



The Juvenile Criminal Justice System's Post-Ten-Year Evaluation: Diversion Analysis and Restorative Justice Approach

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Abstract—The construction of the Juvenile Criminal Justice System was mandated by Law Number 11 of 2012, which replaced Law Number 3 of 1997, which regulated Juvenile Courts. The utilization of diversion, a mechanism for resolving child-related conflicts that occurs outside of the formal legal framework, is a notable characteristic of the SPPA Law. The traditional criminal justice system is replaced by a restorative justice approach, which is used to achieve diversion. This approach entails the involvement of the community, victims, offenders, their families, and other pertinent stakeholders in the resolution of a criminal offense. Ensures the protection of children's welfare in legal disputes and facilitates the resolution of issues and the establishment of agreements without resorting to litigation. Additionally, the author intends to assess the efficacy of the SPPA Law's implementation in Indonesia ten years after its passage, as well as to identify any potential obstacles to its enforcement. The research implemented normative juridical methodologies, which encompassed the examination of statutes, cases, historical documents, and conceptual frameworks. The research results suggested that there are still instances of diversion, impediments, and deficiencies in the resolution of children's cases, particularly in specific areas that have not been adequately addressed by the SPPA Law. The author of the study suggests that the SPPA Law requires revision.

Keywords—Child Criminal Justice System; Diversion; Juvenile Crime.

I. INTRODUCTION

Children occupy a vital role in influencing the future of society, nation, state, and their own families. As a result, children require individualized care in order to organically progress and thrive, embracing both their bodily and spiritual growth.[1] The Indonesian Constitution exhaustively regulates the rights of minors, particularly in the context of human rights. This provision guarantees the right of every infant to remain alive, develop development, and be protected from violence and bias in relation to Article 28B, paragraph (2) of the 1945 Constitution. The Juvenile Criminal Justice System (SPPA) is a comprehensive process that involves the resolution of cases involving children who have committed unlawful acts. It commences with the investigative phase and continues through the guidance phase following their involvement in the criminal process.[2] This system is founded on the fundamental principles of safeguarding, equity, parity, prioritizing the well-being of children, valuing their viewpoints, ensuring their survival and growth, offering suitable guidance, upholding proportionality, and utilizing poverty of liberation and repercussions as a final option while actively avoiding revenge. The law pertaining to this provision can be located in Articles 1, subsections 1 and 2 of Republic of Indonesia Law Number 11 of 2012, which specifically addresses the Juvenile Criminal Justice System (SPPA Law).

Under the Special Protection of SPPA, the term "children in conflict with the law" refers to children who have committed crimes, as well as children who have been victimized or have witnessed criminal acts.[3] Juvenile offenders refer to individuals aged 12 to 18 who are under suspicion of participating in criminal acts. Child victims of criminal acts are individuals Minors under the age of 18 who endure bodily and psychological distress, along with financial harm, as a result of illegal behavior.[4] Child witnesses refer to individuals who are below the legal age of 18 who possess relevant information about a criminal case that they have witnessed or been involved in. This information is pertinent to legal proceedings, including investigations, prosecutions, and court hearings. Diversion is a compulsory intervention for children who are categorized as children in conflict with the law (ABH) during the stages of investigation, legal proceedings, and court processes related to cases involving children. Diversion refers to the practice of redirecting the handling of children's cases away from the criminal justice system towards alternative approaches, under specific circumstances. These conditions arise when the crime carries a maximum prison term of less than seven years and the perpetrator has no prior history of committing the same infraction, as outlined in Article 7, paragraph 2 of the SPPA Law. This section highlights the significance of diversion as a critical strategy to avoid legal consequences for children, instead advocating for a compassionate approach that fosters the child's development and welfare.

The adoption of Law Number 11 of 2012 on SPPA marked a significant milestone in the implementation of diversion in Indonesia. The concept of diversion was not included in Law Number 3 of 1997, which governed Children's Courts. The Faculty of Law at Padjadjaran University in Bandung conducted the National Seminar on Juvenile Justice on October 5, 1996, during which the concept of diversion was first introduced. The implementation of diversion necessitates the involvement of all stakeholders, including the child's family, parents, and guardians, the local community, the educational institution, the government through the Special Child Development Institute (LPKA), and law enforcement personnel.

The primary aim of the SPPA Law is to build a judicial system that ensures the safeguarding and well-being of juvenile offenders, who represent the future of the nation.[5] Nevertheless, a comprehensive assessment must be conducted following the ten-year implementation of the SPPA Law on July 30, 2012. This assessment is crucial in determining whether the implementation of the SPPA Law has effectively ensured sufficient safeguarding for children involved in criminal activities, including those who are perpetrators, victims, or witnesses. This research also seeks to examine the challenges encountered in adopting diversion and the SPPA in the past decade. In addition, it is anticipated that this research will identify emerging issues within Indonesia's youth criminal justice system over time.

II. LITERATURE REVIEW

A. *Theory and Concept of Restorative Justice*

Restorative justice is a criminal justice approach that emphasizes the restoration and reconstruction of relationships between offenders, victims, and the impacted community. In contrast to the retributive approach, which emphasizes the punishment of the offender, this strategy endeavors to accomplish justice by involving all pertinent parties.[6] The foundation of restorative justice theory is in the notion that crime not only transgresses legal statutes and the authority of the state, but also inflicts harm upon individuals and societal bonds. Restorative justice, as advocated by Howard Zehr, seeks to address the harm caused by crime by facilitating a dialogue between the offender and the victim, while also involving society to achieve a mutually satisfactory resolution for all parties. The core principles of restorative justice include the voluntary involvement of all parties, with unanimous consent required. It emphasizes the recovery of losses suffered by both victims and society through restitution. The perpetrators are required to assume accountability for their conduct and comprehend the repercussions on victims. Moreover, active participation from the community is essential in resolving problems and repairing relationships.

In Indonesia, restorative justice is regulated by a variety of rules and regulations that enable the resolution of cases outside the conventional criminal court system.[7] The primary legal framework that regulates the implementation of restorative justice in Indonesia's SPPA Law. The SPPA is designed to prioritize the well-being of young offenders, guarantee equity, prevent prejudice, and safeguard them, as stipulated in Article 1, Section 1 of the SPPA Law. The significance of prioritizing a restorative justice and redirection approach when addressing the conditions of children is underscored by Article 6 of the SPPA Law. Diversion is the process of transferring the resolution of children's cases from the criminal justice system to a distinct mechanism that operates independently of the criminal justice system. The relocation is explicitly regulated by Article 7, paragraph (2) of the SPPA Law.[8] Regulation 65 of 2015 by the government provides specific instructions on how to handle and oversee children under the age of 12 who are involved in legal conflicts. The objective is to guarantee that any underage individual involved in legal conflicts can settle their case by employing a rehabilitative method. Furthermore, Presidential Instruction Number 2 of 2022, which specifically focuses on the National Human Rights Action Plan (RANHAM), encompasses a range of measures and tactics aimed at fostering the use of restorative justice in handling issues concerning children and other marginalized groups. The

objective of this effort is to enhance the safeguarding of human rights through the implementation of a more compassionate and comprehensive strategy.

The adoption of restorative justice in Indonesia is a collaborative effort that includes several parties, such as law enforcement agencies, the government, society, and families. The Special Children's Development Institute (LPKA) and the National Legal Development Agency (BPHN) play a vital role in supporting the implementation of diversion and other restorative programs. Various case studies demonstrate the effectiveness of restorative justice in providing alternative and more efficient resolutions for children engaged in legal disputes, while also being more empathetic. Studies undertaken by researchers have shown that implementing diversion strategies in different areas has resulted in a significant reduction in recidivism rates and has led to higher levels of satisfaction for both victims and offenders in comparison to retributive approaches. This collaborative approach highlights the importance of each stakeholder's involvement in the successful adoption of restorative justice.

Restorative justice offers a thorough and all-encompassing approach to addressing criminal circumstances, particularly for children entangled in legal disputes. Restorative justice in Indonesia is expected to expand and have a wider range of beneficial impacts on the SPPA, due to a strong legal framework and cooperation from various stakeholders. However, the implementation of this idea necessitates a shared commitment from all parties involved. The collective commitment to this cause is crucial in attaining a judicial system that is fair, empathetic, and focused on rehabilitation. The active participation and commitment of individuals are essential for the success of restorative justice in Indonesia.

B. Diversion in the Juvenile Criminal Justice System (SPPA)

Diversion is an essential approach in the SPPA that involves the transformation of cases affecting children coming from the criminal court system to other forms of justice. SPPA Law reinforces the concept of diversion as a strategic approach to prioritize the welfare of juveniles embroiled in illicit activities in the Indonesian context.[9] Article 6 of the SPPA Law emphasizes the necessity of prioritizing a restorative justice and diversion approach in relation to the circumstances of children. Diversion is implemented in specific situations, particularly when juveniles are at risk of imprisonment for a period of less than seven years and have no prior criminal history. Government Regulation Number 65 of 2015 governs the supervision of minors under the age of 12 and the implementation of diversion. It provides guidelines for its implementation.[10] This guideline provides specific technical instructions for law enforcement authorities engaged in the implementation of diversion programs. The content encompasses several facets of diversion, including diversion protocols, coordinating diversion conferences, and implementing restorative repercussions. Diversion seeks to provide a compassionate and efficient alternative strategy for children engaged in criminal behavior, with a focus on restoring the losses suffered by victims and reintegrating children back into society. Empirical evidence from case studies shows that diversion programs have effectively reduced the probability of repeat offenses and have led to greater levels of satisfaction for both victims and offenders in comparison to conventional systems of criminal justice. However, there are still challenges to address in the adoption of diversion, including the need for increased understanding and expertise among law enforcement professionals, as well as a lack of resources to support effective diversion programs. Therefore, it is crucial to maintain a consistent and effective approach of reaching out, providing training, and overseeing the implementation of diversion in Indonesia's youth criminal justice system.

III. METHOD

The approach technique employed in this paper is normative legal research, namely the statute, case, historical, and conceptual methods.[11] The legal materials utilized in this study were acquired from library sources, primarily primary legal literature. The laws and regulations that are relevant to this topic include the Criminal Procedure Code (KUHAP) (Law Number 1 of 2024), the Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, the Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Who Are Not Yet 12 Years Old, the Perma Number 4 of 2014 concerning Guidelines for Implementing Diversion in the SPPA, and the Attorney General Regulation Number: PER-006/A/JA/04/2015 concerning Guidelines for Implementing Diversion at the Prosecution Level.

IV. RESULT AND DISCUSSION

Actualization of Law Number 11 of 2012, which replaced Law Number 3 of 1997, represents a notable advancement in how Indonesia deals with minors who have committed crimes. This shift represents both a legal amendment and a manifestation of the child protection concepts established in international agreements that Indonesia has joined.[12] The core of the SPPA is its explicit regulation of restorative justice and diversion, which diverges from traditional punitive measures. This approach is supported by many national and international legal instruments that emphasize the need of recognizing children as individuals who are entitled to protection and possibilities for rehabilitation.

As per Article 40 of Law Number 1 of 2024 pertaining to the illegal Code, individuals who are younger than 12 years old are exempt from legal responsibility for unlawful conduct. Nevertheless, it is imperative to establish comprehensive restrictions in the SPPA Law to address the complexities of cases involving minors under the age of 12, which presently cause a state of uncertainty.[8] According to Article 21 of the SPPA Law, investigators have the authority to handle these types of matters without initiating the criminal court procedure. This is accomplished by arranging coordination meetings with Probation Officers and Professional Social Workers. Discrepancies may occur when investigators, who are engaged in the criminal justice process, conduct coordination meetings as a component of their investigation. Furthermore, establishing the culpability of a minor in the commission of a crime necessitates compelling evidence, typically acquired during the investigative phase, that demonstrates the active participation of law enforcement officials in the judicial proceedings. Moreover, the surroundings in which children reside also have an impact on their behavior, in addition to the previously mentioned legal matters. Children's decisions and actions are influenced by multiple factors, such as their family, education, and social ties. Hence, when selecting alternative possibilities, it is crucial to thoroughly evaluate the child's living environment to guarantee that the decisions made lead to a favorable end for the youngster.

The rehabilitative process of criminal offenders is in accordance with the principles of criminal law in Indonesia, specifically the restorative justice and diversion strategy. The legal basis for this approach is delineated in Article 1, paragraph (2) of Law Number 11 of 2005, which pertains to the Criminal Justice System. This article posits that the primary goal of punishment is to educate and rehabilitate individuals who have committed misconduct. Indonesia's commitment to adhering to global standards in the protection of children, as outlined in the Convention on the Rights of the Child, is consistent with the concepts of diversion and restorative justice. Thirteen Indonesia's dedication to enhancing the protection of children involved in legal disputes and guaranteeing that the SPPA places a genuine emphasis on rehabilitation and social reintegration is manifested through the implementation of this approach.

The disparity between the requirements of the SPPA Law and the Guidelines for the Implementation of Diversion specified in the Supreme Court Regulation Number 4 of 2014 is obvious in the challenges that occur during the implementation of diversion.[14] The adoption of diversion is complicated by the presence of divergent perspectives among law enforcement officials, investigators, and public prosecutors regarding the courts. The legal framework for confronting and resolving these inconsistencies is established by Article 7 of the SPPA Law. The law mandates that law enforcement adhere to the regulations outlined in the legislation, which encompasses regulations regarding diversion.[15] However, the execution of diversion is significantly influenced by the implementation of Supreme Court Regulation Number 4 of 2014, a legislative instrument that provides highly practical instructions. Additionally, disputes may arise concerning the implementation of diversion strategies in drug-related cases involving juvenile offenders. The provision in the Supreme Court Regulation that allows for diversion in cases where the prospective sentence exceeds seven years is often disregarded by investigators and public prosecutors, as they regard drug offenses as severe and devoid of victims. The SPPA's fundamental objective is to rehabilitate and reintegrate adolescents into society, rather than solely emphasizing punishment. This legal framework for rectifying this disparity is outlined in Article 1 of the SPPA Law. Therefore, it is essential for law enforcement to meticulously incorporate the principles of child safeguarding and restorative justice into every stage of their process.

Additionally, the concerns regarding the minimum age at which minors can be legally accountable, particularly those under the age of 12, are indicative of the discrepancies between Article 21 of the SPPA Law and the fundamental tenets of criminal law in Indonesia.[16] There are concerns regarding the legal status of minors under the age of 12 and whether they are currently under investigation or have become involved in legal proceedings when examining such cases. The 1945 Constitution of the Republic of Indonesia contains the resolution to this issue in Article 1, paragraph (2). In this provision, the recognition of children's rights as a foundational entitlement is explicitly acknowledged. It is imperative to comply with the principles of justice, equilibrium, and the protection of children's rights as delineated in the pertinent criminal procedural legislation when addressing situations involving children under the age of 12.[17]

It is imperative to offer exhaustive guidance on diversion implementation procedures to key stakeholders, including the community, schools, and educational institutions, in order to effectively address technical challenges associated with diversion implementation. Additionally, it is imperative to provide law enforcement officers with a thorough understanding of the fundamental principles of restorative justice and diversion by providing them with comprehensive instruction on the SPPA Law. Therefore, the significant factors to consider when revising the SPPA Law are the inclusion of the restorative justice method and diversion in the resolution of cases involving juvenile offenders. It is anticipated that the SPPA can improve its efficacy in protecting the rights of children and assuring enhanced security by implementing more precise regulations that are consistent with the principles of relevant legislation. The purpose of the amendment to Law Number 3 of 1997, which is now known as SPPA Law, is to create a SPPA that is more responsive to the rights and concerns of minors. The

objective is to guarantee that all juvenile justice methodologies are in complete accordance with the principles of restorative justice and the safeguarding of human rights.

V. CONCLUSION

The author has recognized many obstacles in managing circumstances affecting young people ten years after the enactment of the SPPA Law, based on the available material. These problems have led to inadequate safeguarding of children's rights. The length of time it takes to execute diversion, as specified in Article 7, is a major issue in Indonesia's SPPA. Furthermore, the lack of uniformity in handling issues pertaining to children below the age of 12, as outlined in Article 21, poses an additional issue. Obstacles persistently hinder the efficacy of diversion agreements, which are still problematic, particularly in getting universal consent. Diverse perspectives emphasize the challenges associated with implementing juvenile justice, especially in relation to restorative justice. Hence, the author proposes that the committee tasked with formulating Law Number 11 of 2021 on the Juvenile Criminal Justice System, together with experts engaged in juvenile cases, should partake in further deliberation and meticulous examination to revamp and improve the legislation.

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