

## Optimizing Justice-Based Law Enforcement Against Children In Conflict With The Law

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**Abstract.** *This research examines efforts to optimize law enforcement based on the principle of justice for children who are in conflict with the law. Children involved in the criminal justice system have special needs and rights that must be considered in order for law enforcement policies and practices to provide protection, rehabilitation and reintegration appropriate to their stage of development and well-being. This research describes the legal and social context in which children face the law and the challenges and opportunities faced by the criminal justice system in handling cases involving them. The importance of the active role of stakeholders, including government agencies, non-governmental organizations, and society in supporting and implementing law enforcement policies that focus on justice for children are also discussed in this journal. Through a comprehensive review of legal, social and psychological approaches to children in conflict with the law, this journal seeks to provide insights for policy makers, legal professionals and society as a whole to ensure protection and justice for young people involved in the system of criminal justice. Thus, this journal contributes to creating a legal system that is more inclusive, competitive, and based on human rights for children who are in conflict with the law.*

**Keywords:** Children; Confrontation; Justice; Juvenile.

### 1. Introduction

Children are an important part of the survival of the nation, state and people. The 1945 Constitution of the Republic of Indonesia (hereinafter the 1945 Constitution) explains that children receive special attention, namely in the Human Rights (HAM) regarding children, especially in Article 28 B paragraph (2)

which reads "every child has the right to survival , grow and develop well and have the right to protection from violence and discrimination" and Article 28 D paragraph (1) of the 1945 Constitution which reads "everyone has the right to recognition of guaranteed protection and fair legal certainty and equal treatment before the law". Therefore, the best interests of children should be internalized as the best interests for the survival of mankind<sup>1</sup>.

As a result of the provisions contained in Article 28B paragraph (2) of the 1945 Constitution, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter known as the SPPA Law) has been enacted to prioritize child protection in government policies. With rapid development, globalization in the field of communication and information, advances in science and technology, and changes in the lifestyle of some parents have caused significant social changes in people's lives, which have a negative impact on children's values and behavior. Deviations or violations of the law committed by children can come from factors outside themselves<sup>2</sup>.

Child delinquency is known as juvenile delinquency. The term juvenile delinquency comes from juvenile which means young, children, young people, characteristic features of youth, characteristics typical of the adolescent period. Meanwhile, delinquency means doing wrong, being ignored/ignoring, which is then expanded to mean being evil, asocial, criminal, violating rules, causing disturbances, terrorizing, irreparable, evil, and others.

In dealing with and dealing with various actions and behavior of naughty children, it is necessary to consider the position of children with all their distinctive characteristics and characteristics, namely being unstable, easily influenced, tending to imitate the surrounding environment.<sup>3</sup> Even though the child has been able to determine his own steps of action based on his thoughts, feelings and will, the surrounding circumstances can influence his behavior. Therefore, in dealing with the problem of naughty children, parents and the surrounding community should be more responsible for the coaching, education and development of the child's behavior.

In its development, Indonesia has had special regulations regarding child protection, namely Law Number 4 of 1979 concerning Child Welfare, Law Number 3 of 1997 concerning Juvenile Court which was subsequently replaced by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and

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<sup>1</sup> A. Masyhur Effendi and and Taufani Sukmana Evandri, *Human Rights in Juridical, Social, Social, Political Dimensions/Dynamics, and the Development/Application Process of Ha-Kham (Human Rights Law) in Society* (Bogor: Ghalia Indonesia, 2007), Pg 51.

<sup>2</sup> Tunggal Setia Hadi, *Law of the Republic of Indonesia Number 11 of 2012 Concerning the Juvenile Criminal Justice System* (Jakarta: Harvarindo, 2013), Pg. 59.

<sup>3</sup> Wahyono Agung, *Overview of Juvenile Justice in Indonesia* (Jakarta: Sinar Graphic, 2011).

Law -Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection. Even though we already have a good set of rules, they are still deemed ineffective in resolving cases of children in conflict with the law.

The purpose of administering the juvenile justice system is not solely to impose criminal penalties on children who commit criminal acts. On the contrary, they try to increase the accountability of perpetrators to victims of criminal acts for their welfare and still pay attention to the interests of society<sup>4</sup>.

In the provisions of Article 1 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Justice System, it provides an age limit for children in conflict with the law, namely children in conflict with the law, hereinafter referred to as children, are children who are 12 (twelve) years old, but under the age of 18 (eighteen) years who are suspected of committing a crime<sup>5</sup>.

The Indonesian Criminal Court still uses punishment against children who commit crimes, even for the benefit of children, even in criminal proceedings in the form of community research (litmas) made by Correctional Center (Bapas) officers who still recommend juvenile judges to sentence criminals against children who commit crimes and more than 4,000 Indonesian children are brought to court every year for minor crimes such as theft and generally do not get support from lawyers or social services, so it is not surprising that nine out of ten of these children end up in prison or detention.

Juvenile court in Law Number 3 of 1997 concerning Juvenile Court is oriented towards the dimensions of retaliation (retributive theory). In contrast to Law Number 11 of 2012 concerning the Juvenile Justice System which prioritizes the transfer of settlement of juvenile justice from the criminal justice process to processes outside of criminal justice (Diversion and Restorative Justice), namely justice that settles child crime cases by involving perpetrators, victims, families of victims/perpetrators, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state<sup>6</sup>.

According to Retnowulan Sutianto, child protection is an area of national development, protecting children is protecting humans, and developing humans as fully as possible. The essence of National Development is the development of

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<sup>4</sup> Fiska Ananda, "Application of Diversion as an Effort to Protect the Law Against Child Offenders," *Journal of Daulat Hukum* 1, no. 1 (2018): P. 78, <https://doi.org/10.30659/jdh.v1i1.2566>.

<sup>5</sup> Bambang Mulyono, *Juvenile Delinquency in the Perspective of the Sociological Psychology Approach and its Management* (Jakarta: Gramedia, 2006), Pg. 11.

<sup>6</sup> Government of the Republic of Indonesia, "Law Number 11 of 2012 Concerning the Juvenile Criminal Justice System" (Government of the Republic of Indonesia, 2012), in Article 1 paragraph (6).

a fully virtuous Indonesian human being. Ignoring child protection issues will not strengthen national development<sup>7</sup>. As a result of the absence of child protection will cause various social problems that can interfere with law enforcement, order, security and national development.

Based on that, then this research was conducted aiming to find out the optimization of justice-based law enforcement for children who are in conflict with the law.

## **2. Research Methods**

This research uses a normative juridical approach which is carried out through library research by examining secondary data in the form of laws and regulations related to the juvenile criminal system and the Child Protection Act as well as research results and other references. This research is a specification of normative legal research by looking at the provisions regarding sanctions against children who are in conflict with the law as an alternative means of punishment.

In carrying out this research, the data collection method used the method of library research and interviews as secondary data that strengthens the research. This research was then analyzed using qualitative descriptive analysis by collecting data which were then grouped according to certain criteria which were then drawn into an analysis in this study.

## **3. Results and Discussion**

On November 20, 1959 the General Assembly of the United Nations (UN) passed the Declaration on the rights of the child. In the Preamble to this Declaration, it is implied that humanity is obliged to provide the best for children. In Indonesia, the implementation of the protection of children's rights as stated in the PPB Declaration is stated in Law Number 4 of 1979 concerning Child Welfare.

Sensitivity to a sense of justice and a caring attitude towards the next generation of a nation, should also be measured from their attention to efforts to protect the rights of troubled children. Talking about the rights of troubled children, people often associate them with the problems of children's behavior which to a certain degree take the form of deviant behavior and/or behaviors that lead to criminal acts. These talks usually then bring people on criminal behavior among children, along with their background, including efforts to deal with these behaviors in society.

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<sup>7</sup> Romli Atmasasmita, *Juvenile Justice in Indonesia* (Bandung: Mandar Maju, 1997), Pg. 166.

Most of our society does not know about the legal consequences that arise when children commit violations or crimes. Certain people believe that children should be responsible for all their actions, but others believe that children are not yet entitled to punishment, whatever the cost. This is clearly an interesting perspective for the majority of people, who still lack legal knowledge. These various perspectives will teach us as people who are aware of the law to provide education about legal issues, especially in this case focusing on children who commit criminal acts.<sup>8</sup>

In Law Number 11 of 2012, it is explained in Article 3 that every child who is in the judicial process has rights. The law explains that the importance of children's rights even though the child is in the process of criminal justice. Regardless of the form of crime, a child who commits a crime is still a child whose rights must be protected.

Guarantees for the protection of children's rights are also contained in Article 18 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which states that in handling cases of Children, Child Victims, and/or Child Witnesses, Community Advisors, Professional Social Workers and Social Welfare Workers Investigators, public prosecutors, judges, advocates or other legal aid providers must pay attention to the best interests of the child and try to maintain a family atmosphere. For this reason, the trial process still uses the model that is in Law Number 3 of 1997 concerning Juvenile Court, in the form of a prohibition on wearing a gown or official attributes for officers, this is contained in Article 22 of Law Number 11 of 2012 which reads: "Investigator, Public Prosecutors, Judges, Social Advisors,

This treatment is intended so that children do not feel afraid and fearful of facing Judges, Public Prosecutors, Investigators, Legal Counsels, Community Advisors, and other officers, so that they can express their feelings to the judge why he committed a crime. Besides that, it is also useful to create a family atmosphere so that it does not become a terrible event for children<sup>9</sup>.

In the context of child protection, investigators are obliged to examine suspects in a family atmosphere, wishing that the examination be carried out in an effective and sympathetic approach, this is also regulated by Article 42 paragraph (1) of Law Number 3 of 1997 but in the Justice System Law The new Juvenile Crime Number 11 of 2012 does not include this anymore.

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<sup>8</sup> I Dewa Putu Gede Anom Danujaya, "Model Formulation of the Juvenile Criminal System in Indonesia," *Journal of Daulat Hukum* Vol. 1, no. 1 (2018): P. 108-109, <https://doi.org/10.52166/mimbar.v2i2.1307>.

<sup>9</sup> Wagiati Soetodjo, *Child Criminal Law* (Bandung: Refika Aditama, 2005), Pg. 34.

An effective approach means that the examination does not take a long time, uses language that is easy to understand and invites the suspect to provide clear information. While the sympathetic approach means that during examinations, investigators must be polite and friendly and investigators can carry out law enforcement activities in a friendly atmosphere for juvenile offenders, so that psychological and physical pressures can be minimized and this is an absolute procedure that must be taken at each level of examination.

Legal protection for children has been reflected in the provisions of Article 42 paragraph (1) of Law Number 3 of 1997, as well as legal protection for children regulated in the Law on the Juvenile Criminal Justice System Number 11 of 2012, if carried out by investigators as has been regulated in these provisions. But if the investigator does not carry out the examination in accordance with these provisions, there are sanctions that can be imposed but do not have any implications for the results of the examination. Even in the Law on the Juvenile Criminal Justice System this is stated in Articles 96, 97, 98, 99, 100 and 101.

To carry out investigations into child cases, investigators are required to ask for consideration or advice from the Social Counselor after a crime has been reported or complained about. If deemed necessary, the Investigator may ask for consideration or advice from educational experts, psychologists, psychiatrists, religious leaders, Professional Social Workers or Social Welfare Workers, and other experts. Even in the case of conducting examinations of Child Victims and Children of Witnesses, investigators are required to request social reports from Professional Social Workers or Social Welfare Workers after a crime has been reported or complained about. Thus, the results of Community Research must be submitted by the Bapas to Investigators no later than 3 x 24 (three times twenty four) hours after the investigator's request is received<sup>10</sup>.

The Juvenile Criminal Justice System regulated in Law Number 11 of 2012 is imperatively required in Article 105 requires that every District Prosecutor have a Child Prosecutor to handle juvenile criminal cases, but if the District Attorney does not have a Child Prosecutor because no one fulfills the requirements determined or due to a mutation/transfer, then the task of prosecuting the case of a delinquent child is borne by the Public Prosecutor who carries out the task of prosecuting criminal acts committed by adults<sup>11</sup>.

When viewed from the aspect of child protection, it can be said that children do not get protection. If the prosecution of children is not carried out by the Child Public Prosecutor, it is feared that the target of child protection will be neglected

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<sup>10</sup> M. Nasir Djamil, *Children Are Not To Be Punished* (Jakarta: Sinar Graphic, 2013), Pg. 155.

<sup>11</sup> Indonesia, "Law Number 11 of 2012 Concerning the Juvenile Criminal Justice System," Article 41 paragraph (3).

because the Public Prosecutor concerned does not understand children's problems, so that legal actions taken in prosecutions have the possibility of not reflecting the principles of child protection, because of the absolute requirements to become a Prosecutor Public prosecutors who handle criminal cases involving children have interest, concern, dedication and most importantly understand that children's problems are not fulfilled.

The Child Public Prosecutor in carrying out his duties is to examine the minutes submitted by the Investigator, if deemed necessary the Public Prosecutor because of his position can recommend to the investigator not to continue the investigation or the public prosecutor can stop the prosecution of the child perpetrator of a crime. It is enough for children to be returned to their parents with reprimands and advice. Therefore, the application of restorative justice in the investigation process is very necessary in accelerating the resolution of problems and the most important thing is to achieve justice<sup>12</sup>.

There are three basic principles that make up restorative justice, namely: recovery for those who have suffered losses due to crime; The offender has the opportunity to be involved in recovery; and the Court acts to maintain public order and society acts to maintain a just peace. Of the three basic principles, it is known that restorative justice will provide feedback for perpetrators, victims and those involved in it. In restorative justice, it also allows imprisonment if the sanction is the victim's demand and indeed by carrying out these sanctions, the perpetrator is considered to be accountable for his actions.<sup>13</sup>.

The role of the Juvenile Judge is very important in the juvenile justice process, the judge must look at the child not only from the criminal acts that have been committed, but also from the child's psychology. Until now there has been no standardization of standard legal considerations, even though judges in trying minors have their own beliefs in assessing the fairness and truth of facts in trials and there is also no obligation for judges to make the same decisions as other judges. However, in dealing with the same object, the same perpetrator (both are minors) and the same threat, one should not impose a sentence that is much different in severity from the others.

Judges who handle juvenile criminal cases wherever possible take actions that do not separate children from their parents, on the consideration that a bad home

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<sup>12</sup> Ragil Tri Wibowo and and Akhmad Khisni, "Restorative Justice in Application for Crime Investigation on Property," *Journal of Daulat Hukum* Vol. 1, no. 2 (2018), <https://doi.org/10.30659/jdh.1.2.565-570>.

<sup>13</sup> Yudi Hendarto and Umar Ma'ruf, "Diversion In Children Criminal Justice System Through Restorative Justice," *Journal of Daulat Hukum* 1, no. 2 (2018): 331, <https://doi.org/10.30659/jdh.v1i2.3269>.

is better than a good Child Correctional Institution (a bad home is better than a good institution/prison).<sup>14</sup>.

In making a decision, the judge must listen to and consider the results of the Community Research Officer's research. The use of Community Research Reports for judges in making their decisions must be wise and fair. Judges make decisions that correct lawbreakers and uphold legal authority. Judges who examine and adjudicate a case, as human beings are not spared from oversight, forgetfulness and various kinds of mistakes that can cause harm to others. The Juvenile Judge explained that the judge's considerations in passing a decision on a case committed by a child include juridical considerations and non-juridical considerations.

Special Penitentiary for Children (LPKA) is an institution or place where a child is serving his sentence. In the paradigm of the Law on the Juvenile Justice System, this new institution is not just a euphemism of a detention center, but is expected to contain a conception that harmonizes justice and the interests of child protection. In addition to these institutions, a new supporting facility was also introduced in the form of a Special Service Room for Children, which functioned as a room to place children who were under arrest for 24 (twenty four) hours.

LPKA is a place where imprisonment is carried out for children until the child reaches the age of 18 (eighteen) years. LPKA is required to organize education, skills training, guidance and fulfillment of other rights in accordance with statutory regulations. As is the case with LPAS, the Law on the Juvenile Criminal Justice System also requires ministries that carry out government affairs in the field of law within a maximum period of 5 (five) years after the enactment of the Law on the Juvenile Justice System to build LPKA every year. province. In the event that the ministry administering government affairs in the field of law does not have the land to build the LPKA office, the local government will prepare the required land<sup>15</sup>.

Based on Article 1 paragraph 8 of Law Number 12 of 1995 in conjunction with Article 13 PP Number 31 of 1999 concerning Guiding Correctional Assisted Residents, there are 3 (three) classes of Correctional Students, namely: a) Criminal Children; b) State Children; and c) Civilian Children. A criminal child is a child who, based on a court decision, is serving a sentence in the Juvenile Correctional Institution for a maximum of 18 (eighteen) years of age. If the child in question is 18 (eighteen) years old but has not yet finished serving his

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<sup>14</sup> Maidin Gultom, *Legal Protection of Children in the Juvenile Criminal Justice System in Indonesia* (Bandung: Aditama, 2008), Pg. 120.

<sup>15</sup> Lilik Mulyadi, *Face of the Indonesian Juvenile Criminal Justice System* (Jakarta: ALUMNI, 2014), Pg. 230.



sentence in a Juvenile Correctional Institution, based on Article 61 of Law Number 3 of 1997 which has now been updated to become Law Number 11 of 2012 concerning the Juvenile Justice System, he must be transferred to the Penitentiary. For criminal children who are placed in Correctional Institutions because they have reached 18 (eighteen) years of age but have not yet reached 21 (twenty one) years, the place is separated from convicts who are 21 (twenty one) years old. The Penitentiary is obliged to provide a certain block for those who have reached the age of 21 (twenty one) years. Convicts who have served 2/3 (two-thirds) of the sentence that has been handed down, are at least 9 (nine) months and have good behavior, can be given conditional release, accompanied by a probationary period The Penitentiary is obliged to provide a certain block for those who have reached the age of 21 (twenty one) years. Convicts who have served 2/3 (two-thirds) of the sentence that has been handed down, are at least 9 (nine) months and have good behavior, can be given conditional release, accompanied by a probationary period The Penitentiary is obliged to provide a certain block for those who have reached the age of 21 (twenty one) years. Convicts who have served 2/3 (two-thirds) of the sentence that has been handed down, are at least 9 (nine) months and have good behavior, can be given conditional release, accompanied by a probationary period<sup>16</sup>.

Based on the results of the author's research at the Special Children's Correctional Institution in Wonosari, Gunung Kidul, Special Region of Yogyakarta on October 25 2016 at 09.00 WIB which was conducted by means of interviews with 5 out of 10 assisted children, explained that most of their rights were fully fulfilled. physical or psychological. The following table shows the results of research conducted by the author regarding protection and their rights while undergoing investigations to trial, the author's identity is deliberately disguised to maintain the comfort of the sources.

No	Children's Rights	Respondents				
		A	B	C	D	E
1	Treated humanely with due care needs according to age		YES	YES	YES	YES

<sup>16</sup> Gultom, Legal Protection of Children in the Juvenile Criminal Justice System in Indonesia, Pg. 138.

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2	Separated from adults	YES	YES	YES	YES	YES
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3	Obtain legal assistance and other assistance effectively	YES	YES	YES	YES	YES
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4	Doing recreational activities	YES	YES	YES	YES	YES
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5	Free from torture, punishment or other cruel, inhuman and degrading treatment and his dignity	YES	YES	YES	YES	YES
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6	Not sentenced to death or life imprisonment	YES	YES	YES	YES	YES
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7	Not arrested, detained, or imprisoned except as last resort and in the shortest time	YES	YES	YES	YES	-
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8	Obtain justice before a child court that is objective, impartial, and in a closed session for public	YES	YES	YES	YES	YES
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9	Not published identity	YES	YES	YES	YES	YES
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10	Obtain the assistance of parents/guardians and people who trusted by children	YES	YES	YES	YES	YES
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11	Gaining social advocacy	YES	YES	YES	YES	YES
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12	Gaining a personal life	YES	YES	YES	YES	YES
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13	Gain accessibility, especially for children with disabilities	-	-	-	-	-
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14	Get an education	YES	YES	YES	YES	YES
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15	Obtain health services	YES	YES	YES	YES	YES
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16	Obtain other rights in accordance with the provisions of the legislation	YES	YES	YES	YES	YES
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Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in Article 4 explains the rights of children who are undergoing a criminal period, but because the sources are children who on average (around 2-3 months) are undergoing coaching, then the contents of Article 4 have not been fulfilled by them.

At every level of examination, diversion procedures are always attempted which aim to prevent children from the formal criminal justice system, which takes too long and gives a negative stigma to children, especially children as perpetrators. Therefore, the concept of diversion is an attempt to divert the formal criminal justice process to a diversion process based on a restorative justice approach. In an effort to prevent children from becoming adult criminals, diversion is carried out to provide protection and rehabilitation to the perpetrators<sup>17</sup>.

The concept of a restorative justice approach is an approach that focuses more on conditions for creating justice and balance for the perpetrators of crime and the victims themselves.<sup>18</sup> The application of special juvenile justice has paved the way for widespread diversion. Development of general justice towards justice that prioritizes child protection. With the adoption of the concept of diversion, the existing form of formal justice will prioritize efforts to protect children from imprisonment. In addition, it can be seen that child protection by means of diversion can be carried out at all levels of justice, starting from the community before the occurrence of a crime by taking preventive measures. After that, if the child commits a crime, there is no need to report it to the police. In addition, if the child who committed the crime has been arrested by the police, then the

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<sup>17</sup> Yati Sharfina Desiandri, "Diversion of Children in Conflict with the Law at the Investigative Level," *USU Law Journal* Vol. 5, no. 1 (2017): P. 147-157, <https://repositori.usu.ac.id/handle/123456789/19096>.

<sup>18</sup> Kristin Reimer, "An Exploration Of The Implementation Of Restorative Justice In An Ontario Public School," *Canadian Journal of Educational Administration and Policy*, no. 119 (2011): Pg. 4.

child can later carry out diversion without forwarding it to the prosecutor's office.<sup>19</sup>

However, in practice in the field according to the results of an interview with Dyah Andrini Sri Rejeki as the Community Advisor in the diversion process at the Cilacap District Court, the victims' families very rarely understand the meaning of diversion as above. In practice at the Cilacap District Court, the diversion process is used as a place to claim material damages arising from the actions of children who commit crimes against their victims. The focus of handling the settlement of child cases has changed to material compensation only. Even though according to the SPPA Law, diversion is carried out with the hope of preventing children from the formal criminal justice process and the main goal is to make a recovery, especially for the mentality and behavior of children who commit crimes and restore their original state (victim situation) before a crime occurs by means of a restorative justice approach. As a result of the deterrent effect as the ultimate goal of punishment for the perpetrators of criminal acts, now they are no longer achieving the expected target. There needs to be a breakthrough in the implementation of the criminal system in Indonesia, not only through imprisonment but also through the application of restorative justice now no longer achieve the expected target. There needs to be a breakthrough in the implementation of the criminal system in Indonesia, not only through imprisonment but also through the application of restorative justice now no longer achieve the expected target. There needs to be a breakthrough in the implementation of the criminal system in Indonesia, not only through imprisonment but also through the application of restorative justice<sup>20</sup>.

Meanwhile, when viewed from the perspective of restorative justice, the values that the concept of restorative justice wants to convey does not only focus on compensation. However, how is the settlement of children in conflict with the law resolved by considering only the best interests of the child. The concept of restorative justice upholds the resolution of a problem by way of restoring the situation, fostering perpetrators and victims, remorse (apologizing to victims), accountability of perpetrators of criminal acts and social work rather than only focusing on compensation in the form of material

From the facts in the field based on the results of an interview with Dyah Andrini Sri Rejeki as the Community Advisor from BAPAS, that the average child who is in conflict with the law in the Cilacap Regency area is a child who comes from

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<sup>19</sup> Anak Agung Putra Dwipayana, Jawade Hafidz, and and Aryani Witasari, "The Implementation of Diversion in Handling of Criminal Actions Performed by Child," *Law Development Journal* 4, no. 2 (2022): P. 341.

<sup>20</sup> Annis Nurwianti, Gunarto, and and Sri Endah Wahyuningsih, "Implementation of Restorative / Restorative Justice in Completion of Traffic Accident Crimes Committed by Children at the Rembang Police," *Jurnal Hukum Khaira Ummah* Vol. 12, no. 4 (2017).

underprivileged families or whose parents are divorced and their parents are working abroad as Indonesian Migrant Workers (TKI) so that their children are entrusted to their grandmothers or other relatives. Consequently, these children receive less attention from their parents because they are raised by elderly grandmothers or relatives who are also busy at work and cannot monitor their behavior in the community so that these children become very at risk of committing crimes due to a lack of supervision and moral and religious education from parent.

Government Regulation of the Republic of Indonesia Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Who Are Not Yet 12 (twelve) years old can be used as standard guidelines for law enforcers to provide limits on their actions in carrying out the diversion process.

The implementation of diversion and restorative justice provides support for the process of protecting children in conflict with the law. Diversion and restorative justice have a common basis, namely avoiding criminal offenders from the formal criminal justice system and giving the offender's child the opportunity to improve himself by undergoing alternative criminal sanctions without imprisonment.

Completion of crimes committed by children with diversion and restorative justice policies brings community participation and facilitators/mediators as an important component in this process. The role of the community in the concept of restorative justice is to try to restore the social order that was disrupted due to violations committed by the perpetrators and return victims and perpetrators to their families and their environment without negative stigma from society.

One example of the results of restorative justice is that the perpetrator gives direct responsibility to the victim in the form of compensation or other accountability other than imprisonment. And perpetrators are also willing to be given action in the form of education, social work or entrusted to religious institutions such as Islamic boarding schools for the purpose of returning perpetrators to the behavior of children of their age and it is hoped that perpetrators will not repeat criminal acts again. If the agreement is successful, then the perpetrator must carry out all the agreements with supervision from the community and community advisors (BAPAS). Meanwhile, the victim has the right to receive compensation and healing from the perpetrator for the pain, suffering or loss they receive.<sup>21</sup>.

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<sup>21</sup> Ibnu Suka, Gunarto, and Umar Ma'ruf, "The Role and Responsibilities of the National Police as Law Enforcers in Implementing Restorative Justice for Justice and Community Benefits," *Khaira Ummah Law Journal* Vol. 13, no. 1 (2018).

To overcome obstacles to the implementation of diversion and restorative justice, the author refers to the efforts put forward by Kay Pranis that in order to provide an understanding of the course of the diversion process with a restorative justice approach, there are several steps to build community involvement in taking initiatives to implement restorative justice.<sup>22</sup>

Thus efforts to implement diversion and restorative justice in resolving cases of children in conflict with the law do not only focus on the perpetrators and victims. But the role of the community and law enforcement officials is very important so that the perpetrators can be avoided from a retributive judicial process (retaliation). However, changing to the nature of restorative justice (recovery), as well as achieving the main goal of the Juvenile Criminal Justice System, namely solely for the best interests of the child

#### **4. Conclusion**

The investigation process carried out by investigators is actually quite optimal, children as perpetrators of crimes are not detained in accordance with the Law on the Juvenile Criminal Justice System. The investigation process at the Polres is carried out by child investigators who are assisted by parents/guardians, legal advisers, and from the Bapas. Meanwhile at the Polsek level, investigations are carried out by investigators who usually conduct investigations on adults, this is due to a lack of human resources. Detention is not carried out during the investigation process, but if needed (investigation process) or for other reasons in accordance with Article 20 of the Criminal Procedure Code. A child who is still a suspect must be accompanied by a legal adviser. There was no intimidation during the investigation process, everything was carried out according to the investigation procedure for children. During the trial process the Judge was given recommendations by the Bapas regarding the educational background, family and environment around the child, but these recommendations were not a reference for the judge in considering his decision later. The rights of children during the trial period are fulfilled and protected by judges and public prosecutors in accordance with the Law on the Juvenile Criminal Justice System. If the child (defendant) is not accompanied by a legal adviser, then the case is absolutely null and void. In general, the rights and protection of fostered children have been fulfilled, they receive physical and psychological development, education, health services, recreation and other facilities. They are treated equally and there is no intimidation or discrimination.

#### **5. References**

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<sup>22</sup> Marlina, *Juvenile Criminal Justice in Indonesia The Development of the Concept of Diversion and Restorative Justice* (Bandung: Refika Aditama, 2009), Pg. 170.

Agung, Wahyono. *Overview of Juvenile Justice in Indonesia*. Jakarta: Sinar Graphics, 2011.

Ananda, Fisher. "Implementation of Diversion as an Effort to Protect the Law Against Child Offenders." *Journal of Sovereign Law* 1, no. 1 (2018): 77–86. <https://doi.org/10.30659/jdh.v1i1.2566>.

Atmasasmita, Romli. *Juvenile Justice in Indonesia*. Bandung: Mandar Maju, 1997.

Danujaya, I Dewa Putu Gede Anom. "Model Formulation of the Juvenile Criminal System in Indonesia." *Journal of Sovereign Law* Vol. 1, no. 1 (2018): 107–17. <https://doi.org/10.52166/mimbar.v2i2.1307>.

Desiandri, Yati Sharfina. "Diversion of Children in Conflict with the Law at the Investigative Level." *USU Law Journal* Vol. 5, no. 1 (2017). <https://repositori.usu.ac.id/handle/123456789/19096>.

Djamil, M. Nasir. *Children Are Not To Be Punished*. Jakarta: Sinar Graphics, 2013.

Dwipayana, Anak Agung Putra, Jawade Hafidz, and and Aryani Witasari. "The Implementation of Diversion in Handling of Criminal Actions Performed by Child." *Law Development Journal* 4, no. 2 (2022): 339–46.

Effendi, A. Masyhur, and and Taufani Sukmana Evandri. *Human Rights in Juridical, Social, Political, and Social Dimensions/Dynamics, and the Process of Developing/Application of Ha-Kham (Human Rights Law) in Society*. Bogor: Ghalia Indonesia, 2007.

Gultom, Maidin. *Legal Protection of Children in the Juvenile Criminal Justice System in Indonesia*. Bandung: Aditama, 2008.

Hadi, Single Faithful. *Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System*. Jakarta: Harvarindo, 2013.

Hendarto, Yudi, and Umar Ma'ruf. "Diversion in Children Criminal Justice System Through Restorative Justice." *Journal of Sovereign Law* 1, no. 2 (2018): 331. <https://doi.org/10.30659/jdh.v1i2.3269>.

Indonesia, Government of the Republic. "Law Number 11 of 2012 Concerning the Juvenile Criminal Justice System." Government of the Republic of Indonesia, 2012.

Marlina. *Juvenile Criminal Justice in Indonesia The Development of Diversion and Restorative Justice Concepts*. Bandung: Refika Aditama, 2009.

Mulyadi, Lili. *The Face of the Indonesian Juvenile Criminal Justice System*. Jakarta: ALUMNI, 2014.

Mulyono, Bambang. *Juvenile Delinquency in the Perspective of the Sociological Psychology Approach and its Management*. Jakarta: Gramedia, 2006.

Nurwianti, Annis, Gunarto, and and Sri Endah Wahyuningsih. "Implementation of Restorative / Restorative Justice in Completion of Traffic Accident Crimes Committed by Children at the Rembang Police Station." *Khaira Ummah Law Journal* Vol. 12, no. 4 (2017).

Reimers, Kristin. "An Exploration Of The Implementation Of Restorative Justice In An Ontario Public School." *Canadian Journal of Educational Administration and Policy*, no. 119 (2011).

Soetodjo, Wagiyati. *Juvenile Criminal Law*. Bandung: Refika Aditama, 2005.

Like, Ibnu, Gunarto, and Umar Ma'ruf. "The Roles and Responsibilities of the National Police as Law Enforcers in Implementing Restorative Justice for Justice and the Benefit of the Community." *Khaira Ummah Law Journal* Vol. 13, no. 1 (2018).

Wibowo, Ragil Tri, and and Akhmad Khisni. "Restorative Justice in Application for Crime Investigation on Property." *Journal of Sovereign Law* Vol. 1, no. 2 (2018). <https://doi.org/10.30659/jdh.1.2.565-570>.