

# Implementation of Diversion for Children in Conflict with the Law by the National Police of Indonesia

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## ABSTRACT

This research explores the execution of diversion for juveniles in conflict with the law by the Indonesian National Police. Analyzing and evaluating the Indonesian justice system's regulation of the safeguarding of children who are in conflict with the law and diversion as an aspect of safeguarding children constitutes normative research. Statutory and conceptual approaches are utilized throughout the investigation. Restorative justice is a component of the police's strategy to combat crime on the ground, according to the findings of this study. The fundamental concept of diversion in juvenile restorative justice is the transfer of cases involving juveniles from the criminal justice process to an impartial process outside of the judicial system, with an emphasis on restoring the original situation as opposed to punishment. Consequently, the application of diversion in restoration justice in the system for juvenile offenders is less effective in the police.

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## 1. INTRODUCTION

Children are both a responsibility and an act of kindness from God the Creator that must constantly be safeguarded because human beings have inherent dignity and rights. Children's rights are human rights according to the Constitution of 1945 of the Republic of Indonesia and the United Nations Convention on the Rights of the Child, which was accepted by the Indonesian government via Presidential Decree Number 37 of 1990, then stipulated in Law Number 4 of 1979 regarding Child Welfare and Law Number 35 of 2014 regarding Child Protection. Law No. 3 of 1997 on Juvenile Courts and Law No. 11 of 2012 concerning the Juvenile Criminal Justice System introduced the fundamental principles of protection for children, namely non-discrimination in the child's best interests and respect for the child's growth, survival, and development.

According to the General Explanation of Law Number 23 of 2002 of the Republic of Indonesia Regarding the Protection of Children, children constitute the future of the country as well as the future generations of the nation's values; therefore, each child has a right to be safeguarded from actions of harm and prejudice, as well as human rights and freedoms. Parents, families, and the public are legally obligated to protect and uphold the human rights and safety of children. In a comparable vein in the setting of carrying out safeguarding kids, the state and the government are responsible for offering children accommodations and access, particularly in terms of assuring effective and targeted growth and development (Pangestika, 2019).

Primarily, diversion was developed with the intention of protecting children's rights. The emergence of diversion was an attempt to shield children from the stigma of evil. With diversion, law enforcers in the police, prosecutors, and courts are authorized to divert the judicial process outside of the existing formal justice system. The procedure of imposing punishment is not regarded as the most effective means of resolving juvenile crimes. This is consistent with the main objective of the penal system, which is to implement criminal justice that ensures the protection of children's best interests (Ananda, 2018).

The procedure of addressing issues of children in conflict with the law without recourse to the justice system is an improvement in children's case resolution. Retaliation is no longer an effective means of



resolving children's issues; a more important principle is the restoration of the situation by bringing all parties to the table to resolve incidents in the hope that both perpetrators and victims receive the justice that is already theirs (Kurniawan *et al.*, 2020).

The use of alternative methods for resolving situations involving children in conflict with the law, which do not rely solely on the judicial process, represents a significant advancement in addressing the legal matters concerning children. The efficacy of using retaliation as a means to address children's issues has diminished; the more important principle is the restoration of the situation by involving all parties to sit together to resolve cases that occur with the hope that both perpetrators and victims get the justice that is already theirs (Suwandewi & Adiyaryani, 2020).

## 2. METHOD

The research category is normative research. This research investigates the regulation of the protection of children in conflict with the law and diversion as a form of child protection within the justice system in Indonesia. The sorts of approaches utilized in this study are the statutory approach and the conceptual approach. The author's investigation was conducted using primary and secondary legal sources. The technique for reviewing and accumulating legal materials employs documentary studies, which are then subjected to qualitative analysis techniques in order to produce verbose descriptions of the findings.

### 3. DIVERSION AS RESTORATIVE JUSTICE FOR THE INDONESIAN NATIONAL POLICE

The national police is a government mechanism that attempts to achieve homeland security, which includes preserving public safety and order, enforcing the law in an orderly and consistent manner, putting protection into practice, serving the community, and promoting public peace through defending human rights. For the people to have faith in the National Police, the National Police must be professional in how they carry out their tasks and obligations, and they must also be more accessible to the community. The National Police must, therefore, offer the best level of service to the community in terms of law enforcement (Kurnia & Ali, 2023). The police are the first institution to deal with children in conflict with the law when resolving juvenile cases. Police investigators are obliged to seek diversion as mandated by the Juvenile Justice System Law.

Article 11 of Government Regulation No. 65/2015 on Guidelines for the Implementation of Diversion and Handling of Children Under the Age of 12 states that children are placed with their parents or guardians during the diversion procedure. The infant is placed in a Social Welfare Organizing Institution (LPKS) if he or she has no parents or guardians. Considering the child's best interests, minors with parents may be placed in LPKS. Further provisions regarding the procedures for situating children during the diversion process shall be governed by a regulation issued by the Minister in charge of coordinating government affairs pertaining to law and human rights.

The primary principles of the implementation of diversion are the use of persuasion or non-punitive approaches (outside the scope of criminal law) and the provision of opportunities for a person to correct errors. The high number of juveniles who enter the criminal justice system and are sentenced to incarceration is an illustration of the necessity of diversion policies. The purpose of diversion is to provide opportunities for lawbreakers, primarily juveniles, to become law-abiding again through non-formal channels and community resources (Hambali, 2019).

The limited form of diversion applied by the police, which is only in the form of returning to parents, threatens the diversion process offered to victims with failure. This is because the form of diversion in the form of returning to parents is the weakest process, with no educational process carried out on child offenders such as education or social work. The possibility of rejection from the victim's family is very high due to the inability of the investigator to convince the victim that the offender will be properly educated and will not repeat criminal offenses in the future.

The police have not optimally utilized their authority to implement restorative justice when dealing with children who have committed crimes. This indicates that the police have not utilized a restorative approach when handling cases involving minors. The police do not utilize the restorative approach to its full potential because there are numerous child cases that must be transmitted to the prosecutor's office, such as sexual abuse (rape) and drug cases. In cases of minor criminal offenses, such as sexual abuse, maltreatment, or larceny, the victim's family and community leaders are typically involved in a restorative approach.

The application of restorative justice to criminal offenses committed by children is usually done in cases of minor offenses, maltreatment, or theft. However, for cases of sexual abuse or drugs, all cases are forwarded to the prosecutor's office and processed through the applicable legal process.

However, usually, when the perpetrator is a child, peace must be sought. Peace is usually suggested by the investigator and held first with legal experts in the Polres, and the decision is taken in a meeting session. Usually, there is no time limit for the peace process.

According to Article 18, Paragraph 1 of Law No. 2 of 2002 of the National Police of the Republic of Indonesia, the police are granted the authority to exercise discretion. This provision emphasizes that such discretion should be exercised in the best interest of the public and the officers of the National Police of the Republic of Indonesia. The exercise of authority by the relevant entities is subject to their own judgment, as indicated in paragraph (2), which specifies that the measures outlined in paragraph (1) should only be employed in exceptional situations, in accordance with the laws, regulations, and professional behavior guidelines of the Indonesian National Police. According to the elucidation of Article 18 Clause (1), it is stipulated that the act of making a decision by members of the Indonesian National Police necessitates a careful consideration of both the potential advantages and disadvantages involved. The alignment of actions and truth holds significance within the realm of public interest.

In line with the regulations of Law No. 2 of 2002 on the Indonesian Police, specifically subsection 18 Paragraph 1, the Police Commissioner has recently issued Regulation No. 08 of 2021. This regulation pertains to the Indonesian Police's management and resolution of restorative judicial offenses.

The emerging paradigm in police discipline is based on restorative justice in criminal law enforcement that aligns with societal norms and values, offering a viable alternative while ensuring legal certainty. The concept of social justice aims to foster a sense of concern and raise awareness regarding issues of inequality and injustice within society. This pertains to the advancement of socio-legal requirements in order to address the collective perception of justice among all parties involved and serves as an affirmation of the authorities' jurisdiction as outlined in Law No. 02/2002 about the Indonesian Police.

This strategy permits law enforcement to investigate societal values during an investigation. Ought to be the matter settled during the preparatory stage of the criminal court's processes, or should the trial proceed? However, when attempting to perform discreetly, police are frequently concerned.

This is due to a dearth of positive legal knowledge and concerns about the general public's view of what they perceived to be a police strategy intended to help the litigants. Even the earliest conceptions in the practice of criminal investigation are derived from litigants, not victims (Wagiu, 2015).

In this instance, the researchers' use of police discretion represents a restorative justice approach that concentrates on restoring fairness and equilibrium for crime and victims. Criminal justice mechanisms typically prioritize prosecution instead of the utilization of discussion and compromise to reach equitable settlements. Thus, restorative justice is an aspect of justice involving victims, offenders, and society (Haerul & Zainuddin, 2023).

The establishment of a direct line of contact between the perpetrator and the victim facilitates the victim's ability to articulate their emotions and assert their legal rights and preferences. The process of communication entails that criminals are anticipated to recognize their transgressions, rectify any harm caused, and assume full accountability for their criminal actions. By means of this discussion approach, the community can make valuable contributions towards the attainment of consensus outcomes and the subsequent monitoring of their implementation. Therefore, the process of resolving disputes through criminal arbitration is commonly referred to as restorative justice (Pradityo, 2016).

Some of the benefits attained when police conduct diversion during the investigation phase (Ratomi, 2013), namely:

1. The only penal subsystem law enforcement organization that operates a subdistrict-level network is the police. Consequently, the police are the closest and most accessible law enforcement agency to the community from a structural standpoint. The police are the most likely law enforcement agency to have a network at the village level, given their institutional profile.
2. Compared to other law enforcement officers, the number of police officers is significantly greater, although it is acknowledged that not all police officers are committed to addressing crimes committed by minors. The availability of sufficient personnel will also significantly facilitate the resolution of crimes committed by minors.
3. Diversion at the police level entails providing minors with assurances that they will avoid contact with the criminal justice system as quickly as possible. Thus, the deleterious effects of children's interactions with law enforcement can be mitigated.
4. The diversion of the process from the process of justice to the non-judicial procedure at the police level will keep minors from being transformed into victims of violence during the investigation stage, a prevalent flaw in the judicial process.

#### 4. THE APPLICATION OF JUVENILE DIVERSION IN THE INDONESIAN NATIONAL POLICE

The National Police Rules of the Republic of Indonesia No. 08 Year 2021 regulates the restorative justice-based administration of criminal acts, to be specified in the termination of investigations (SPP-Lidik) as well as the termination of criminal act investigations (SP3) for legal reasons. This rule is used as an outline for resolving instances in the procedure of examination and investigation of criminal offenses to provide legal certainty. When managing cases, police investigators give restorative justice the highest priority.

Police have to resolve conflicts between the perpetrators and victims along with other parties involved in a case who seek a peaceful resolution. Utilizing a restorative justice strategy, all cases are prioritized, with the exception of those that could cause division and are exacerbated by radicalism and separatism.

Diversion must be pursued at every jurisdictional examination; diversion cannot be implemented in cases punishable by more than seven years and is not a continuous action of the action; the application for diversion requires the permission of the person who was assaulted and/or the victim's immediate family and an application for diversion in minor crimes must acquire the approval of the victimized and/or the victim's family. In addition, the administration of diversion must take into account the categorization for criminal violations, the age of the criminal, the findings of community investigation, and the support of family and others in the community (Wahyudi & Angkasa, 2018).

In accordance with the first article, Number 27 of the Regulation of the Head of the Indonesian National Police No. 6 of 2019 Regarding Criminal Investigations, restorative justice must include perpetrators, victims, and/or their families, in addition to other parties. This is meant to accomplish justice for all parties involved. There are numerous reasons to use restorative justice in resolving conflicts.

Article 12 of Letters A and B of Regulation No. 6 on Criminal Investigations issued by the Indonesian Police Commissioner for 2019 describes these requirements, which include the following: (1) the solved crime was a violation or an administrative crime, either ultimate or relatively; (2) each party to the litigation (accused and victim) desires reconciliation, and the outcome of these instances won't have a pervasive or detrimental impact on people's lives; (3) dialogue activities must involve plaintiffs and social organizations, including society leaders; (4) for the purpose to sort out the unlawful act, each party have to seek the reconciliation process; (5) when an offense reappears, legal procedures has to be implemented in conformity with applicable laws and regulations.

The following are specified in the Criminal Police Secret Telegram TR/1124/XI/2006 concerning Instructions for the Implementation of Diversion:

1. Article 18, subsection 1 of Law No. 2 of 2002 regarding the Indonesian National Police stipulates that the police discretionary authority is contingent on certain conditions. These conditions include the necessity of the action, its alignment with police duties, and its appropriateness in achieving the intended objective. This discretionary authority is guided by the principle of balance, which entails weighing the nature of a child's actions against the resulting consequences, all while prioritizing the best interests of the child.
2. The United Nations Convention on the Rights of the Child's Diversion principle is an instance of diversion from official court proceedings to alternative forms of resolution deemed to be in the best interests of the child. Diversion can take the form of returning the child to his or her parents, with or without informal or formal warnings, mediation, group deliberation between the perpetrator's family and the victim's family, or other forms of best settlement in accordance with the local community's culture.
3. Based on Article 16, paragraph (1), letter L of the Police Act, individuals in positions of authority are permitted to engage in additional actions as long as they are in accordance with the law, align with professional duties that necessitate such actions, are appropriate and reasonable, and fall within the scope of their role. These actions must be based on practical considerations derived from compelling circumstances while also respecting human rights.
4. To the extent possible, develop the principle of diversion in the restorative justice model to process criminal cases committed by children by creating an understanding in the local community that children's involvement in criminal offenses must be understood as child delinquency due to the failure/error of adults in educating and supervising children until they reach adulthood.

Article 15, paragraph (2) of Government Regulation No. 65/2015 stipulates that the procedure of diversion is conducted via diversion deliberations. Investigators and community advisors serve as facilitators during diversion deliberations. On the basis of a restorative justice method, the process of diversion involves the child and their parents or custodians, the victim or child victim and/or his or her parents, community counselors, and social workers.

In the diversion minutes, the entire implementation procedure is documented. The rules and regulations of the Chief of the Indonesian National Police govern additional procedures for the investigation-level implementation of diversion. If diversion is not feasible, the investigator transfers the case file to the prosecutor, and the criminal justice system continues. Nevertheless, if the diversion works out well, the letter of agreement will reflect this. The results of the agreement must be established by the judge-in-chief of the district judge's court when the proceeding occurred or the agreement was signed.

A letter signed by the minor and/or parent or guardian, the investigator, and the community advisor formalizes the agreement. Within three days of receiving the agreement for diversion, a determination is made. Within three days of its execution, the stipulation is submitted to the correctional administrator, the investigator, the public prosecutor, or the judge. Upon receipt of the stipulation, the investigator must issue a stipulation of discontinuation of investigation or a stipulation of diversion agreement and determine the status of evidence within three days of receiving the diversion agreement and minutes. The investigator and community advisor must receive the stipulation within three days of the date it was issued (Ribunu *et al.*, 2023).

Women and Children Service Unit (PPA) investigators use language that is easily comprehended by children, do not force children, and do not use official attributes and uniforms that can make children feel threatened and cause fear and trauma. Additionally, officials seek advice or counsel from community advisors (BAPAS) or, if required, from educational professionals, religious leaders, counselors, and various other professionals available (Surya & Budi, 2023).

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The data in Table I illustrates the police reports and diversion actions taken against children in conflict with the law as follows:

TABLE I: THE POLICE REPORTS AND DIVERSION ACTIONS HANDLED BY THE NATIONAL POLICE FROM 2017 TO 2020

| Year | Police reports | Diversion actions |
|------|----------------|-------------------|
| 2017 | 3,964          | 258               |
| 2018 | 9,387          | 1,380             |
| 2019 | 6,963          | 2,051             |
| 2020 | 8,914          | 473               |

Based on the data above, 2018 was the year with the most police reports related to juvenile offenses (9387), while 2019 was the year with the most diversions for children (2051) (Republic of Indonesia, 2021). In principle, investigators at the PPA Unit of the Police have attempted to resolve every criminal case in which the perpetrator is a child in order to make diversionary efforts; however, investigators are occasionally constrained by criminal offenses that result in material losses, and the reporting party objects if the case does not proceed to court. In addition, investigators still have doubts because there are no standard rules or clear Standard Operating Procedures (SOPs) for conducting criminal investigations, particularly for children who commit criminal acts of drug abuse, so they prioritize repressive actions through law enforcement over other efforts. This situation gives the impression that investigators are only interested in completing the investigation process so that the perpetrators can be charged and that no effort is being made to prioritize human rights values, particularly those of children (Setjo & Ma'ruf, 2020).

In reality, effective application of restorative justice might avoid social conflicts among communities, prioritize discussion and agreement, and reduce state spending. In discussing these financial adjustments, it is important to recognize that the justice system continues to be intricate. There is both an investigation process and a criminal investigation in the internal police, and each of these phases is lengthy.

As described above, officers who utilize negotiation by implementing restorative justice in police organizations can refer to Articles 18 and 19 of the Police Law. If these two articles are cited, officers can divert juveniles from formalized justice system processes, including not arresting them, should they disobey the law. This regulation provides an adequate basis for police officers performing investigations that apply restorative justice in an attempt to avoid the adverse impacts of the judicial system, particularly in averting the establishment (improvement) of unlawful vocations and recidivism.

The main signs of unlawful conduct that can restore justice are as follows: (1) not all crimes, even though in different countries; (2) a violation of the law bringing imprisonment of no more than five years in prison given that it is a serious offender that brings a punishment of more than five years; (3) an offense which cannot be life/life/body frightening; and (4) property-related offenses such as theft, fraud, fraud, and forgery. (5) Crimes against honor (dignity), such as libel and slander (Haerul & Zainuddin, 2023).

Theoretically, there are a number of benefits to the police instituting restorative justice during the investigation phase, including the following: (1) Police are the lone law enforcement organization in the justice system's criminal justice subsystem with an organizational structure that touches the street level. The police authority is the only institution of law enforcement that is formally closest and most accessible to the public. (2) The quantity of police officers exceeds that of other law enforcement agencies, despite the fact that not each officer interacts with criminals. Appropriate personnel levels will greatly facilitate the process of error correction. (3) Since the National Police Agency is the primary law enforcement officer who takes part in the criminal justice system, restorative justice at the law enforcement level concentrates on avoiding early access to the system. Consequently, communication with authorities and officials can mitigate adverse effects.

Among the numerous benefits of applying penal dispute resolution outside of court are the following: reducing court congestion in judicial institutions; increasing community involvement in the method of resolving disputes (legal decentralization) and urging denying parties; promoting the availability of justice in society; providing mediation possibilities that result in results that are suitable for all parties; and accelerating case resolution. Transforming the procedure to the judiciary to a non-judicial approach at the law enforcement stage will additionally decrease the possibility of becoming a victim of abuse during the investigation phase, which is often the bane of the legal system.

## 5. CONCLUSION

Restorative justice is an element of the police's efforts to combat local crime. The basic concept of diversion in juvenile restorative justice is the relocation of children's cases from the framework of criminal justice to an impartial approach outside of the court system, with a priority on recovering the way things were before rather than retribution. Numerous kids in conflict with the law are still managed through formal procedures (penal settlement) as opposed to diversionary settlement, reducing the effectiveness of the application of diversion in restorative justice throughout the Children's Justice System by the Police.

## CONFLICT OF INTEREST

The authors declare no conflict of interest.

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