

IMPLEMENTATION OF DIVERSION IN THE SETTLEMENT OF CRIMINAL CASES CHILDREN IN CONFIDENCE UNDER THE LAW PRINCIPLES OF RESTORATIVE JUSTICE

Cahyo

Iblam Higher School of Law

Corresponding author:cahyo.iblam@gmail.com

ABSTRACT: This study investigates the implementation of diversion by the Indonesian National Police as a strategy for resolving cases involving children in conflict with the law. One of the challenges encountered by investigators from the Indonesian National Police (POLRI) pertains to the utilization of discretionary authority in their investigative processes. The present study investigates the implementation of diversion by the Indonesian National Police as a means of resolving cases involving children in conflict with the law. One of the challenges encountered by investigators from the Indonesian National Police (POLRI) pertains to the exercise of discretionary power in resolving cases involving juvenile offenders who face the possibility of imprisonment exceeding a duration of seven years. This issue arises from the provisions outlined in Law Number 11 of 2012, which governs the Juvenile Criminal Justice System in Indonesia. According to this law, the diversion of juvenile offenses is mandated only for those offenses that carry a maximum prison sentence of less than seven years. The present study employs a normative-empirical legal methodology, drawing upon primary and secondary sources. The process of data collection involved conducting interviews and conducting a study of relevant literature in libraries. The data were subjected to qualitative normative analysis techniques. This study applies the theory of restorative justice as a grand theory, justice theory as a middle-range theory, and legal protection theory as an applied theory to analyze the provided data. The findings of the study indicate that the implementation of diversion during the investigation phase lacks effectiveness and efficiency in adhering to the principles of justice, namely simplicity, expediency, and cost-effectiveness. This is primarily attributed to the bureaucratic nature of the diversion procedure, as well as the complex and administratively challenging mediation process, which involves numerous elements. Furthermore, it is worth noting that the Indonesian National Police (POLRI) investigators possess the ability to pursue diversion as a course of action in cases involving juvenile offenses. This particular measure is applicable even in situations where the offense carries a potential prison sentence exceeding seven years. The discretionary authority exercised by law enforcement officials in this regard is justified by the absence of explicit provisions within the SPPA Law that explicitly prohibit the application of diversion for criminal acts that are punishable by imprisonment for more than seven years. However, the utilization of police discretion in this particular scenario must adhere to the restrictions, prerequisites, or standards for implementing restorative justice as outlined in the Chief of Police Circular Number SE/8/VII/2018, which pertains to the utilization of restorative justice in the resolution of criminal cases.

KEYWORDS: *Discretion, Children in Conflict with the Law, Diversion, Restorative Justice.*

I. INTRODUCTION

The responsibility to ensure child protection is rooted in the fundamental belief that children are entrusted to us as a divine mandate and precious beings, possessing inherent human dignity and status. Hence, to uphold the dignity of children, it is imperative that they are afforded the entitlement to receive specialized safeguards, encompassing legal protection within the framework of the justice system. The issue of child protection within the justice system is intricately linked to the presence of children involved in legal conflicts, as outlined in Law Number 11 of 2012, which pertains to the Juvenile Criminal Justice System. There exist two distinct categories of child behavior that result in legal consequences. The first category pertains to offender status, which refers to juvenile delinquency behaviors that, if committed by adults, would not be considered criminal acts. Examples of such behaviors include disobedience, truancy, and running away from home. The second category, known as juvenile delinquency, encompasses behaviors exhibited by children that are deemed unlawful or criminal when committed by adults (Laksana, 2017). Thesecond category under consideration is

intricately linked to children who are involved in conflicts with the law, as stipulated in Article 1, number 3 of Law Number 11 of 2012. Law Number 11 of 2012, which pertains to the Juvenile Criminal Justice System, was enacted in response to the criticisms raised by diverse groups regarding the shortcomings of Law Number 3 of 1997, specifically pertaining to Courts. Children who exhibit a greater inclination towards punishment rather than recovery. One modification Law Number 11 of 2012 encompasses the introduction of a fundamental aspect, namely the implementation of "restorative justice" within the framework of the juvenile justice system. The application of the restorative justice model in Law Number 11 of 2012 involves the implementation of diversion, which refers to the transfer of child cases from the criminal justice system to an internal process that operates outside the realm of criminal justice. The implementation of diversion aims to mitigate the adverse consequences of children's participation in legal proceedings. The diversion program serves as a means to mitigate the adverse consequences associated with the formal criminal justice system, with the primary objective of circumventing the detrimental social perception attached to juvenile delinquency. The stigmatization of evil represents a form of violence perpetrated against children. The diversion program involves redirecting formal judicial assessments towards coaching programs that operate independently from the judicial process, with the aim of preventing stigmatization of the child as morally corrupt. The objective of this intervention is to facilitate the application of restorative justice, a framework that aims to promote the restoration and recovery of individuals affected by wrongdoing, as opposed to pursuing punitive measures commonly associated with traditional criminal justice systems (Djamil, 2013).

Since the enactment of Law Number 11 of 2012, the Indonesian National Police (POLRI) has implemented a diversion program rooted in restorative justice principles as a means to address juvenile criminal cases. Nevertheless, the consistent implementation of diversion by police officers in every criminal case has not been observed in practice. This phenomenon is evident in the research report published by the Jakarta Legal Aid Institute (LBH) titled "An Analysis of the Implementation of Diversion in the Juvenile Criminal Justice System within the Police Force from 2013 to 2016." This study conducted by LBH Jakarta reveals that the police have not effectively pursued diversion as a means of addressing cases involving juvenile delinquency. Based on the findings reported by LBH Jakarta, out of the total of 229 cases that were examined, a mere 32 cases were determined to have been diverted, whereas the remaining 158 cases were found to have not undergone diversion during the investigation phase. A total of 39 cases were found to have no recorded diversion information. Furthermore, it is worth noting that LBH Jakarta has observed that detention remains the primary approach in addressing instances involving children who have engaged in unlawful activities. Based on the data provided by LBH Jakarta, out of a sample size of 229 cases, it was found that 122 children involved in conflicts with the law were subjected to police detention, while 107 children were not detained (LBH Jakarta, 2020). The aforementioned data indicates that the integration of a restorative justice-based juvenile criminal justice system within the police force has exhibited inconsistencies and inefficiencies in its implementation. Within the framework of policies governing the handling of Juveniles involved in legal disputes (in the present denoted as ABH) cases, the utilization of discretionary authority is anticipated to effectively reconcile the conflict between legal norms and humanitarian principles. The application of discretionary authority by law enforcement officials is anticipated to facilitate the realization of the principle that every juvenile involved in criminal activities possesses the entitlement to avail themselves of restorative justice. This principle further entails affording them the opportunity to resolve criminal cases without resorting to legal intervention, instead opting to reunite them with their parents or guardians, or alternatively placing them in a designated Safe House. The topic of discussion is the phenomenon of social children, specifically focusing on the concept of the Children's Social Protection House (in the present denoted as RPSA). The police possess discretionary authority that allows them to exercise their judgment in terminating investigations involving children. This authority can be exercised through actions such as releasing the child or transferring them to alternative processes, thereby enabling the child to avoid legal proceedings (United Nations, 2004). The researcher aims to investigate the utilization of police discretion in addressing cases involving children in conflict with the law (ABH) through the lens of restorative justice principles. This examination will be conducted from the standpoint of Pancasila, which serves as the philosophical foundation and guiding principles of the Indonesian society, as well as the legal framework of the Unitary State of the Republic of Indonesia.

II. THEORETICAL REVIEW

Restorative Justice Theory

Restorative justice is a sentencing framework that seeks to address the discontentment arising from the outcomes of the prevailing criminal justice system. The restorative justice paradigm originated during the 1970s, coinciding with a growing sense of doubt surrounding the effectiveness of retributive and rehabilitative justice models. Theoretical justifications for the adoption of restorative justice programs encompass a wide range of considerations, such as the adverse impacts of the penal system on juvenile offenders and the criminal justice system's limited capacity to effectively handle the continuously mounting caseload. These arguments encompass the critique of the judicial system's tendency to retraumatize victims, the limited involvement of victims in

criminal justice procedures, and the necessity to restore community engagement in the resolution of criminal conflicts (penal conflicts) (Lemonne, 2003). Gerry Johnstone and Daniel Van Ness assert that a consensus among scholars regarding the definition and boundaries of restorative justice remains elusive. According to Johnstone and Van Ness, restorative justice should be regarded as a "appraisive concept", a "internally complex concept", and a "open concept" that undergoes ongoing development through practical application. This elucidates the reasons behind the contentious nature of the restorative justice concept (Johnstone & Ness, 2007).

Legal Protection Theory

The theory of legal protection refers to the concept that individuals are entitled to certain rights and safeguards under the law in order to ensure their well-being and prevent harm. Fitzgerald, as cited by SatjiptoRaharjo, posits that the genesis of this legal protection theory can be traced back to the theory of natural law or the natural law school. The development of this particular flow can be attributed to the pioneering efforts of notable philosophers such as Plato, Aristotle (who was a student of Plato), and Zeno (the founder of the Stoic school). The concept of natural law posits that the source of law is derived from a universal and eternal deity, and that a clear distinction between law and morals is untenable. The proponents of this ideological framework maintain that the relationship between law and morals is one of mutual influence and regulation, both internally and externally, within the realm of human existence. This interplay is manifested through the establishment and enforcement of legal and moral principles (Raharjo, 2000). Fitzgerald explained that the theory of legal protection endeavors to amalgamate and harmonize diverse interests within society. This is due to the recognition that, in a complex interplay of interests, safeguarding specific interests necessitates the imposition of limitations on opposing interests. The primary focus of the field of law is to address and safeguard human rights and interests. As such, the legal system holds the utmost authority in determining the specific human interests that necessitate regulation and protection. The examination of legal protection necessitates an analysis of its various stages. These stages encompass legal protection derived from statutory provisions, as well as the entirety of legal regulations established by the community. These regulations essentially consist of communal agreements that aim to govern behavioral interactions among community members, as well as interactions between individuals and the government, which is perceived as the representative entity safeguarding the community's interests (Raharjo, 2000).

III. RESEARCH METHOD

This research uses the present study employs a normative-empirical approach, which integrates two distinct methodologies in legal research: normative legal research and empirical legal research. The term "law" is used in this study to encompass both its normative, principled, and doctrinal aspects, as well as its manifestation as a social phenomenon. Normative legal research entails the systematic exploration of legal rules, principles, and doctrines in order to address and resolve pertinent legal matters (Marzuki, 2005). Normative legal research entails the examination of literature or secondary data sources (Soekanto&Mamudji, 2015). The cognitive approach employed is deductive reasoning, which involves deriving specific conclusions from a general premise that has been established as true. The resulting conclusion is tailored to address a specific context or situation (Sedarmayanti&Hidayat, 2002).

IV. DISCUSSION

The Examination of Restorative Justice Within the Framework of Legal Protection

The concept of "restorative justice" was initially introduced into the field of criminal justice practice during the 1970s. However, compelling evidence suggests that the origins of this concept can be traced back to ancient traditions and are deeply rooted in the cultural practices of traditional societies and prominent world religions. Certain scholars posit that the principles underlying restorative justice have been present within the judicial framework that emerged during the ancient Greek and Roman civilizations (Braithwaite, 2002). Anne Lemonne asserts that the concept of restorative justice originated during the 1970s, coinciding with a growing sense of doubt towards retributive and rehabilitative justice frameworks. Theoretical justifications for the implementation of restorative justice programs encompass a wide range of considerations, such as the adverse impacts of the penal system on juvenile offenders and the criminal justice system's limited capacity to manage the continuously growing volume of cases. These arguments also encompass critiques of the judicial system, which has a tendency to retraumatize victims, the minimal involvement of victims in criminal justice proceedings, and the necessity of revitalizing community engagement in resolving criminal disputes (penal conflicts). This argument makes a valuable contribution to the advancement of conflict resolution strategies aimed at maximizing societal benefits by incorporating the considerations of citizens. The theory of restorative shaming posits that individuals' adherence to the law is influenced by moral considerations and the promotion of community cohesion, rather than relying solely on punitive measures for social control (Braithwaite, 1989). The utilization of shame (in the form of shaming) is employed by individuals within society to impart knowledge to offenders regarding the perils associated with engaging in criminal conduct, which may have adverse

consequences for both the individual and the broader social fabric, while also aiming to restore the social compact. In the context of the restorative shaming process, the perpetrator is regarded as an individual who bears a moral duty and accountability to make appropriate decisions, thereby being accorded the status of virtuous individuals. The efficacy of incorporating shame as a component within the restorative justice process lies in its treatment of the offender as an autonomous individual who possesses the agency to either conform to societal norms or disregard them, thereby subjecting themselves to disapproval from their peers (Braithwaite, 1989)

In accordance with the findings of C.S.T. Kansil (1989) the legal protection council encompasses a range of legal measures that law enforcement officials are obligated to offer in order to ensure a sense of security, encompassing both mental and physical well-being, by addressing disturbances and potential threats from any entity According to Philipus M. Hadjon (2011), the act of legal protection entails safeguarding or offering support to individuals who possess legal rights, employing various legal mechanisms. The notion of legal protection is a universally recognized principle within the framework of the rule of law. Legal protection encompasses two primary forms: preventive legal protection and repressive legal protection. Preventive legal protection, also referred to as preventive measures, encompasses actions taken to prevent legal issues or mitigate potential risks before they occur. The implementation of preventive legal protection holds great importance in the context of government actions that are grounded in the principle of freedom of action. By establishing preventive legal protection measures, the government is compelled to exercise caution and prudence in its decision-making processes. The preventive legal protection is established through statutory regulations in order to proactively prevent violations and impose limitations on the execution of obligations. Repressive legal protection serves the purpose of resolving disputes that have emerged due to violations. This measure represents the ultimate form of protection, as it entails the imposition of sanctions for any committed violations. The analysis of restorative justice from the standpoint of legal protection reveals its manifestation as a means of preventive legal protection. The execution of penal policy is facilitated by law enforcement agencies, such as the police, who exercise discretionary powers in accordance with relevant provisions and legal frameworks. Nevertheless, the discretionary powers wielded by law enforcement officers, such as the police, can be employed in a preventive capacity through non-penal mechanisms, as a result to the existence of legal protections.

The Utilization of Diversion and Restorative Justice Within the Context of the Juvenile Criminal Justice System

In recent times, there has been a notable shift in the focal point of criminology. The primary concern shifts from understanding the motivations behind individuals' engagement in criminal behavior to examining the factors that determine the classification of certain actions as criminal while others are not. This observation indicates a shift in the field of criminology, where the emphasis has moved away from examining the inherent traits of criminal behavior towards examining the mechanisms involved in the criminalization of certain behaviors. Clayton Hartjen(1974) observes a notable shift in focus, wherein attention is increasingly directed towards the criminal justice system and the interplay between perceptions of crime, the administration of criminal law, and broader societal dynamics. The criminal justice system is a legal framework that relies on criminal law, encompassing both substantive criminal law and procedural criminal law. The criminal justice system possesses a dual functional aspect. Firstly, it serves as a mechanism for society to effectively manage and suppress criminal activities to a certain extent. Secondly, it operates as a means of secondary prevention, specifically aimed at diminishing criminal behavior among individuals who have already engaged in criminal acts or those who have intentions to do so. This is achieved through the processes of detection, punishment, and execution of criminal justice measures (Muladi, 1995). The definition of children within the framework of the Juvenile Criminal Justice System Law (UU SPPA) delimits the age range of individuals who can be deemed legally accountable for their actions. It primarily encompasses children involved in the justice system, specifically those who are engaged in delinquent behavior, those who have fallen victim to criminal acts, and those who have witnessed such acts. According to the SPPA Law, children are defined and their age limit is specified as follows:

1. According to Article 1, point 2, a child who is in conflict with the law encompasses three distinct roles: a child who is in conflict with the law, a child who is a victim of a crime, and a child who serves as a witness to a crime.
2. A child in conflict with the law, henceforth referred to as a child, is an individual between the ages of 12 and 18 who is under suspicion of engaging in criminal activities (as defined in Article 1, number 3).
3. A child victim, as defined in Article 1 point 4, is a child under the age of 18 who suffers physical, mental, and/or economic harm as a result of a criminal act.
4. A child witness, defined as an individual below the age of 18, possesses the ability to furnish pertinent details relevant to the investigation, prosecution, and courtroom testimony pertaining to a criminal incident that they have personally observed, heard, or experienced. According to Article 1, section 5.

Based on the provisions outlined in the SPPA Law mentioned earlier, it can be inferred that the term "child" refers to an individual between the ages of 12 and 18 who is under suspicion of engaging in criminal activities. In essence, Law no. 11 of 2012 pertaining to the Juvenile Criminal Justice System stipulates specific criteria that must be fulfilled in order to classify individuals as children. (a) The individual in question is between the ages of 12 and 18, specifically not having reached the age of 18 yet. (b) There are suspicions surrounding the child's involvement in a criminal act. The juvenile criminal justice system, as regulated by the SPPA Law, is applicable to children falling within this particular category.

The term "Children's Criminal Justice System" refers to the comprehensive process of addressing cases involving children who have engaged in unlawful activities, encompassing all stages from investigation to post-sentencing guidance (as stated in Article 1, point 1). As previously mentioned, a distinguishing feature of the juvenile justice system is its utilization of restorative justice and diversion practices. The concept of "restorative justice" as outlined in the SPPA Law refers to the resolution of criminal cases through the active involvement of perpetrators, victims, families of perpetrators/victims, and other relevant parties. This collaborative approach aims to achieve a just outcome by prioritizing the restoration of the affected parties to their original state, rather than seeking retribution. According to Article 1, point 6. The implementation of the restorative justice principle necessitates the active involvement of law enforcement officials across all stages of the criminal justice process, including investigation, prosecution, trial, and detention. The regulation pertaining to this matter can be found in Article 5, paragraph (1) of the SPPA Law, which states the following:

- (1) It is imperative for the Juvenile Criminal Justice System to accord priority to the Restorative Justice approach.
- (2) The Juvenile Criminal Justice System, as mentioned in paragraph (1), encompasses several components. Firstly, it involves the criminal investigation and prosecution of children, which must adhere to the laws and regulations unless specified otherwise in this legislation. Secondly, it entails the trials of children, which are conducted within the framework of general courts. Lastly, it encompasses the provision of guidance, supervision, and assistance throughout the commission and aftermath of a crime or action.
- (3) In accordance with the provisions outlined in paragraph(2) letters a and b, the Juvenile Criminal Justice System necessitates the pursuit of diversion. The aforementioned provisions highlight the necessity for diversifying the implementation of restorative justice in resolving juvenile criminal cases during the stages of investigation, prosecution, and trial. The term "diversion" is defined as "the act of transferring the resolution of child cases from the criminal justice system to alternative processes that exist outside of the criminal justice system" (Article 1, point 7). The implementation of diversion serves several objectives, as outlined in Article 6. These include: (a) fostering reconciliation between the victim and the child; (b) resolving cases involving children outside the formal judicial process; (c) preventing the deprivation of liberty for the child; (d) promoting community engagement and participation; and (e) cultivating a sense of responsibility towards children. While the SPPA Law mandates the implementation of diversion at various stages, such as investigation, prosecution, and court proceedings, it is important to note that not all juvenile criminal cases are eligible for diversion. According to the SPPA Law, diversion may be implemented in instances where a juvenile offender's offense satisfies two conditions: (a) it carries a maximum penalty of less than seven years of imprisonment, and (b) it does not constitute a repeated offense (Article 7). The diversion process is implemented through a series of deliberations that involve children, their parents or guardians, victims or their parents or guardians, community counselors, and professional social workers. This approach is grounded in the principles of restorative justice. If deemed essential, the process of deliberation may involve the participation of Social Welfare Workers and/or members of the community. The Diversion process should prioritize several key considerations: (a) the well-being of the victim; (b) the welfare and accountability of the Child involved; (c) the importance of mitigating negative social perceptions; (d) the prevention of retaliatory actions; (e) the promotion of community cohesion; and (f) the maintenance of decency and public order, as outlined in Article 8.

The Utilization of Police Discretion-Based Diversion in Addressing Cases Involving Children in Conflict with the Law from a Perspective of Restorative Justice

During the course of conducting inquiries pertaining to cases involving children, investigators are obligated to seek deliberation or guidance from the Community Advisor subsequent to the reporting or lodging of a criminal incident. In the event that it is deemed necessary, investigators possess the authority to seek guidance or counsel from professionals in the fields of education, psychology, psychiatry, religious leadership, professional social work, social welfare, and other relevant areas of expertise. Investigators may be susceptible to administrative sanctions. Community advisors are responsible for the preparation of social research reports with the aim of conducting investigations. Investigators utilize these social research reports as substantive material to inform their investigative actions, with a particular focus on ensuring that misbehaving children

receive optimal treatment. The Correctional Center (Bapas) is required to promptly provide investigators with the findings of social research within a maximum timeframe of 72 hours subsequent to receiving the investigator's request. investigation. The coordination is conducted within a prescribed timeframe of 24 hours from the initiation of the investigation. The execution of Pro *Justitia* actions, such as arrests and detentions, is subject to stringent limitations imposed by the SPPA Law. One provision within the SPPA Law, specifically Article 3 letter g, outlines the entitlement of a child to refrain from being subjected to arrest, detention, or imprisonment, unless it is deemed absolutely necessary and for the briefest duration feasible (UU Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak Pasal 22). This provision explicitly demonstrates the imperative for investigators to minimize the apprehension of children during the course of an investigation. In the event that an arrest becomes necessary for investigative purposes, it is important to emphasize that this measure should only be employed as a final recourse or *ultimum remedium*. The apprehension should be conducted in a compassionate manner, considering the age-specific requirements of the child, and completed within a limited timeframe of no more than 24 hours. Children who are apprehended must be allocated to a designated facility specifically designed to cater to the needs of juvenile offenders. The jurisdiction in question currently lacks specialized services for children, resulting in their placement under the care of the Social Welfare Organizing Institution (in the present denoted as LPKS) (UU Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak Pasal 22).

In the context of detaining children, it is important to note that the SPPA Law prohibits the detention of children under certain circumstances. Specifically, if a child is able to provide assurances from their parents/guardians and/or relevant institutions that they will not attempt to escape, engage in any form of evidence tampering or destruction, and refrain from committing similar offenses in the future, the detention may be deemed unnecessary. criminal. The detention of a minor is permissible only if the individual is at least 14 years old and there is reasonable suspicion that they have engaged in an offense that carries a minimum prison sentence of 7 years. The explicit articulation of the terms of detention is imperative within the detention order. It is imperative to ensure that the physical, spiritual, and social needs of a detained child are adequately addressed. Children are subjected to detainment at temporary child placement institutions, commonly referred to as LPAS. If the LPAS is unavailable, detention can be conducted at the nearby LPKS. The placement of children in residential care institutions, commonly known as LPKS, is undertaken with the primary objective of safeguarding the well-being and security of children. The duration of detention is limited to a maximum of seven days. The Public Prosecutor has the authority to extend this time period for a maximum duration of eight days, upon the Investigator's request. In accordance with legal provisions, if the designated time period has lapsed, it is mandatory for the child to be granted the necessary documentation. It is imperative that children who are involved in criminal activities, commonly referred to as "Children in conflict with the law" or "ABH," are provided with legal representation throughout all stages of the legal process, including investigations. Additionally, it is crucial that they are accompanied by a Community Advisor or another designated individual as outlined by relevant statutory regulations. The individual responsible for effectuating the arrest or detention is obligated to inform both the minor and their parents or legal guardian about their entitlement to seek legal representation. In the event that the designated authority fails to enforce these stipulations, the apprehension or confinement of the minor is rendered invalid and without legal effect. The provision of written notification regarding the entitlement to legal assistance is customary, unless the child and their parents or guardians possess limited literacy skills, in which case oral notification is provided. The delivery of legal assistance, in addition to being provided by attorneys, can also be facilitated by paralegals, professors, and law students in accordance with the Law on Legal Aid, specifically Law Number 16 of 2011 concerning Legal Aid. One of the primary distinguishing features between the resolution of juvenile criminal cases and other criminal cases is the utilization of diversion, which refers to the transfer of the adjudication of cases involving minors from the criminal justice system to alternative processes outside the realm of criminal justice. The implementation of this diversion is grounded in the principles of restorative justice, specifically the resolution of criminal cases involving offenders, victims, families of offenders/victims, and other relevant parties working together to pursue a fair resolution that prioritizes restoration rather than retribution.

One of the significant challenges faced in Indonesia pertains to the insufficient quantity of LPAS and RPSA. This issue poses a considerable obstacle to the effective execution of diversion strategies by Police Investigators. The enactment of UU no. 11 of 2012 has served as a catalyst for the establishment of four distinct institutions, namely the Special Child Development Institution (LPKA), the Temporary Child Placement Institution (LPAS), the Social Welfare Organizing Institution (LPKS), and the Special Service Room for children (RPKA). LPKA refers to a correctional facility or establishment where a juvenile offender is serving their court-imposed sentence. The LPAS facility serves as a transitory residence for minors throughout the course of legal proceedings. LPKS refers to a social service institution or facility that is responsible for the implementation of social welfare programs aimed at benefiting children. RPKA is a childcare facility that caters to children who have been apprehended within a 24-hour period. Based on the documented data provided by the Institute for Criminal Justice Reform (ICJR), Indonesia presently houses a total of 33 correctional facilities

known as LPKA. These facilities are categorized into two classes, namely seven Class I LPKA and 26 Class II-B LPKA. It is noteworthy that 18 of these institutions have undergone a nomenclature change from their previous designation as Juvenile Correctional Institutions, which had been in operation for an unspecified duration. In the present scenario, it is observed that a total of 15 individuals who fall under the LPKA continue to be incarcerated within adult prisons or remand centers. However, the availability of LPKS and LPAS in Indonesia is limited. Similarly, to the RPKA not all Police Sector Offices (Polsek) possess RPKA. Based on the observations made by ICJR, it is evident that in practical terms, the sole resolution entails the placement of the child under the care of social services administered by the Ministry of Social Affairs, such as the RPSA. However, this situation presents its own set of challenges. To begin with, it is important to note that not all regions possess social institutions. Furthermore, in cases pertaining to security concerns such as the risk of children absconding from daycare facilities, it is not within the purview of local law enforcement to provide daily security measures at social service establishments. Additionally, there exists a bureaucratic process within the National Police that must be adhered to in order to address security matters. The crux of the issue lies in the absence of regulations specifically catering to the placement of individuals in social services. Consequently, children possess the capacity to be subjected to confinement in detention facilities, a practice that is explicitly disallowed by the SPPA Law. 49 The presence of the RPSA holds significant significance within the framework of diversion employed by law enforcement. The primary objective of RPSA is to deliver a comprehensive and coordinated approach to treatment, characterized by organization, structure, and careful planning. This approach places utmost importance on the victim's viewpoint and the well-being of the child. The primary purpose of the RPSA is to serve as a temporary shelter and protective residence, offering a range of services aimed at safeguarding the well-being and promoting the holistic development of children who have been subjected to acts of violence and abuse, or who require specialized protection. These services encompass protective measures, recovery initiatives, rehabilitative efforts, advocacy campaigns, reunification endeavors, and reintegration programs. The overarching goal of these interventions is to ensure the survival, optimal growth, and active engagement of children within society.⁵⁰ However, empirical evidence indicates that not all districts or cities in Indonesia possess RPSAs. The provision of RPSA is limited to the provincial level within Indonesia, with certain provinces not offering this service.

V. CONCLUSION

Drawing upon the preceding chapters' analysis, this study presents the ensuing findings: The consistent implementation of diversion in resolving cases involving children in conflict with the law has been observed by the National Police Institute of the Republic of Indonesia. The prevailing tendency among POLRI investigators is to actively pursue alternative approaches in addressing cases of juvenile delinquency, as mandated by Law Number 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA). However, the efficacy of diversion measures has been lacking due to the insufficient alignment between the implementation of legal substance in the SPPA Law and the corresponding reform of the legal structure and institutional framework responsible for the practical enforcement of legal norms. From a procedural standpoint, the implementation of diversion during the investigation phase is hindered in its ability to effectively and efficiently adhere to the principles of a streamlined, expeditious, and cost-effective trial. This is primarily due to the bureaucratic nature of the diversion process, which entails a convoluted mediation procedure involving numerous administrative elements that pose challenges in its execution.

The investigators of the Indonesian National Police (POLRI) possess discretionary authority to pursue diversion in cases involving juvenile offenses that carry a prison sentence exceeding seven years. This is due to the absence of explicit provisions in the SPPA Law that prohibit law enforcement officials from implementing diversion for offenses punishable by imprisonment for more than seven years. This perspective is supported by United Nations studies that indicate the continued potential for diversion in the resolution of juvenile criminal cases classified as serious offenses. This approach is consistent with the principles of restorative justice, which prioritizes adaptability and responsiveness to the unique circumstances of each child and the specific requirements of each case. Moreover, it aligns with the principles of deliberation and peace, which are deeply ingrained in the legal consciousness of the Indonesian population, commonly referred to as "living law." However, it is imperative that the exercise of police discretion in this particular instance adheres to the prescribed limitations, requirements, or criteria outlined in Chief of Police Circular Letter Number SE/8/VII/2018, which pertains to the implementation of restorative justice in the resolution of criminal cases.

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