bring individuals into processes that support recovery, accountability, and personal growth.¹⁷ In this context, the settlement of a criminal case is not only carried out in the legal realm, but must also consider political, economic, and social factors that exist in society.

Transformative justice shares conceptual roots as restorative justice. However, the transformative justice approach goes deeper, not only analysing crime based on its concrete actions but also exploring its economic, social, and political dimensions comprehensively. In summary, there is a significant difference between these two concepts. Transformative justice clearly aims to drive change at both the social and individual levels, while restorative justice focuses more on the question of what aspects need to be restored. Therefore, there is a need to further develop the concept of restorative justice as regulated in Law Number 11 of 2012 on the Juvenile Criminal Justice System so that it transforms into transformative justice framework. In this case, justice is not only seen from the final result (output) alone but also from the wider impact (outcome) on society. This approach involves identifying the root causes of offending and promoting systematic reforms within the juvenile criminal justice system. Thus, this article will discuss the urgency of transformative justice in handling children's cases as well as the implementation of the concept in a broader legal context.

2. ANALYSIS AND DISCUSSION

2.1. Juvenile Justice System in Indonesia

The existing legal framework for prosecuting minors is distinctly at odds with human rights, violates fundamental constitutional principles, and poses significant risks to the future of young people. Therefore, a comprehensive reform of the juvenile justice system in Indonesia is imperative. Merely amending the Juvenile Justice Law will not suffice; it is inadequate to simply adjust the guidelines for law enforcement personnel in practice. A shift in the juvenile justice paradigm is essential. This new perspective on juvenile justice should prioritize the protection of children.¹⁸ The Juvenile Justice System Law reflects an inductive or bottom-up approach grounded in Indonesian social conditions, including mechanisms such as handover and return to parents, while also incorporating international developments such as restorative justice, diversion, and non-custodial alternatives.¹⁹ The juvenile criminal justice system is used by law enforcement to decide

¹⁶ Bambang Waluyo, *Penyelesaian Perkara Pidana: Penerapan Keadilan Restoratif Dan Transformatif* (Jakarta: Sinar Grafika, 2020).hal.20

¹⁷ Gusti Muhammad Andre and Umi Rozah, "The Concept of Restorative Justice and Transformative Justice in the Indonesian Criminal Justice System," *International Journal of Social Science Research and Review* 5, no. 11 (2022): 343–51.

¹⁸ Lisnawaty W. Badu and Julisa Aprilia Kaluku, "Restorative Justice in The Perspective of Customary Law : A Solution to The Settlement of Narcotics Crimes Committed by Children," *Jambura Journal of Community Empowerment* 4, no. 2 (2022): 313–327.

¹⁹ Setya Wahyudi et al., "Recomposing the Handover and Return to Parents in the Juvenile Justice System in Indonesia: Dilemma between Best Interest of the Juvenile and Legal Shadow," *Volksgeist: Jurnal Ilmu Hukum Dan*

on criminal sanctions against children who commit criminal acts or children who are in conflict with the law. The best interests of children must be the top priority in juvenile punishment. However, according to Law Number 11 of 2012 on the Juvenile Criminal Justice System, the Juvenile Criminal Court remains part of the general court system, although it functions as a special court for children.²⁰ Article 59 of Law Number 35 of 2014 concerning Child Protection regulates special protection for children who are in conflict with the law and is also affirmed in Article 64 of Law Number 35 of 2014, among others, such as humane treatment by paying attention to needs according to their age, the provision of legal aid and other assistance effectively, and the provision of justice before the Children's Court that is objective and impartial in a hearing closed to the public. Such protection extends to both children in conflict with the law and children who are victims of criminal acts, as part of realization of justice within Indonesian juvenile criminal justice system.²¹

Law Number 11 of 2012 Act on the Juvenile Criminal Justice System encompasses three dimensions of legal regulation and enforcement consisting substantive criminal law, formal procedural criminal law, and the law governing the execution of sanctions. First, the material criminal law aspect can be seen from the regulations on diversion, the age limit for child criminal liability, and crimes and actions. Within the law enforcement process, diversion should be prioritized as the most appropriate approach in handling children's cases. This is due to the fact that children emphasize the value of caring more and keeping children away from things that can embarrass them in public. The age limit is also important because the child is not mentally ready to handle the situation that happens to him. In addition, children must go through the growth process without experiencing trauma because of the mistakes that the child has made.²² Second, the formal criminal law aspect, as can be seen from the regulation of provisions on procedural procedures at the stage of investigation, prosecution, examination of hearings in court, the imposition of judgments, and the provision of citations and copies of decisions. The application of this aspect still prioritizes the fulfilment of children's rights in order to avoid acts of discrimination against children. Therefore, law enforcement officials must fully understand and implement juvenile justice procedures from beginning to end in accordance with the provisions of the juvenile criminal justice system Law. Third, the legal aspects of criminal execution can be seen from the regulation of the place and the punishment given. This aspect should be implemented through non-punitive actions that are not inflict unnecessary harm for the child, while promoting educational value, behavioural change, and positive social cohesion. To give children the opportunity to interact with their world and maximize all their talents and potential.

As explained in Law Number 11 of 2012 on the Juvenile Criminal Justice System, this diversion is intended, among other things, to protect children from the harmful effects of criminalization. The obligation of diversion by law enforcement has been regulated in Article 7, paragraph (1), of Law Number 11 of 2012 concerning the Juvenile

Konstitusi 8, no. 1 (2025): 263–84, <https://doi.org/10.24090/volksgeist.v8i1.13130>.

²⁰ Nafi' Mubarak, *Juvenile Criminal Justice System* (Mojokerto: Insight Mediatama, 2020).hal.20

²¹ Muhammad Rido et al., "Implementation of Diversion in the Juvenile Criminal Justice System in Samarinda District Court," *Awang Long Law Review* 7, no. 2 (2025): 282–87, <https://doi.org/10.56301/awl.v7i2.1511>.

²² Kayus Kayowuan Lewoleba and Kayus Kayowuan Lewoleba, "Implementation of the Juvenile Criminal Justice System in the Context of Realizing Restorative Justice," *Al-Mashlahah: Journal Of Islamic Law And Islamic Social Institutions* 11, no. 02 (2023): 143–162, <https://doi.org/10.30868/am.v11i02.5070>.

Criminal Justice System, which states that at the level of investigation, prosecution, and examination of child cases in the District Court, diversion must be sought. However, the implementation of diversion encountered various obstacles. In practice, victims or their families may reject diversion because they prefer the case to proceed to trial in the expectation that the offender will receive fair punishment and that the process will emerge a deterrent effect.²³ Another factor contributing to the failure of diversion is the inability of the parties to reach a agreement. In addition, obstacles also arise from the negative response of the community to efforts to resolve through peaceful and familial channels carried out by law enforcement officials who are considered to only take sides with certain parties based on normative decisions through written legal texts. Even though the mental and psychological elements of the perpetrator and victim need to be considered. The persistent mindset within society is that anyone who commits a criminal act, whether adults or children must be subject to sanctions, and in some cases, even severely punished.²⁴

Case involving children in conflict with the law are resolved through diversion, a key component of restorative justice, where all parties collaborate to find the most appropriate solution for the child. In this sense, the child's best interests are given priority while protecting youngsters who are in legal trouble.²⁵ The concept of diversion and restorative justice aim to protect offenders, victims, and society by providing a case resolution framework that addresses both immediate and future implications.²⁶ Alternative dispute resolution in court usually uses the negotiation process as the simplest dispute resolution, mediation involving a third party with expertise in the field to help resolve the issue, and conciliation as an effort to bring together the parties' desire to reach an agreement peacefully.²⁷

Restorative justice is a philosophy, process, ideas, theories, and set of interventions designed to achieve a child's justice before the law, focusing repairing the harm caused or expressed by criminal behaviour rather than simply punishing the offender. These things explain that in restorative justice, the priority is not the imposition of punishment on the perpetrator, but how the perpetrator can be held accountable for the criminal act committed. Furthermore, restorative justice seeks to ensure that victims receive justice, facilitating the restoration of their situation to its original state.²⁸ The implementation of restorative justice requires a policy from law enforcement that is authorized to exercise discretion in assessing a child's case that enters, whether it can be continued or stopped.²⁹ The severity of the offense, the child's personal circumstances, and the

²³ Fahria et al., "Diversion of Juvenile Criminal Cases at the Investigation Stage at the Ternate City Police Force," *Journal of Law, Politic and Humanities* 5, no. 4 (2025): 2913–27, <https://doi.org/10.38035/jlph.v5i4.1667>.

²⁴ Zeha Dwanty El Rachma, "Restrictions On Diversion For Children Who Commit Recidivism," *Mimbar Keadilan* 14, no. 1 (2021): 74–83, <https://doi.org/10.30996/mk.v14i1.4496>.

²⁵ Pangestika Rizki Utami, "The Concept of Diversion and Restorative Justice as a Shift in Criminal Responsibility in the Juvenile Criminal Justice System," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 1, no. 1 (2018): 95–106.

²⁶ Salim, "Rights and Legal Protection for Children of Criminal Offenders in the Criminal Justice Process.," *Legal Dynamics* 14, no. 2 (2023): 237–260.

²⁷ Louisa Yesami Krisnalita, "Diversion on Criminal Acts Committed by Children," *Binamulia Hukum* 8, no. 1 (2009): 93–106.

²⁸ Royke Adrianus Taroreh et al., "Legal Protection for Children with Diversion in the Indonesian Juvenile Criminal Justice System," *Academic Nuances: Journal of Community Development* 10, no. 2 (2025): 701–16, <https://doi.org/10.47200/jnajpm.v10i2.3213>.

²⁹ Maria Sri Iswari, "Restorative Justice; Handling Children In Conflict With The Law (Abh) From A Social Welfare Perspective," *Khidmat Sosial, Journal of Social Work and Social Service* 1, no. 2 (2020): 77–92, <https://jurnal.umj>.

context in which the act was committed may serve as grounds for law enforcement to avoid imposing criminal sanctions, instead opting for measures that consider the principles of justice and humanity.

Restorative justice focuses on settling criminal matters by including the offender, the victim, the families of both, and other associated individuals to collectively pursue a fair outcome, prioritizing restoration to the initial state rather than seeking revenge. According to Bagir Manan, the essence of the Restorative Justice approach is to foster collaborative involvement among offenders, victims, and community organizations in addressing an incident or crime; viewing these groups as essential participants who collaborate to find solutions that are deemed equitable for everyone involved.³⁰ Restorative justice has proven to be an effective form of case resolution within the Juvenile criminal justice system in Indonesia, Particularly through diversion. To date, diversion has been interpreted as more effective alternative to a lengthy and rigid juvenile case resolution process. It can also be through the mediation process or deliberation as an integral part of diversion to achieve restorative justice. From the operational side, maximizing the integrated service centre specifically for juvenile criminal justice will create more convincing professionalism in the community. Meanwhile, in terms of law enforcement, professionalism can be improved based on adjustments to the juvenile justice system in Indonesia as regulated in the 2012 Juvenile Criminal Justice System Law. Thus, the child designated as the perpetrator receives more attention to ensure that their rights are respected, alongside the consideration of victims' rights.

Implementing the restorative justice paradigm is the most effective approach for resolving cases involving children in conflict with the law. In completing the transfer procedure and restorative justice in accordance with the provisions of the law for children who are in conflict with the law. Settlement efforts use mediation, conciliation, and restitution methods simultaneously to unite parties with a settlement model. Therefore, the case of children in conflict with the law must be tried not to involve the judicial process. Instead, the case is transferred outside the judicial process (non-litigation).

2.2. Transformative Justice in the Handling of Children's Cases

Transformative justice was first pioneered by a Canadian legal reformer named Ruth Morris in 1990 as a critique of the concept of restorative justice. The principle of transformative justice is a principle that seeks to expand restorative justice. When restorative justice only focuses on the perpetrators, victims, and other related parties, transformative justice seeks to solve problems by using approaches outside the law, such as political, economic, social, and cultural aspects. Additionally, transformative justice requires that legal problems be viewed not just within the confines of statutory law but through lens that considers political, economic, and social dimensions. Thus, it is possible to identify and analyse in depth the root cause of the legal problem, through which the right formulation can be produced to overcome the problem so that it does not happen again in the future. Transformative justice is a comprehensive and holistic

ac.id/index.php/khidmatsosial/article/view/7834/4653.

³⁰ Nun Harrieti et al., "Restorative Justice in Law Enforcement of Banking Crimes : How It ' s Works ?," *Jambura Law Review* 8, no. 1 (2026): 1–29.

approach that not only seeks to restore a balance between perpetrators and victims but also focuses on the various efforts that can be made to implement positive social justice.³¹

The concept of transformative justice aligns with Richard Quinney's thinking on critical criminology and criminology of peace, which argue that the study of crime should focus not only on the crime and the criminal but also on the underlying social structure of society. Meanwhile, according to Braithwaite's opinion, to prevent greater evil, it is necessary to have a gentleness that can transform human life into a path of love. Therefore, transformative justice exists as a philosophy that aims to create social peace in society, which does not focus only on the restoration of interpersonal relationships, as restorative justice does, but on broader and more comprehensive social change. Howard Zehr argues that restorative justice and transformative justice are essentially the same concepts, although differences in terms can lead to some differences in practice. Zehr views that restorative justice and transformative justice both aim at positive social transformation.³²

Furthermore, it is imperative to emphasize the normative implications that demand a fundamental reconstruction of the Juvenile Criminal Justice System (SPPA) Law's structure. This transformation must go beyond theoretical discussions and be implemented through concrete models, such as revising strategic articles to expand the discretionary authority of law enforcement officials. This discretion should no longer be rigidly constrained by the seven-year sentencing threshold but should instead be predicated on a holistic assessment of the child's underlying socio-economic root causes. Additionally, a viable concrete model involves strengthening the functional integration between the judicial system and cross-sectoral policies in social welfare and education. Consequently, the outcome of the legal process can facilitate structural changes that prevent recidivism through independent rehabilitation schemes oriented toward distributive justice.

The youth criminal justice framework, as specified in the JCJS Law, prioritizes values such as safety, fairness, equality, and the welfare of minors. It also emphasizes the importance of considering children's views, fostering their growth and well-being, as well as the necessary guidance and support they need. Furthermore, the framework also emphasizes the importance of proportional responses, utilizing confinement and penalties solely as a final option, while avoiding punitive measures motivated by revenge.³³ The purpose of the juvenile criminal justice system is to maintain the dignity of children; indirectly, children are entitled to special protection in the judicial system as a form of legal protection. In the implementation of the diversion and restorative justice system in juvenile justice, there are still many obstacles, one of which is that if there is no good communication in deliberation and mutual understanding between the two parties, it results in criminal cases committed by children not ending in peace, with the non-achievement of peace between the two parties causing efforts to implement *restorative justice*. It has not been able to run perfectly. One significant challenge is when the implementation of diversion is not acceptable to the victim, preventing an agreement

³¹ Bambang Waluyo, *Criminal Case Resolution: The Application of Restorative and Transformative Justice* (Jakarta: Sinar Grafika, 2020).p.20

³² Bambang Waluyo. p.23

³³ Nurini Aprilianda et al., "Re-Conceptualizing Child Victim Rights : A Normative and Comparative Analysis of Victim Impact Statement in Indonesia ' s Juvenile Justice System," *Jambura Law Review* 7, no. 02 (2025): 442–467.

from being reached. In such cases, victims often feel that the diversion does not provide them with justice, as their position requires legal protection. The basis is because the main principle of diversion and *restorative justice* is to avoid perpetrators of child crimes from the general criminal justice process and provide opportunities for perpetrators to carry out alternative punishments without the existence of a prison sentence, which is retaliatory in reality, has not been carried out effectively because of several factors or obstacles that often occur in the handling process, such as internal factors, namely law enforcement itself, and external factors as the lack of understanding of the community.³⁴

Regulation is necessary for restorative justice, as the current criminal justice and punishment systems are often perceived as ineffective and prone to complications. The penal system is still primarily viewed as a means of incarceration, aimed at deterring offenders and seeking vengeance. The idea of rehabilitation fails to focus on the well-being of children after their release, resulting in a detrimental stigma towards former juvenile inmates that hinders their ability to move forward in life. To ensure that every child's rights to survival, development, and growth are upheld, along with safeguarding them from violence and discrimination as required by the constitution, a strategic approach is essential for providing child protection. One aspect of this strategic approach involves the creation of laws and regulations geared towards the protection of children.³⁵ In theory, the SPPA Law strongly supports the protection of children, but it has not substantially resolved conflicts with children who are in conflict with the law. Given the obstacles in implementing diversion and *restorative justice* in the juvenile criminal justice system, *transformative justice* offers an alternative approach for handling children's cases. While both transformative and restorative justice share similar foundations, transformative justice provides a more in-depth approach, analysing not only the criminal act but also considering aspects, namely political, economic, social, and cultural contexts.

When viewed further, restorative justice is an approach that emphasizes the following elements:

- a. Emphasizing justice and redress;
- b. Restoring balance in society;
- c. The perpetrator and the victim were brought together to solve the problem, and community members were involved in recovery efforts.
- d. Meanwhile, the transformative justice approach emphasizes the following elements:
- e. Emphasizing justice in the restoration of the situation;
- f. Restoring balance in society by involving non-legal factors such as social, political, economic and cultural;
- g. Analysis of the root of the problem as an effort to prevent crimes from happening again in the future.

A transformative justice-based juvenile criminal justice system represents both a form and purpose of legal reform. The key concept is the formulation of aspirational regulation (*ius constituendum*) that aim to improve upon existing laws. In its implementation, it includes many aspects of reform and regulation-making that complement the legal needs that have been applied to the juvenile criminal justice system, including affirming the

³⁴ Diaz Yasikha Putri and Wahyudi, "Opportunities and Challenges of Mediation for Restorative Justice in Resolving Theft Cases," *Indonesian Journal of Law and Justice* 3, no. 2 (2025): 18, <https://doi.org/10.47134/ijlj.v3i2.5209>.

³⁵ Dwi Ratna Kamala Sari Lukman, "Concept Of Restorative Justice In The Law Of The Republic Of Indonesia Number 11 Of 2012 Concerning Children's Criminal Court System," *IUS: Kajian Hukum Dan Keadilan* 2, no. 3 (2014): 588-600.

institutional function and coaching for law enforcement who handle children's cases that are facing the law as a principle of legal certainty.³⁶

The essence in the law enforcement system and also an assessment of the effectiveness of law enforcement, the *restorative* justice approach in the SPPA Law has been regulated relatively clearly. Meanwhile, the Transformative Justice Approach if applied in the juvenile criminal justice system, the strategy can be pursued by adding and reinterpreting the SPPA Law:

- a. Following the diversion stage model with the addition of a focus on transformative justice;
- b. New formulations of transformative justice; and
- c. Adding or perfecting the formulation of the concept of *restorative justice* coupled with transformative justice.

The application of the transformative justice approach within the juvenile criminal justice system is intended as an alternative solution for children's facing legal charges, with the goal of positively impacting law enforcement practices in Indonesia. Nevertheless, the implementation of this approach in the juvenile criminal justice system still has weaknesses due to the rigidity of diversion requirements, which are limited to criminal offenses carrying a sentence of less than seven years and do not include repeat offenses. This seven-year limit often prevents law enforcement officials from seeking reconciliation in cases that may be more appropriately resolved outside of court from a sociological perspective, but are administratively constrained by the charges. This restriction seems to reduce the essence of restorative justice to a mere calculation of the threat of punishment, which ultimately often forces children into a traumatic litigation process. There is a significant disparity between the institutional capacity and the philosophical mandate given by law. The SPPA requires the active involvement of Bapas Community Counselors, Professional Social Workers, and access to facilities like LPKS (Social Welfare Institutions). However, in practice, the distribution of human resources and facilities remain uneven, especially in remote areas. Without adequate infrastructure support, the mandate to keep children out of prison often fails because judges do not have access to suitable rehabilitation facilities, so detention remains a bitter pragmatic solution. Post-sentencing supervision mechanisms or diversion agreements are still very weak and not systematically integrated. Currently, the focus of the SPPA tends to stop at reaching a settlement or the judge's gavel, but pays less attention to long-term monitoring of the child's social reintegration and victim recovery. This weak monitoring risks making the diversion process merely a formality to dismiss cases without any substantive behavioral change in the child, which in the long term could actually increase recidivism rates because the sociological root causes of the child's problems are not fully addressed.

2.3. The Concept of Transformative Justice in Handling Children's Cases

In the 1945 Constitution of the Republic of Indonesia, Article 28b, paragraph 2, explains that "every child has the right to live and develop and has the right to protection from all forms of discrimination against the dignity and dignity of children." The constitutional inclusion of children's rights in the 1945 Constitution of the Republic of Indonesia implies that the protection of children in conflict with the law must be considered comprehensively, with the aim of preserving their honour and dignity.

³⁶ Thia Efrillia et al., "Criminal Liability of Children in Premeditated Murder Cases: Legal Analysis of Decision Number 3/Pid.Sus-Anak/2022/PN.Bnt," *Jurnal Krisna Law* 7, no. 1 (2025): 1–14, <https://doi.org/10.37893/krisnalaw.v7i1.1035>.

Children need to be given the opportunity to grow and develop optimally in order to realize children's welfare by providing special protection without discrimination. Law enforcers must pay attention to these elements in handling children's cases as a form of legal protection in order to maintain the mandate that has been included in the 1945 Constitution.

Diversion, as outlined in Law No. 11 of 2012 related to the Criminal Justice System for Children (hereinafter referred to as the SPPA Law), has specific definitions. According to Article 1, point 7, this diversion refers to the relocation of a child's case resolution from the traditional criminal justice framework to an alternative method outside of that system. In contrast to retributive justice, which focuses on punishing the offender, and recitative justice, which centers on compensating the victim, restorative justice emphasizes understanding and achieving justice while restoring conditions following the offense and the proceedings concerning both the offender and the victim. From the standpoint of evolving criminal legislation and the characteristics of contemporary penal practices, diversion has led to the emergence and evolution of what is referred to as the "Doer-Victims" Relationship approach.³⁷ Diversion and restorative justice mechanisms currently applied in the juvenile criminal justice system are still not yet fully effective as a legal basis for handling cases involving children who commit criminal acts. All series of handling children's cases that are in conflict with the law refer to the SPPA Law. I reviewed the handling of children's cases with a transformative justice approach. Where the transformative justice approach is further a factor in the occurrence of a child criminal act than understanding other elements. These elements include, among others, the following:

2.3.1. Political Elements

The political element emphasizes that law is the political decision made by the community, reflecting the aspirations of the people in shaping the legal system. Aspirations are channelled in accordance with these aspirations. Political aspirations are conveyed through various institutions and organizations, including the government, legislature, political parties, universities, student organizations, and community organizations. This leads to the distribution of political power to government institutions that are seen as capable of avoiding for community aspirations, thereby gaining special attention (*for power*) from the government in national development. These aspirations will form a political configuration in the sense that the political configuration here is a reflection of the various aspirations of the community. Among others: democratic political configuration and authoritarian political configuration. The integration of "political elements" in the procedural investigation phase can be operationalized through the identification of the political configuration that underlies the birth of the legal product violated by the child. In a transformative framework, investigators not only focus on proving criminal elements, but also must be able to map whether the aspirations of the community have been accommodated in these regulations or are elitist and oppressive. Technically, this is done by including an analysis of public policies (*community aspirations*) that are at the root of the problem in the examination file, so that the investigation serves as a

³⁷ Iva Kasuma et al., "Problematics Of Diversion Implementation Of Children In Conflict With The Law In Child Friendly Cities(Study On Legal Enforcers, Local Government And Social Community In Depok And Surakarta)," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 2 (2020): 351–371.

“screening” tool to change the authoritarian character of law enforcement to be more democratic and responsive to the needs of children at the local level.³⁸

In reality, the political configuration is not completely democratic and not completely authoritarian and is always somewhere in between. Political configuration will affect the characteristics of legal products; if political configuration is more democratic, it will produce legal products that are populist, responsive, and autonomous. Meanwhile, if the political configuration is more authoritarian, it will produce legal products that are elitist, conservative, and oppressive.³⁹ The filtering process in the legal system plays a very important role and is expected to always have a democratic character, and the filtering of the legal system is able to change the authoritarian character to a democratic one so that every change in people’s aspirations can be well accommodated in the characteristics of legal products that apply in society. The political element is realized through strengthening the role of institutions and community organizations in formulating case handling strategies. The public prosecutor can procedurally open up space for universities, community organizations, or relevant government agencies to provide input on transformative demands. This mechanism ensures that prosecution not only stops at individual convictions, but also encourages reforms at the national and regional policy levels that give authorities priority to the development of child welfare as a strategic resource of the nation

2.3.2. Economic Elements

In the economic element, two perspectives on law are commonly discussed, economic analysis of law and the relationship between law and economics. According to the economic analysis of law, as discussed by Richard Posner, law is designed to minimize costs. Here *cost* refers not only to financial expenses but also to burdens that individuals or parties must bear. Therefore, the existence of the law increases the costs so that the burden borne by the people is greater, so such a law is not a law and can cause instability, while the purpose of one of the laws is to realize public order. If the existence of the law causes costs to the community, then the institutions that are authorized to make the law that is applied are responsible for changing the law in accordance with the aspirations of the community in order to reduce or eliminate these costs.

Economic elements are integrated through the preparation of accountability schemes oriented to efficiency and distributive justice. The public prosecutor can formulate charges that oblige the perpetrator or related parties to carry out actions that provide real economic benefits for the recovery of the situation, such as through an independent rehabilitation scheme rather than simply imprisonment that weighs on the state. This procedure requires a balance between rights and obligations in the lawsuit, where the final result (outcome) of the legal process must be able to correct economic inequality and minimize social debt arising from the crime.⁴⁰

Costs can also arise from third parties, referred to as external cost. Those affected by external costs can be reintegrated through legal processes, either in court or through alternative dispute resolution. Meanwhile, the point of view of legal and economic relations is that the law basically contains norms that govern people’s lives with the

³⁸ Sunnah et al., “Juvenile Diversion By The Police In The Perspective Of Pancasila Justice: Reformulation And Optimization,” *Lex Localis-Journal Of Local Self-Government* 23, no. 11 (2025): 908–918.

³⁹ Jetter Wilson Salamony and Faisal Santiago, “The Influence of Authoritarian Political Configuration in The Presidential Government System on Constitutional Court Decisions,” *Jurnal Greenation Sosial Dan Politik* 3, no. 2 (2025): 230–239, <https://doi.org/10.38035/jgsp.v3i2.359>.

⁴⁰ Kathryn E Mcollister et al., “Criminal Justice Measures for Economic Data Harmonization in Substance Use Disorder Research,” *Health and Justice* 6, no. 17 (2018): 1–11.

aim of realizing justice, which is called normative law. Like law, economics is also understood as a normative economy that desires a goal of efficiency by running a positive economy to produce a situation where inputs are always smaller than outputs. This means that if financing in national development always produces benefits for the prosperity of the people, which is also followed by a reduction in the state debt, then events like this are a reflection of the sense of justice of the community where rights are balanced with obligations. This means that in carrying out the life of the nation and state, it is said to be “fair” if the input is smaller than the output. And vice versa, if the input is greater than the output followed by the amount of state debt, so that in this situation there is a lot of injustice. It can be concluded that law and economics in national development are interconnected.⁴¹

2.3.3. Social Element

The social element highlights the interaction between legal subjects and legal objects within society. The point of view of the interaction of legal subjects, as previously stated, is that laws are made by institutions that are authorized to form laws. In this regard, the application of law is a relationship between the governing party, namely the government, and the regulated party, namely the community. From the perspective of legal objects, these refer to entities regulated by the law, including legal events, legal relationships, and legal consequences. The purpose of the law is to provide certainty, realize justice, and provide benefits. The purpose of the law must be realized in various aspects of society, including political stability, economy efficiency, social welfare, culture stability, defense strength, security peace, and environmental resilience.⁴²

2.3.4. Cultural Elements

In the cultural element emphasizes understanding the values of human attitudes and behaviours, distinguishing between positive and negative impacts on social life. Law, as *the living law*, is deeply embedded in community life, drawing from customs as primary source of legal norms, including religious, moral, and social etiquette rules. Sir Carleton Kemp Allen stated “that the law that lives in society is derived from custom, judges’ decisions (*precedence*), justice (*equality*), and legislation (legislation)”.⁴³

Transformative justice is a principle that examines criminal event from a broader perspective comprehensively and holistically by analysing and identifying the root causes of criminal act, especially committed by minors. In the political element, it can be developed from public policy to the aspirations of the community in a democratic political configuration, meaning that there are legal events that occur as an opportunity to overcome injustice over larger public policies. Furthermore, from an economic point of view, with *benefit and cost* analysis, which sees the application of law as a rule that provides benefits or provides a burden (*cost*) to the community. The social element emphasizes how the enactment of laws and regulations on social life is in accordance with what is intended by the legislators themselves. Meanwhile, the cultural element focuses on the values that determine human attitudes and behaviours in social life.

⁴¹ Abbie Yunita et al., “Making Development Legible to Capital: The Promise and Limits of ‘Innovative’ Debt Financing for the Sustainable Development Goals in Indonesia,” *Environment and Planning E: Nature and Space* 6, no. 4 (2023): 2271–94, <https://doi.org/10.1177/25148486231159301>.

⁴² Tommy Hendra Purwaka, “Several Approaches for Understanding the Law,” *Peradilan* 4, no. 3 (2015): 519–535.

⁴³ Tommy Hendra Purwaka.

3. CONCLUSION

Transformative justice in handling child cases in Indonesia seeks to update the law by expanding the restorative justice approach in the SPPA Law. However, this approach faces challenges, especially due to ineffective communication during deliberation between perpetrators and victims, which hinders the peace process and diversion. The failure to reach an agreement makes restorative justice inefficient. Transformative justice emerged as a new solution in the management of children's cases, involving many elements in legal settlement to support children's recovery and development. This approach emphasizes children's rights and welfare and avoids punitive sanctions. Transformative justice also pays attention to children's personal factors, such as social background and family conditions, which can affect their growth. This is an option to change the paradigm of the juvenile criminal justice system. This study provides a significant scholarly contribution by offering a theoretical deconstruction of the rigid limitations of diversion within the Juvenile Criminal Justice System (SPPA) Law through the integration of political, economic, social, and cultural elements into a transformative justice framework. In practical terms, this research formulates a concrete model for cross-sectoral integration and the expansion of discretionary authority for law enforcement officials as a strategic foundation for a more holistic and outcome-oriented reform of juvenile criminal law.

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