

## Comparison of Diversion and Restorative Justice in Handling Juvenile Crimes within Indonesia's Criminal Justice System

**Rustam<sup>1\*</sup>, Iskandar Wibawa<sup>2</sup>**

Universitas Muria Kudus, Indonesia

Email: [rustam.bm03@gmail.com](mailto:rustam.bm03@gmail.com)<sup>1</sup>, [iskandar.wibawa@umk.ac.id](mailto:iskandar.wibawa@umk.ac.id)<sup>2</sup>

Correspondence: [rustam.bm03@gmail.com](mailto:rustam.bm03@gmail.com)\*

KEYWORDS	ABSTRACT
Child crimes; Comparison; Diversion; Indonesian criminal justice system; Restorative justice	The Juvenile Criminal Justice System in Indonesia prioritizes an approach that educates and rehabilitates children who are facing the law. Restorative approaches, such as diversion and restorative justice, have become very relevant to achieve these goals. This study aims to examine legal protection for the application of restorative justice in handling juvenile crimes and understand diversion and restorative justice as a mechanism for resolving criminal acts outside the formal criminal justice process. This study uses a non-doctrinal method with qualitative descriptive analysis. The data used is sourced from primary, secondary, and tertiary legal documents. The results of the study show that diversion functions as a transfer of the settlement of children's cases from the formal criminal justice process to a mechanism outside the judiciary. This provides opportunities for children to improve themselves and avoid negative stigma due to formal justice. Meanwhile, restorative justice involves all parties affected by criminal acts with the aim of repairing damaged relationships, recovering losses, and preventing the recurrence of criminal acts. Thus, concluding a restorative approach both through diversion and restorative justice is effective in creating a more humane child penal system. This approach can focus on victim recovery and also provide child rehabilitation to perpetrators of crimes to ensure the sustainability of social recovery.

Attribution-ShareAlike 4.0 International (CC BY-SA 4.0)



### Introduction

The diversity of human life patterns has an impact or effect, some of which can cause legal problems. Thus, the law can be used as a guideline that regulates human life patterns which have an important role in achieving the goal of peace of life for the community. In the legal world, knowing the existence of *Adagium ubi societas ibi ius* is an expression in Latin which means "where there is a society, there is law". The phrase was first introduced by Marcus Tullius Cicero, a philosopher, jurist, and politician from Italian Rome who lived in the 1st century BC.

The resolution of legal problems can be through diversion, which means that diversion is an act or treatment to divert or place the perpetrator of child crimes out of the criminal justice system,

while the concept of restorative justice is the settlement of criminal acts involving the victim, the perpetrator, the perpetrator's family and the victim, and the community. Justice is a fundamental principle in the teachings of Islam. All Muslims must be given the same rights and responsibilities. The nature of humanity shows that all believers have the same position, with differences that arise solely from the level of devotion shown by each individual. The rights and obligations of all individuals universally have different interpretations. The conception of justice greatly affects the determination of human rights and obligations. Upholding justice will ensure that all individuals feel safe and secure.

Legally, it is clear that the absence of injustice in life poses a significant challenge, since the social life characterized by different layers of society influences the interpretation of justice. All individuals will harbor suspicion and distrust towards each other. The interpretation of justice varies greatly among individuals in practice. Nevertheless, justice must be upheld, especially in accordance with the principles of justice that Islam teaches its adherents.

The restorative justice approach is a philosophical framework that discusses the evolution of the criminal justice system by prioritizing the interests of the community and victims who feel neglected by the existing legal structure. A new idea emerged that is considered the embodiment of a comprehensive sense of justice. This concept is referred to as *the "Restorative Justice"* approach or in Indonesian it is called restorative justice. This perspective, from the perspective of criminal law, emphasizes that restorative justice not only puts responsibility on the perpetrators of criminal acts, but also prioritizes the position of the victim. In criminal cases, the main party to be harmed is not the state, but the victim and/or the victim's family (Nashriana, 2011, p. 8).

The enactment of Law Number 11 of 2012 which replaces Law Number 3 of 1997, changes the definition of children in the context of the Juvenile Criminal Justice System is an individual aged 12 (twelve) years old to under 18 (eighteen) years old who is suspected of committing a criminal act (Dellyana, 2016, p. 50).

Before Law Number 11 of 2012 came into effect, law enforcement officials recognized the benefits of restorative justice strategies in dealing with situations involving minors in legal conflicts. This can be seen from the regulations mentioned above. The laws and regulations regarding this transfer are regulated in Law Number 11 of 2012 which will come into effect in July 2014 (Balai Pemasarakatan Kota Pati, 2021).

The settlement of criminal cases with a restorative justice approach mainly emphasizes efforts to recover the perpetrator's mistakes and improve the relationship between the parties involved. Before the restorative justice method was developed, law enforcement officials had an authority called discretion. Discretion refers to the authority of law enforcement officers to decide whether to proceed with the case or not. Every law enforcement officer must have discretionary authority to handle the problem of children who are in conflict with the law. This discretionary jurisdiction serves as a valuable tool for the diversion of minor cases, thereby reducing the adverse impact of the criminal justice system on minors. This diversion, after the evolution of the restorative justice paradigm, is recognized as the application of restorative justice, specifically handling criminal cases outside the judicial system through mediation and reconciliation. However, the

diversion carried out by law enforcement officials cannot be expressly classified as the application of the restorative justice paradigm.

In order to carry out discretion, diversion, and restorative justice, it must first be known who are the actors who function to carry out these three things. There are four subsystem components in the criminal justice system in Indonesia, namely the police, prosecutor's office, courts, and corrections. The four subsystems must cooperate with each other in an integrated manner in resolving criminal cases that occur. In the correctional subsystem, there is a Correctional Center (BAPAS) as one of the correctional technical implementing units that plays a role in all stages of justice, from the pre-adjudication stage to the post-adjudication stage.

The purpose of this study is as follows: To find out and examine legal protection for Restorative Justice in the Handling of Child Crime in the Criminal System in Indonesia" To understand the act of Diversion and Restorative Justice as a concept of how to resolve criminal acts (actions) outside the judicial process (out of criminal judicial procedure) or at least not fully follow the criminal justice process.

## **Research Methods**

### **Jenis Penelitian**

The methodology of this research will use non-doctrinal techniques, as stated by Mukti Fajar DN, which is based on the provisions of the law and the events or events that can be observed in the subject. The author considers complementary sciences in addition to the application of relevant legal principles and norms when analyzing problems and conducting research, since legal research allows the integration of all information.

In this method of non-doctrinal approach, it is necessary to look at the facts of how a law is enforced (Fajar ND & Achmad, 2010, p. 192). Especially in terms of "Comparison of Diversion and Restorative Justice in the Handling of Child Crime in the Criminal System in Indonesia". In normative law research, law is often defined as the content of a law (law in a book) or as a rule or norm that serves as an acceptable standard of human behavior (Amiruddindan, 2010, p. 118). As a result, data sources only include library sources or secondary data, which includes primary legal documents, secondary legal sources, and tertiary legal materials.

### **Source and Discuss Research**

This normative law research uses a literature review as a data source consisting of:

- a. Primary Legal Materials: Legal documents with official authority, such as Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.
- b. Secondary Legal Materials: Non-official publications such as textbooks, legal dictionaries, and legal magazines that support legal studies.
- c. Tertiary Legal Materials: Additional reference sources such as dictionaries, encyclopedias, magazines, and newspapers that explain primary and secondary legal materials.

## **Analysis of Research Materials**

The main legal documents and secondary sources in this study are studied using descriptive analysis through qualitative methods. The summary discusses the content and structure of positive law. This suggests that the author is trying to explain what the rule of law means or why it is important when looking at the legal issues being studied (Ali, 2010, p. 107).

### **Technical Data Analysis**

After the required data is collected from literature and study sources, the data will be processed and analyzed qualitatively. The qualitative analysis methodology generates descriptive data, which includes oral and written responses from participants, as well as real risks that will be evaluated collectively (Soekanto, 1984, p. 13).

### **Results and Discussion**

Children involved in criminal acts are often victims of various factors, such as social conditions, the environment, and the weaknesses of the system that is supposed to protect them. Thus, in the aspect of applying criminal sanctions to children who commit criminal acts, it must be distinguished from the treatment of adults who commit similar violations (Sholehoddin & Ihya, 2023). This different approach is based on the principle of the best interests of the child, as mandated in the International Convention on the Rights of the Child.

The principle of child protection, especially the principle of non-discrimination, emphasizes the importance of prioritizing the best interests of the child. Such as including respect for children's basic rights, namely the right to life, the right to survival, and the right to grow and develop optimally. In the application of these principles, respect for children, including children who commit criminal acts, is very important (Yasim & Anwar, 2023). Therefore, the legal system must ensure that any action against a child involved in a criminal act remains mindful of their rights as a developing individual.

In the Juvenile Criminal Justice System in Indonesia, the handling of children who are in conflict with the law is not only focused on sentencing, but also directed to educate and rehabilitate so that they can return to a positive role in society (Sutanto & Rahaditya, 2024). The juvenile criminal justice system in Indonesia introduces two important concepts, namely restorative justice and diversion. These two concepts are regulated in Article 5 Paragraph (1), Paragraph (2), and Paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In this mechanism, restorative justice referred to in the article is realized through a diversion mechanism. Although they have the same goal, which is to provide the best protection for children in conflict with the law, these two approaches have differences in their implementation.

Diversion is the process of transferring the handling of children's cases from the formal criminal justice route to a settlement mechanism outside the criminal justice system. In the concept of diversion, the settlement of cases is carried out informally through dialogue and deliberation between the parties involved, with the main objective of reaching a fair agreement for both parties within 30 days (Setyowati, 2024). This switch is designed to prevent children from the negative impact of the formal and rigid criminal justice system.

The idea of diversion arises from the awareness that correctional institutions are not the ideal solution to deal with the problems of children who are facing the law. On the other hand, correctional institutions are often the place where children's rights violations occur, which can actually worsen their situation. This is what encourages the application of diversion as an alternative approach, with the concept of restorative justice as one of the main foundations (Yasim & Anwar, 2023). The main purpose of diversion is to prevent children from becoming more involved in the formal criminal justice system, as well as to provide opportunities for children to improve themselves (Rahayu, 2015). This process focuses on efforts to educate children to be accountable for their actions without having to experience the negative impact caused by the rigid justice system. The use of diversion gives children the opportunity to learn and develop in a more positive way, as well as avoid the bad stigma that can arise as a result of the criminal justice process.

In this case, it is emphasized that a child who commits a criminal act must still be tried, but in a special juvenile court that is within the general judicial environment. The process applied in the juvenile court is different, with specialized officials who understand children's issues, from arrest and detention, to court and coaching. This approach aims to ensure that the treatment of children remains humane and in accordance with their rights, and does not harm their psychological development in the future (Yasim & Anwar, 2023).

From the perspective of criminal science, the imposition of criminal penalties on children who are considered naughty is often detrimental to the development of children's psyche, especially when the sanctions given are in the form of imprisonment. The effects of prison sentences can create a stigma or bad label on children as perpetrators of criminal acts, which can actually worsen their future. Therefore, diversion is a wiser option, as it can involve steps such as mediation, counseling, or rehabilitation programs (Nopita, 2024). The focus of diversion is on preventive efforts that reduce children's involvement in the criminal justice system and protect children's rights. Through this effort, it is hoped that children can be improved through a more educational process and support development in a better direction.

Meanwhile, restorative justice is an approach that focuses on restoring the original situation, not on retaliation for the actions of the perpetrators of criminal acts. In the settlement of child criminal cases, restorative justice emphasizes the process involving relevant parties, including the perpetrator, the victim, and their families, to achieve peace outside the court. This settlement does not aim to avenge the perpetrator with imprisonment, but to seek the restoration of the situation through the principles of social and moral restoration (Denadin et al., 2021).

In restorative justice, all parties involved in criminal acts work together to find a fair solution. This process involves a discussion that leads to a settlement that recovers the damage caused by the criminal act (Ernis, 2017). Legal settlement prioritizes the restoration of social relations damaged by criminal acts, by compensating for losses experienced by victims. In addition, restorative justice also focuses on preventing similar crimes in the future. The main goal of restorative justice is to repair relationships damaged by criminal acts, as well as to provide opportunities for all parties to learn from the mistakes that have occurred (Flora, 2023).

Of these two settlements, both the application of diversion and restorative justice in the juvenile criminal justice system in Indonesia have been clearly regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). The law emphasizes the importance of providing special protection for children in conflict with the law, as well as encouraging the application of a more restorative approach. In this case, diversion and restorative justice serve as a mechanism for resolving cases as well as an effort to ensure that children's rights remain protected during the legal process.

The benefits of the application of diversion and restorative justice are very significant in the protection of children who commit crimes. One of the main benefits is its ability to prevent the criminalization of children, because by shifting the handling of cases outside the formal criminal justice system, diversion can prevent children from being negatively stigmatized as criminals, which often has a negative impact on their psychological and social development in the future (Pradityo, 2016). In addition, restorative justice provides an opportunity for perpetrators and victims to repair relationships damaged by criminal acts. This approach helps convicts to work together in finding mutually beneficial solutions, which in turn can rebuild trust that has been lost during the process (Setyowati, 2020).

Another benefit of the application of diversion and restorative justice is its ability to speed up the resolution of cases. Divergence and restorative justice processes tend to be faster compared to formal criminal justice processes, as they both involve a more informal approach and help settlement outside of the courtroom. Thus, this reduces the burden of cases that accumulate in court and accelerates recovery for children who are facing the law. Then, these two approaches are more effective in rehabilitation. Actively involving perpetrators in the case settlement process, either through mediation, counseling, or other rehabilitation programs, encouraging diversion and restorative justice can increase the effectiveness of rehabilitation programs. The impact helps children to better understand the consequences of their actions and provides opportunities to improve themselves constructively, without having to experience the trauma or stigma that is usually associated with the formal justice system.

However, despite the great benefits, the application of diversion and restorative justice also faces a number of challenges. One of them is the public's limited understanding of the concept of diversion. Many parties have not fully understood the importance of this approach, making it difficult to reach an agreement between the two parties. In addition, there are obstacles related to the compensation costs requested by victims which are sometimes too large, as well as challenges in calling all parties involved. The diversion process can also be disrupted by disputes that arise during the process. Some members of the community still think that every guilty person should be punished, and cannot be forgiven only through an agreement in the diversion process. In addition, the absence of the victim's family or the victim himself in the diversion process is also a significant obstacle (Denadin et al., 2021).

Therefore, the right strategy is needed to deal with these obstacles so that the application of diversion and restorative justice can be more effective. It can be concluded that diversion and restorative justice are two concepts that support each other in handling criminal cases involving



children. Both offer a more rehabilitative and coaching-focused approach, which is more effective and mindful compared to traditional criminal justice methods. Through consistent application and with the support of various parties, these two concepts can be a better solution in dealing with the problems of children who are entangled in the law, while still considering the welfare and development of the child. If applied properly, these two concepts can provide a more humane way out, keep children away from bad experiences in the formal criminal justice system, and provide space for them to develop and learn from the mistakes that have occurred.

## Conclusion

Diversion and restorative justice are two important approaches in handling child crimes in the Indonesian Criminal Justice System. Both have the same goal, which is to prioritize recovery over punishment, but with different mechanisms and focuses. Diversion aims to shift the process of resolving children's cases from the formal criminal justice system to alternative routes outside the court. This is done to protect children from the negative impacts of the formal justice process, such as social stigma and psychological trauma, while giving children the opportunity to improve themselves. Meanwhile, restorative justice is an approach that involves all parties affected by criminal acts, including victims, perpetrators, and communities, to jointly find solutions that repair the damage caused by criminal acts. This approach focuses on the restoration of social relations, compensation for losses, and prevention of future crimes. Thus, diversion and restorative justice complement each other in creating a humanist child penal system. These two approaches represent a paradigm shift in the handling of juvenile crimes, from a punishment orientation to a more rehabilitative and restorative approach.

## Bibliography

- Ali, Z. (2010). *Metode Penelitian Hukum* (Cetakan II). Sinar Grafika.
- Amiruddindan, H. Z. A. (2010). *Penghantar Metode Penelitian Hukum*. PT. Raja Grafindo Persada.
- Balai Pemasyarakatan Kota Pati. (2021). *Laporan Akuntabilitas Kinerja Instansi Pemerintah LKJIP BAPAS PATI*.
- Dellyana, S. (2016). *Wanita dan Anak di Mata Hukum*. Liberty.
- Denadin, S. A., Najemi, A., & Arfa, Nys. (2021). Pendekatan Diversi dalam Sistem Peradilan Pidana Anak (SPPA). *PAMPAS: Journal of Criminal Law*, 2(2), 29–45. <https://doi.org/10.22437/pampas.v2i2.13714>
- Ernis, Y. (2017). Diversi Dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak Di Indonesia (Diversion And Restorative Justice In Case Settlement Of Juvenile Justice System In Indonesia). *Jurnal Ilmiah Kebijakan Hukum*, 10(2), 163–174.
- Fajar ND, M., & Achmad, Y. (2010). *Dualisme Penelitian Hukum: Normatif & Empiris*. Pustaka Pelajar.

- Flora, H. S. (2023). Perbandingan Pendekatan Restorative Justice dan Sistem Peradilan Konvensional dalam Penanganan Kasus Pidana. *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 5(2), 1933–1948. <https://doi.org/10.37680/almanhaj.v5i2.3812>
- Nashriana. (2011). *Perlindungan Hukum Pidana Bagi Anak di Indonesia*. Rajagrafindo Persada.
- Nopita, S. (2024). *Peran Pembimbing Kemasyarakatan Dalam Pelaksanaan Diversi Pada Tindak Pidana Penganiayaan Oleh Anak (Balai Pemasyarakatan (BAPAS) Kelas II Banda Aceh)*. <https://repository.ar-raniry.ac.id/id/eprint/38618>
- Pradityo, R. (2016). Restorative Justice dalam Sistem Peradilan Pidana Anak. *Jurnal Hukum Dan Peradilan*, 5(3), 319. <https://doi.org/10.25216/jhp.5.3.2016.319-330>
- Rahayu, S. (2015). Diversi Sebagai Alternatif Penyelesaian Perkara Tindak Pidana Yang Dilakukan Anak Dalam Perspektif Sistem Peradilan Pidana Anak. *Jurnal Ilmu Hukum Jambi*, 6(1), 43317.
- Setyowati, D. (2020). Memahami Konsep Restorative Justice sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan. *Pandecta Research Law Journal*, 15(1), 121–141. <https://doi.org/10.15294/pandecta.v15i1.24689>
- Setyowati, S. (2024). Problematika Penerapan Diversi Dalam Penyelesaian Perkara Tindak Pidana Anak Dalam Mewujudkan Keadilan Restoratif. *UNES Law Review*, 6(4), 11679–11693. <https://doi.org/https://doi.org/10.31933/unesrev.v6i4.2126>
- Sholehoddin, Moh., & Ihya, R. (2023). Penerapan Sanksi Pidana Terhadap Anak Sebagai Pelaku Tindak Pidana Kekerasan Seksual (Studi Putusan PN PAMEKASAN No. 8/Pid.Sus-Anak/2022/PN Pmk). *Birokrasi: Jurnal Ilmu Hukum Dan Tata Negara*, 1(3), 298–312. <https://doi.org/10.55606/birokrasi.v1i3.601>
- Soekanto, S. (1984). *Pengantar Penelitian Hukum*. UI Press.
- Sutanto, P., & Rahaditya, R. (2024). Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana Dalam Sistem Peradilan Pidana Anak di Indonesia. *UNES Law Review*, 6(4), 10361–10367. <https://doi.org/https://doi.org/10.31933/unesrev.v6i4.2022>
- Yasim, S., & Anwar, M. C. (2023). Konsep Diversi dan Restorative Justice pada Peradilan Pidana Anak. *Jurnal Hukum Unsulbar*, 6(2), 72–89.