



# AN APPLICATION OF RESTORATIVES TO CHILDREN OF CRIMINAL OFFENDERS (STUDY AT POLDA NORTH SUMATRA)

**T. Riza Zarzani**

Faculty Social And Science, Universitas Pembangunan Panca Budi, Gatot subroto street, Medan, 24000, North Sumatera, Indonesia

ARTICLE INFO	ABSTRACT
Date received : 18 Oct2022 Revision date : 1 Nov 2022 Date received :15 Nov 2022	The application of restorative justice and system diversion should be the main process or step in resolving disputes when children come into contact with the law. This study aims to find out how the application of the law regarding the application of a restorative justice system to children as perpetrators of criminal acts. Furthermore, to find out how the role of the Police in implementing the restorative justice system for children as perpetrators of crimes in the jurisdiction of the North Sumatera Regional Police. This research uses normative legal research methods and empirical legal research. That the arrangements regarding diversion and the restorative justice system are regulated in Article 6, Article 7 and Article 8..
<b>Keywords:</b> Restorative Justice, Juvenile Crime, North Sumatera Police	

## INTRODUCTION

There are several children's rights that must be fulfilled by both the state and society which are contained in Law Number 23 of 2003 concerning Child Protection which has been amended by Law Number 35 of 2014 concerning Amendments to Law 23 of 2003 concerning Child Protection, in order to grow children's development can run well and optimally. One of these rights is the right to avoid illegal and arbitrary deprivation of liberty. Legal protection for children is an effort to protect the law against various freedoms and human rights of children (fundamental rights and freedoms of children) as well as interests related to child welfare.

In the consideration of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System it is also stated that children are a mandate and a gift from God Almighty who has dignity and worth as a whole human being. To maintain their dignity, children are entitled to special protection, especially legal protection in the justice system. According to Retnowulan Sutianto, child protection is part of National Development.

Along with the times there are many things that can interfere with the growth and development of children. Many children fall into negative things, starting from violence, free sex, narcotics and so on. Some of these things can damage the personality and development of children. There are many factors that can plunge children into negative things, both from within the child and from outside such as the surrounding environment.

Indonesia as a country that is a member of the Convention on the Rights of the Child which regulates the principle of legal protection for children, is obliged to provide special protection for children who are in conflict with the law. One form of child protection by the state is realized through a special criminal justice system for children who are in conflict with the law.



This is emphasized in the United Nations Standard Minimum Rules For the Administration of Juvenile Justice, that the purpose of juvenile justice is: the criminal justice system for children/adolescents will prioritize the welfare of adolescents and will ensure that any reaction to juvenile offenders will always be commensurate with circumstances both in violation of the law and in violation of the law

In the Handbook on Restorative Justice Programs published by the United Nations, it is stated that: "Restorative justice is an approach to problem solving that, in its various forms, involves the victim, the offender, their social networks, justice agencies and the community. In relation to criminal law enforcement, restorative justice is an approach to solving criminal problems involving victims, perpetrators, and elements of society for the sake of creating justice.

Children as perpetrators of crimes are often encountered in everyday life. The behavior of children committing criminal acts is often categorized as naughty children or committing violations of the law. Children in such conditions are called children in conflict with the law (Children in conflict with the law). Children in conflict with the law can be defined as children who are suspected, accused or recognized as having violated criminal law laws.

Children who violate the law or commit criminal acts are greatly influenced by several other factors outside of the child such as association, education, playmates and so on, because crimes committed by children in general are a process of imitating or being influenced by the negative actions of adults or others. surrounding. When the child is suspected of committing a crime, the existing formal justice system ultimately places the child in prisoner status, of course, having considerable consequences in terms of the child's development. The process of punishment given to children through the formal criminal justice system by putting children in prison has failed to make children deterrent and become better individuals to support their growth and development process

Law No.11 of 2012 concerning the Juvenile Criminal Justice System is a form of protection for children in conflict with legal cases and child victims of criminal acts, and the most fundamental in this Law is strict regulation regarding Restorative Justice and diversion, which is intended to avoid and keep children away from the judicial process so as to avoid stigmatization of children who are in conflict with the law and it is hoped that children can return to the social environment normally. Therefore it is very necessary for the participation of all parties in order to realize this goal which in the end can create good restorative justice for children.

## **THEORETICAL BASIS.**

### **2.1. Definition of Restorative Justice**

The original concept of restorative justice practices comes from the peacekeeping practices used by the Maori people, the indigenous people of New Zealand. According to Helen Cowie, restorative justice lies at its core in the concept of a caring and inclusive community. When conflicts arise, restorative justice practices will deal with the perpetrators, victims, and community stakeholders, who collectively solve the problem.

The restorative model of juvenile justice also departs from the assumption that assumptions or reactions to child delinquency behavior are ineffective without the cooperation and involvement of victims, perpetrators and society. The basic principle is that justice is best served when each party receives attention in a fair and balanced manner, and is actively involved in the judicial process. Helen Cowie and Dawn Jennifer as quoted by Hadi Supeno, identify the main aspects of restorative justice as follows:

1. Improvement is not about winning or accepting defeat, accusations, or revenge, but about justice.



2. Reconciliation is not punitive in nature as criminals take responsibility for wrongs and correct them in a number of ways, but through a process of open and direct communication, between victims and criminals, which has the potential to change the way one relates to one another.
3. Reintegration, at its broadest level, provides an arena in which children and parents can have a fair process. This means that they learn about the consequences of violence and crime and understand the impact their behavior has on others.

The restorative justice model is more on efforts to restore the relationship between the perpetrator and the victim, for example, someone steals the professor's book, the justice process is how and what steps to solve the problem so that the good relationship between the person and the professor continues as before without anyone being harmed.

Retributive justice, the community is not involved because it has been represented by a lawyer, while in the nature of restorative justice the community is involved through community leaders who have authority in the environment, for example religious leaders, influential people, and so on. Furthermore, the notion of restorative justice according to Augustine Pohan is an approach to making transfers and institutionalization compatible with justice. Restorative Justice is built on the basis of positive traditional community values and the sanctions implemented respect human rights (HAM). The principles of Restorative Justice are, making the perpetrator responsible for proving his capacity and quality as well as he overcomes his guilt in a constructive way, involving victims, parents, family, school or playmates, creating forums for cooperation, also in issues related to crime to overcome.

## **2.2.Children as perpetrators of criminal acts (children in conflict with law)**

Soerojo Wignjodipoero states that: Apart from being seen by the parents as the next generation, the child is also seen as a vessel where all the hopes of the parents must be shed in the future, and is also seen as a protector for their parents when the parents are no longer physically able to earn a living. Normatively, the definition of a child is regulated in several laws and regulations (positive law) that apply in Indonesia, including:

1. Law No. 39 of 1999 concerning Human Rights states that a child is every human being under the age of 18 (eighteen) years and is not married, including children who are still in the womb if this is in his interest.
2. Law No. 11 of 2012 concerning Juvenile Courts Children are people who in cases of juvenile delinquents have reached the age of 8 (eight) years but have not yet reached the age of 18 (eighteen) years and have never been married.
3. Law No. 35 of 2014 concerning child protection states that a child is someone who is not yet 18 years old, including children who are still in the womb.

Based on the definitions of children above, it can be said that what is meant by a child is someone who is not yet 18 years old (0-18 years old) and has never been married or married. Meanwhile, someone who is married and married, even though he is under 18 years old, is considered an adult.

According to Law no. 11 of 2012 concerning the Juvenile Criminal Justice System Article 1 Paragraph 3, Children in conflict with the law, hereinafter referred to as children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime.



Article 1 paragraph (2) of Law no. 35 of 2014 concerning Child Protection, that: Child protection is all activities to guarantee and protect children and their rights so that they can live, grow and develop and participate optimally in accordance with human dignity and values, and receive protection from violence and discrimination.

Every child has the right to freedom according to the law. Arrest, detention or punishment of imprisonment for children is only carried out if in accordance with applicable law it can only be carried out as a last resort. Child legal protection is an effort to protect the law against various freedoms and children's human rights.

Punishment is basically oriented towards individual perpetrators or commonly referred to as individual or personal responsibility, where perpetrators are seen as individuals who are able to take full responsibility for the actions they commit. A child, basically is an individual who has not been able to fully realize for his actions or actions. Because, children are individuals who are immature in thinking. Therefore, treating children the same as adults is feared to have an adverse impact on children's development and growth, especially children's psychological growth.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System adheres to the principle, that juvenile criminal justice must pay attention to the best interests of the child. Apart from that, respect for the opinion of the child must also be paid attention to, the survival and development of the child as well as the guidance and guidance of the child, which in our opinion efforts to diversion and restorative justice in every case involving children are the first step and choice in resolving these disputes. In accordance with the mandate of law No. 11 of 2012 article 5.

This type of research in this is normative legal research and empirical legal research. Normative legal research, often referred to as library research, is based on secondary data as basic data. This normative legal research can be obtained from primary, secondary and tertiary legal materials, in order to obtain adequate results, both in terms of practice and scientific content.

## **ANALYSIS RESULTS**

### **3.1. Legal Arrangements Regarding Diversion in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.**

Following regarding the system juvenile criminal justice that prioritizes restorative justice as explained in Article 5 namely:

- (1) The Juvenile Justice System is obliged to prioritize Restorative Justice approach
- (2) The Juvenile Criminal Justice System as referred to in paragraph includes:
  - a. Criminal investigations and prosecutions of children carried out in accordance with the provisions of laws and regulations, unless otherwise provided for in this law;
  - b. Juvenile trials conducted by courts within the general court environment; and
  - c. Guidance, guidance, supervision, and/or assistance during the process of executing a crime or action and after serving a crime or action.
- (3) In the Juvenile Criminal Justice System as referred to in paragraph (2) letters a and b, efforts must be made to diversion.



The article above explains clearly and clearly that restorative justice is the goal of this law. Because this law requires restorative justice which is primarily in the interests of children's rights to obtain legal protection.

Diversion in RI Law Number 11 of 2012 as regulated in Article 6, Article 7 and Article 8 namely:

Article 6:

Diversion aims:

- a. Achieving peace between victims and children;
- b. Resolving child cases outside the judicial process;
- c. Avoiding Children from deprivation of liberty;
- d. Encouraging the community to participate; and
- e. Instill a sense of responsibility to children.

Article 7:

- (1) At the level of investigation, prosecution and examination of cases of children in district courts, it is mandatory to seek diversion;
- (2) Diversion as referred to in paragraph (1) is carried out in the event that a criminal act is committed:
  - a. Threatened with imprisonment under 7 (seven) years; and
  - b. No is a repeat offence.

Article 8:

- (1) The Diversion process is carried out through deliberations involving children and their parents/guardians, victims and/or parents/guardians, AdvisorCommunity, and Professional Social Worker based on Restorative Justice approach;
- (2) In matterIf necessary, the deliberations as referred to in paragraph (1) may involve Social Welfare Workers and/or the community.
- (3) The Diversion process must pay attention to:
  - a. The interests of the victim;
  - b. Child Welfare and responsibility;
  - c. Avoidance of negative stigma;
  - d. Avoidance of retaliation;
  - e. Harmony Public; and
  - f. Decency, decency and public order.

The description of the article above shows that Diversion was also used as the main reason for the formation of this law, where one of Diversion is the settlement of child cases outside the court, which aims to protect the legal interests of children involved in criminal cases.



### **3.2. Government Regulation Number 65 of 2012 Concerning Guidelines for the Implementation of Diversion and Handling of Children Who Are Not Yet 12 (Twelve) Years Old**

As for its considerations, this Government Regulation was born because in order to implement the provisions of Article 15 and Article 21 paragraph (6) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is necessary to stipulate a Government Regulation concerning Guidelines for the Implementation of Diversion and Handling of Children Who Are Not Yet 12 Years Old. (twelve years. The following describes the purpose of diversion, as explained in Article 2:

Diversion aims:

- a. achieve peace between the victim and the child;
- b. resolve cases of children outside the judicial process;
- c. prevent children from deprivation of independence;
- d. encourage people to participate; and
- e. embed flavor responsibility to the Child.

The following describes the obligation for law enforcers to seek diversion, as explained below:

Article 3 :

- (1) Every Investigator, Public Prosecutor, and Judge in examining a Child is obliged to seek Diversion.
- (2) Diversion as referred to in paragraph (1) is carried out in the event that a crime is committed:
  - a. threatened with imprisonment under 7 (seven) years; and
  - b. not a repetition of a crime.

Article 6

- (1) The Diversion process must pay attention to:
  - a. the interests of the victim;
  - b. child welfare and responsibility;
  - c. avoidance of negative stigma;
  - d. avoidance of retaliation;
  - e. community harmony; and
  - f. decency, decency and public order.
- (2) Investigators, Public Prosecutors and Judges in carrying out Diversion must consider:
  - a. category of crime;
  - b. child's age;
  - c. social research results; and
  - d. family and community support.
- (3) Diversion agreement results can take the form of, among others:
  - a. reconciliation with or without compensation;
  - b. handover to parents/guardians;



- c. participation in education or training at an educational institution or LPKS for a maximum of 3 (three) months; or
- d. society service.

(4) Diversion agreements are carried out by investigators, public prosecutors, and judges on the recommendation of the Community Advisor.

### 3.3. The Role of the National Police in the Implementation of the Diversion and Restorative Justice System for Children as Criminal Offenders (Case Study at the North Sumatra Regional Police)

Application of Diversion and Restorative Justice System Against Children as Actors (Case Study in Polda North Sumatra) Application of diversion and restorative justice system in Polda North Sumatra based on Law Number 11 of 2012 concerning Juvenile Criminal Justice System. The procedure for implementing diversion in Sub Directorate IV – Renakta Ditreskrimum Polda Sumut based on Article 8 of Law Number 11 of 2012 concerning the Justice System Criminal

Child by involving children and their parents/guardians, both children as perpetrators and children as victims and involving BAPAS by prioritizing deliberations. As described below:

#### DIVERSION AGREEMENT

The undersigned below:

- I. Full name :  
Place and date of birth:  
Religion :  
Gender :  
Nationality :  
Profession :  
Education :  
*Accompanied by people old which name is , as a party – 1,*

- II. Full name :  
Place and date of birth:  
Age :  
Religion :  
Gender :

*In this case, the victim, as the second party*

On the day..., date.... taking place at the North Sumatra Regional Police, and the parties involved in the diversion process of the child case Number...., a diversion agreement was reached with the following provisions:

Article 1: That second party has agreed to hold peace on case....., what children do is... in the month....

Section 2: That the first party... have apologized to the parties the second is ..... and the victim has forgiven all the actions of the first party and its consequences.

Article 3: The first party has compensated the losses of the second party and the parties both have received a replacement the loss is in accordance with the agreement.



If this agreement is not fulfilled by the parties, then the process continues for the criminal investigation process. This agreement was made by the parties without any element of coercion, error or fraud from any party.

Thus this agreement was made and signed by the parties and the Diversion Facilitator. The agreement mentioned above is then reported to the Court, then the Court makes a stipulation which is signed by the Judge and stamped by the court, so that the stipulation of diversion gets a permanent legal decision.

The following is the number of cases involving children as perpetrators who have successfully carried out diversion and a restorative justice system at Sub-Directorate IV Renakta Ditreskrim Polda Sumut:

**Table 1.** Number of Cases of Children as Perpetrators of Criminal Acts Successfully Conducted by Diversion and restorative justice system at Sub Directorate – IV Renakta Ditreskrim Polda North Sumatra 2016 – 2018

No	Year	Amount
1	2016	1
2	2017	3
3	2018	-
Total		4

Source: Sub Directorate – IV Renakta Ditreskrim Polda Sumut 2018

**Table 2.** Data Recapitulation of Cases of Children in Conflict with the Law Based on the High Court, 2020

No	Kejaksaan Tinggi	SPDP	SP3	KPP	JUMLAH DIVERSI		Pelimpahan Perkara	Putusan PN	Eksekusi
					Penyidik	Penuntut Umum			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	Aceh	191	17	0	15	6	103	78	80
2	Sumatera Utara	409	24	14	30	30	243	188	178
3	Sumatera Barat	201	14	18	18	10	141	147	114
4	R i a u	182	30	0	12	8	160	153	145
5	J a m b i	151	12	0	14	14	76	82	82
6	Sumatera Selatan	471	1	0	8	9	397	380	379

Source: Kemenpppa Annual Report 2020<sup>1</sup>





**Table 3.** Data Recapitulation of Child Victims, Based on the 2020 High Court

No	Kejaksaan Tinggi	Perkara Anak Korban	Diselesaikan Dengan Diversi	Dirujuk Ke Lembaga Rujukan Untuk Rehab/Konseling	Pelimpahan Perkara	Putus PN	Eksekusi	Upaya Hukum
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	Aceh	210	2	1	150	128	131	19
2	Sumatera Utara	328	7	11	232	186	166	24
3	Sumatera Barat	206	2	0	199	176	169	7
4	Riau	300	2	30	200	159	139	13
5	Jambi	123	29	0	125	110	108	5
6	Sumatera Selatan	236	5	2	205	190	188	2
7	Bengkulu	123	0	0	111	117	92	9
8	Lampung	277	18	12	275	275	275	0
9	D.K.I Jakarta	190	2	0	138	111	109	4

Source: Kemenppa Annual Report 2020<sup>2</sup>

**Table 4.** Number of Child Criminal Cases dealing with the Law handled by the National Police in 2020

NO	KESATUAN	JML LP	Jumlah							Penyelesaian Perkara		Keterangan	
			Korban	Pelaku	Saksi	P21	SP3	DIVERSI	PENGAM BILAN KEPUTUSAN	SIDIK	LIDIK		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)		
1	BARESKRIM POLRI	9	23	3	2	3	0	2	0	1	3		
2	POLDA ACEH	141	145	33	145	73	16	9	5	28	22		
3	POLDA SUMATERA UTARA	517	498	299	554	105	96	18	2	222	56		
4	POLDA SUMATERA BARAT	622	526	334	229	167	26	26	34	246	233		
5	POLDA RIAU	326	287	114	755	112	16	27	2	102	66		
6	POLDA KEPRI	134	136	122	73	35	19	3	11	66	-		

Source: Kemenppa Annual Report 2020<sup>3</sup>

Even so, in terms of applying Diversion and Restorative Justice to crimes involving children, there are also obstacles from several sides. Which resulted in the implementation of diversion and restorative justice not being optimal, some of these obstacles:

1) There is no special investigator for children

The absence of special investigators who have special expertise to handle cases of children in conflict with the law certainly makes it difficult for Subdit IV – Renakta Ditreskrim Polda Sumut, both in understanding for the best interests of children as perpetrators, because children as perpetrators are protected by their rights in the Protection Act. Child.

2) Subdit IV – North Sumatra Regional Police Renakta does not yet have a detention room specifically for children.

The absence of a special detention room for children at the North Sumatra Police will certainly create difficulties for the Polda itself. Bearing in mind that children cannot be put together in prison cells with adults.

3) External Barriers

The external obstacles encountered in implementing the diversion and restorative justice system at Sub Directorate IV – Renakta of the North Sumatra Regional Police's Criminal Investigation Unit are as follows:



a. It is difficult to reach an agreement between the victim and the child in conflict with the law or as a perpetrator of a crime.

Different understandings between law enforcers in the application of diversion and restorative justice systems to children in conflict with the law. Different understandings also occur among law enforcers, this could be due to the fact that law enforcers still receive special education to handle child cases, so these officials do not yet understand the philosophical foundations and objectives of the diversion and restorative justice system for children as perpetrators of crimes.

#### **CONCLUSION.**

The mandate of Law No. 11 of 2012 that Efforts to resolve criminal disputes involving children must be resolved through Diversion and Restorative Justice efforts first. For this reason, it is the duty and obligation of the Police to properly provide understanding and impact on the resolution of criminal disputes involving these children to the public. Especially the Regional Police of North Sumatra Province.

#### **REFERENCES.**

- Djamil, M. Nasir, 2013, Children are not to be punished; *Notes Discussion of the Law on the Juvenile Criminal Justice System (UU-SPPA)*, Jakarta :Graphics Light.
- Hadjon, Philip M., 1987, Legal Protection for the People in Indonesia, Surabaya: PT. Science Development.
- M. Taufik Makarao. 2013. Legal Studies Regarding the Application of Restorative Justice in Settlement of Crimes Committed by Children. Jakarta: BPHN.
- Marlina, 2010, Introduction to the Concept of Diversion and Restorative Justice in Criminal Law, Medan: USU Press.
- Marlina. 2009. Juvenile Criminal Justice in Indonesia. Bandung: PT Refika Aditama.
- Mulyadi, Mahmud, 2008, Criminal Policy, Medan: Pustaka Bangsa Press.
- Nandang Sambas. 2010. Renewal of the Child Criminal System in Indonesia. Yogyakarta: Science Graha.
- Natangsa Surkti. 2015. Restorative Justice, In Empirical Frames, Theory and Practice. Yogyakarta: Genta Publishing
- Nawawi, Barda, 2005, Criminal Law Renewal, Bandung: PT. Image Aditya Bakti.
- Poernomo, Bambang, 1994, Principles of Criminal Law, Yogyakarta: Ghalia Indonesia.
- Rena Yulia. 2009. *Victimology: Protection Law To Victims of Crime*. Yogyakarta: Science Graha.
- Romli Atmasasmita. 2013. Contemporary Criminal Justice System. Jakarta: Kencana Media.
- Satjipto Rahardjo. 2001. Law Science. Bandung: Citra Aditya Bakti.
- Siswanto Sunarso. 2015. Introduction to Police Science. Jakarta: Nusantara Peace Library.
- Soerjono Soekanto & Sri Mamudji. 2013. Normative Legal Research. Jakarta: Rajawali Press.
- Soerjono Soekarno. 2010. *Factors Influencing Law Enforcement*. Jakarta: Rajawali Press.
- Talib Setiady. 2010. Principles of Penitential Law. Bandung: Alfabeta.
- Wagiati Soetedjo. 2013. Children's Criminal Law. Jakarta: Refika Aditama