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ANALYSIS OF JUSTICE IN CRIMINAL JUSTICE PRACTICES FOR CHILD CRIMINALS

Sepia Walandari[1]Zayyan Tsabitah Panjaitan[2]Adinda Frizi Ananta[3]Sinvani Dinda Br Sitepu[4]

Department of Law Islamic University of North Sumatra Jl. William Iskandar Ps.V Medan Estate, Kec. Percut Sei Tuan, Kabupaten Deli Serdang, Indonesia

sepiawalandariyap@gmail.com[1]zayyantsabitah@gmail.com[2]adindafrizianant a@gmail.com[3]

Abstract

This study aims to analyze the application of the principle of justice in criminal justice practices for child offenders in Indonesia, with a focus on the effectiveness of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). The national criminal law system is still heavily influenced by a retributive paradigm that focuses on punishment, while the SPPA Law attempts to shift this approach toward a restorative justice paradigm that emphasizes the restoration and protection of children. Using a normative juridical method with a legislative approach and case studies, this study found a significant gap between legal norms and field practice. Although the SPPA Law normatively guarantees the protection of children's rights and regulates diversion mechanisms at every stage of the legal process, its implementation remains hampered by the dominance of legal formalism, a lack of understanding among law enforcement officials, and minimal community and victim involvement in the mediation process. of the justice system still emphasizes the aspect of punishment rather than rehabilitative and rehabilitation. Therefore, ongoing reforms are needed in the form of increasing the capacity of officers, optimizing diversion, and strengthening collaboration between legal institutions and the community to ensure comprehensive protection of children's rights.

Keywords: Restorative Justice, Juvenile Criminal Justice System, Diversion, Child

INTRODUCTION

Children are an integral part of human and national survival. The Indonesian Constitution affirms that the state guarantees children's rights to life, growth, and development, and protects them from violence and discrimination. Therefore, children's interests must be considered in the best interests of humanity.

To achieve this, government policies must be formulated to protect children from the negative impacts of development, globalization, technological advances, and changes in parental lifestyles. These factors can influence children's values and behavior, and therefore, they need to be addressed to prevent deviant behavior and unlawful acts by children.

The Indonesian criminal justice system is deeply rooted in a retributive tradition, with the primary emphasis on retribution and the application of appropriate punishment to violators of the law. This approach, which prioritizes formal procedures and strictness, often overlooks the humanitarian and social aspects associated with criminal acts. This results in victims often being overlooked in the judicial process, while offenders, especially children, can face detrimental long-term consequences. Children in conflict with the law must undergo a rigid process, which can lead to social stigmatization, mental trauma, and the loss of opportunities for reintegration into society, including education. Awareness of the special rights of children and the need for different protections compared to adults is increasingly recognized internationally. The UN Convention on the Rights of the Child (1989), to which Indonesia has acceded, serves as an important foundation for the implementation of justice in this area. This convention encourages countries to create a justice system that prioritizes the best interests of children, rather than solely focusing on punishment.

The traditional criminal law paradigm focused on revenge has become prevalent in the Indonesian legal system (Flora 2018), including in handling cases involving children in the justice system (Maulana and Agusta 2021). In this context, the primary focus is on imposing a sentence deemed proportionate to the perpetrator's actions, often ignoring the psychological and social impact on the child, the victim, and the community (Armanda and Fadhilah 2025). However, with the emergence of progressive legal thinking and international commitments to the protection of children's rights, this approach is beginning to be questioned. Considered a turning point, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) brought significant changes. This law not only regulates procedures but also

introduces the concept of restorative justice as a foundational concept, shifting the focus from "revenge" to "restoration."

The implementation of restorative justice in the UU SPPA aims to find solutions that involve all affected parties—the child, the victim, the family, and the community—so that they can collectively resolve problems and restore damaged relationships (Sumiati 2020). This approach fundamentally differs from the traditional model, which positions the state as the authority to impose punishment. Although the UU SPPA normatively establishes this principle, its implementation in the real world still faces a number of challenges (Febriani and Suherman 2024). This paradigm shift requires a profound transformation in the perceptions of law enforcement officials (police, prosecutors, judges), the community, and even the children themselves.

The gap between regulation and practice is often evident in a lack of understanding of mediation, the dominance of legal formalism, and minimal collaboration between institutions. "Delinquency" here refers to actions that contain elements considered bad and considered a violation of the law, at the very least, such behavior can disturb the peace of others or the surrounding community.

Children, as part of the future generation, are the successors to the dreams of the nation's struggle and human resources for national development. In many cases, child protection efforts face various problems and challenges that can influence children's behavior and actions, both directly and indirectly. Changes in the lifestyles of some groups have caused significant social transformations in interpersonal interactions, which naturally impact children's values and behavior. Furthermore, children who do not receive affection, attention, direction, and guidance in developing attitudes, behavior, adjustment, and supervision from parents, guardians, or caregivers are more likely to be trapped in unhealthy social environments that endanger their personality development.

Addressing and managing children's misbehavior requires considering various underlying factors. Although children can make their own decisions based on their thoughts, feelings, and desires, their environment can influence their behavior. Therefore, guidance and direction from parents and the surrounding community are crucial.

If the relationship between parents and children is unbalanced, children tend to live in their own worlds without much in common with their parents. Parents are often unaware of their children's activities, and children are unaware of their parents'

activities. Therefore, a clear foundation is needed to create harmony in family life and shape a generation with potential. Parents must be role models for their children, as this is crucial for developing a sense of belonging and consistent moral values. Moral values implemented at home must align with those at school and in the community, so children can understand and avoid seeking truth in their own way.

Children need protection from the negative impacts of development, globalization, technological advances, and changes in parental lifestyles, which can influence their values and behavior. These external factors can lead to deviant behavior and illegal acts in children.

A crime, delinquency, or criminal act committed by an individual must have a cause that underlies the act. The factors that drive the act are often referred to as motivation, which includes elements of intention, desire, will, and drive. Needs and aspirations are then manifested in actions. Similarly, criminal acts committed by children are inseparable from factors that support the child's criminal behavior.

A child within a family learns to play a role as a social being with certain norms and skills that will guide them to enter a broader social life. The experiences gained from the family also influence how a child behaves. If the family provides a good example, it will have a positive influence on the child and will be reflected in their behavior in social situations. Conversely, if there are poor relationships within the family, it is likely that the child will also engage in unhealthy relationships. Therefore, it is not impossible to find many children engaging in behavior that deviates from prevailing societal norms.

Generally, children spend most of their time within their families. Therefore, it's not impossible that a child's delinquency is influenced by their family circumstances, especially if those circumstances are abnormal. An abnormal family can be one experiencing discord, often referred to as a broken home. This discord often results in a child receiving insufficient love and attention from both the father and mother, or even both.

METHOD

This research uses a normative juridical approach, namely legal research conducted by examining applicable positive legal norms and literature relevant to the problem under study. This approach was chosen because the primary focus of the research is to analyze the application of the principle of justice in the juvenile criminal

justice system based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) and its implementing regulations.

The data sources in this study consist of two types:

1. Primary legal materials, including related laws and regulations, such as Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 35 of 2014 concerning Child Protection, the Criminal Code (KUHP), and Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversion.

2. Secondary legal materials, in the form of books, scientific journals, previous research results, and official documents discussing the concept of restorative justice and its application to juvenile offenders.

Data collection was conducted through library research, reviewing various relevant literature, regulations, and court decisions.

Data analysis was conducted qualitatively, interpreting and linking applicable legal norms with their implementation in practice. The data obtained was then systematically interpreted to identify a match between the ideal concept of restorative justice and the reality of its implementation in juvenile criminal justice.

Through this method, the research sought to identify gaps between ius constitutum (applicable law) and ius operatum (law in practice), and to provide recommendations for improving the juvenile criminal justice system to better orientate it toward the protection and recovery of children, both perpetrators and victims.

RESULTS AND DISCUSSION

RESULTS

Justice in Criminal Justice Practices for Child Offenders

In modern society, parents are often preoccupied with their own affairs, particularly earning a living, leaving children with little guidance and supervision. This can lead children to seek parental attention in negative ways. Furthermore, a family's financial situation can also lead children to commit crimes to meet their needs. This phenomenon is common in lower-middle-class families who struggle to meet basic needs. Parents busy earning a living are often unable to supervise their children, leading children to engage in inappropriate behavior, such as stealing or robbery, to meet their own needs.

A child's personality development is often influenced by their social environment, especially their friends. When children spend time with friends, they tend to be influenced by the values and behaviors around them. This can influence children to do what they consider right, but it can also lead to deviant behavior if their social environment is unbalanced.

When a child is suspected of committing a crime, the formal justice system can have significant consequences for their life. Formal justice processes that place children in prison are often ineffective and do not improve their well-being. Indonesia has Law No. 3 of 1997 concerning the Juvenile Court to handle juvenile cases, but this law has several weaknesses.

The main weakness of Law No. 3 of 1997 concerning the Juvenile Court is the lack of implementation of the concept of diversion. To address this, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) was enacted, which uses a restorative justice approach through a diversion system. The SPPA Law requires law enforcement officials to pursue diversion at every stage of the legal process. Diversion itself is the transfer of juvenile cases from the criminal justice process to a process outside the criminal justice system.

The SPPA Law stipulates that diversion can only be applied to crimes that carry a sentence of less than seven years and are not repeat offenses. In Indonesia, there are problems in resolving juvenile cases.

The juvenile case in question is a narcotics case, for which two charges currently apply: the first charge carries a prison sentence of under seven years for alleged drug use, and the second charge carries a prison sentence of more than seven years for alleged possession. The Juvenile Justice and Child Protection Law (UU SPPA) remains the legal guideline for law enforcement in resolving this case. However, the restorative justice principle enacted by the regulation appears to be missing, as there are two charges in this case. The lesser charge can be used as a basis for deciding and re-implementing the diversion concept. Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System was created to address the legal gap in the Juvenile Justice and Child Protection Law, which does not regulate or explain the application of diversion to alternative charges. Judges and other law enforcement officials should be able to use Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice

System as a guideline for diversion, in addition to the Juvenile Justice and Child Protection Law. A 17-year-old child was tried by the Binjai District Court and appealed to the Medan High Court on Thursday, November 6, 2014. The child was charged with drug possession under alternative charges, namely Article 111 paragraph (1) and Article 127 paragraph (1) letter a of Law No. 35 of 2009 concerning Narcotics. The investigators and prosecutors did not apply diversion in this case, while the Binjai District Court applied the guidelines of Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System.

Article 3 of Supreme Court Regulation No. 4 of 2014 requires juvenile judges to apply diversion. However, in the case of drug possession by a child in Langkat Regency, investigators disagreed with the application of diversion and appealed to the Medan High Court. The Medan High Court granted the appeal and overturned the Binjai District Court's decision, imposing a three-week prison sentence on the child.

This case demonstrates the ongoing disagreement among law enforcement officials regarding the implementation of diversion, even though diversion aims to safeguard and protect children's rights. Child offenders who are tried after the age of 18 still receive legal protection under Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). If a child commits a crime before the age of 18, but is tried after the age of 18 but has not yet reached the age of 21, the child is still brought before a juvenile court.

The Law on the Juvenile Criminal Justice System prioritizes restorative justice and diversion, namely resolving juvenile cases outside the criminal justice process. Diversion can be implemented if the crime committed carries a prison sentence of less than 7 years and is not a repeat offense.

he purpose of diversion is to achieve peace between victims and children, resolve children's cases outside the judicial process, prevent children from being deprived of liberty, encourage community participation, and instill a sense of responsibility in children. Children in conflict with the law are entitled to the protection and rights stipulated in the Children's Justice and Prosecution Service Law (UU SPPA), including the right to anonymity, the right to be accompanied by a parent or guardian, and the right to legal aid.

Based on the results of the author's research in answering the first research question, the legal protection for child perpetrators of crimes at the time of trial is stated in Article 20 of the UU SPPA. Children in conflict with the law must still be tried and processed according to the legal procedures for juvenile criminal justice. Even if the child is over 18 years old at the time of trial and sentencing, but has not yet reached 21 years of age, the child is still referred to a juvenile court. Therefore, a child in conflict with the law can still be brought to a juvenile court even if the child is over 18 years old (even if the crime was committed before the age of 18). This means that it doesn't matter if the court's decision is received when the child is over 18.

The wording of Article 20 of the Child Protection and Child Protection Law reads: "In the event that a crime is committed by a child before the age of 18 and is brought to court after the child has passed the age limit of 18, but has not yet reached the age of 21, the child will still be brought to a juvenile court." This aligns with R. Wiyono's statement (R. Wiyono, 2016), who stated that if a case can be brought to a juvenile court even if the child is over 18 years old (but the crime was committed before the age of 18), then it doesn't matter if the court's decision is received after the child is a few days older than 18. Therefore, the case remains within the realm of juvenile criminal law.

Law No. 35 of 2014 concerning Amendments to Law No. Article 1, number 1 of Law No. 23 of 2002 concerning Child Protection states that "a child is a person under the age of 18, including unborn children." Furthermore, Article 1, number 2 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System states that "children in conflict with the law are children in conflict with the law, namely children who commit crimes and children who witness crimes." Article 1, number 3 of the Child Protection and Child Protection Law states that "a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 years old but under 18 years old and is suspected of committing a crime."

Children convicted and placed in a Special Child Correctional Institution (LPKA) will only receive counseling until they turn 18. If they reach 18 but their sentence has not yet been completed, the child will be transferred to a Youth Correctional Institution (Lapas Pemuda).

If there is no Youth Correctional Institution, the Head of the LPKA can transfer a child to an Adult Correctional Institution (Adult Correctional Institution) based on

the recommendation of the Community Guidance Officer. If the child is 21 years old but is still serving a sentence, he or she will be transferred to an Adult Correctional Institution with attention to the continuity of the child's development. This regulation is based on Article 85 paragraph (1), Article 81 paragraph (3), Article 86 paragraph (1), Article 86 paragraph (3), and Article 86 paragraph (2) of the SPPA Law.

The handling of cases involving juvenile offenders differs from that involving adult offenders, namely by applying the principle of restorative justice. The main principle of restorative justice is the participation of the victim, the offender, and the community as facilitators in resolving the case, so that the child or the offender does not disrupt public order.

The next principle is an effort to prioritize the restoration of children as victims, offenders, and the community. This means that children are not solely classified as offenders; because they are still minors and cannot yet distinguish between right and wrong, they are also considered victims (Luh Putu Gita Dharmaningtyas, 2020). The following are several explanations of the definition of a child according to several laws and regulations in Indonesia, namely:

1. The Criminal Code (KUHP). The definition of a child's status in criminal law is defined as a child who is not yet an adult, as someone who has special rights and needs to receive protection according to applicable legal provisions. The definition of a child in criminal law creates a positive legal aspect to the process. Normalizing children from deviant behavior to shape their personality and Responsibility ultimately ensures that the child has the right to proper welfare.
2. Law No. 23 of 2002 concerning Child Protection in conjunction with Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. A child is a person under 18 years of age, including unborn children.
3. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). A child who is a victim of a crime, hereinafter referred to as a child victim, is a child under 18 years of age who experiences physical or mental suffering and/or economic loss caused by a crime.
4. Law No. 39 of 1999 concerning Human Rights. Article 1, number 5, states that: A child is every human being under 18 years of age and unmarried, including unborn children. If this is in their best interest.

5. Law No. Law No. 4 of 1979 concerning Child Welfare. Article 1, number 2, states that a child is a person who has not reached the age of 21 and has never been married.

Detention of a minor must meet the requirements stipulated in Article 21 paragraph (1) of the Criminal Procedure Code. However, if the child has a clear identity and family, detention on the grounds of potential escape is irrelevant.

Detention of a child caught stealing and whose evidence has been confiscated is also irrelevant, because the condition for detention based on fear of destroying evidence no longer applies once the evidence has been confiscated.

According to Article 32 paragraph (1) of the Child Welfare Law, child detention may not be carried out if the child receives a guarantee from a parent/guardian and/or institution that the child will not run away, will not damage or destroy evidence, and/or will not repeat the crime.

Gap between Norms and Practices in the Field

An analysis of the implementation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System reveals a significant gap between normative idealism and the reality of practice on the ground. This gap stems primarily from the structural and cultural challenges faced by key actors in the juvenile criminal justice system.

1. Dominance of Legal Formalism and Limitations of Law Enforcement Officials

   In fact, the transition from a deeply entrenched retributive paradigm to a restorative paradigm is not an easy process, especially for law enforcement officials such as police, prosecutors, and judges. The main challenge identified is a lack of substantive understanding of the philosophy of restorative justice. In line with data presented by Sulung et al. (2023), which presented supporting data from 2021 to April 2023, the North Sulawesi Regional Police still have a relatively low level of prioritizing restorative justice, requiring its implementation to be intensified and accompanied by outreach to all stakeholders.

   The limited implementation of restorative justice demonstrates that a legal culture still oriented toward retribution and punishment is a major obstacle. Law enforcement officials tend to view restorative justice as a procedural

option, rather than a philosophical principle that should be integrated into the handling of juvenile cases.

Diversion, the core of restorative justice, is often applied selectively or ignored, especially in serious cases or those requiring rapid response. As a result, children's recovery, reconciliation, and reintegration into society are not optimally achieved, demonstrating a gap between applicable law (ius constitutum) and law in practice (ius operatum).

To address this, systematic efforts are needed, including a shift in perspective and capacity building of law enforcement officials through ongoing and comprehensive training, rather than solely focusing on regulations.

This is supported by research findings from Sopacua (2024), which demonstrates that restorative justice can resolve domestic violence cases through a process conducted by UPPA (women police officers) who offer reconciliation to victims, in accordance with National Police Chief Regulation No. 8 of 2021.

2. Unempowered Participation of Victims and Communities

The implementation of the Juvenile Justice and Child Protection Law faces complex legal and sociological barriers to involving victims and communities in the diversion process. Their involvement is central to the restorative process, but this participation is often hampered by social stigma and retributive societal views.

Victims and their families may be reluctant to engage in mediation due to social stigma, while society demands punishment rather than restitution. Power inequalities between families, children, perpetrators, and victims' families also limit victims' ability to voice their rights and needs.

The participation mandated by the law often leads not to empowerment but to the legitimization of potentially unfair agreements. This demonstrates that the implementation of restorative justice still faces significant challenges in achieving a fair and effective process.

3. Limitations of Diversion Mechanisms and Risks of Injustice

The diversion and mediation mechanisms stipulated in the Child Protection Law (UU SPPA) have technical limitations that can threaten the very purpose of restorative justice. Diversion cannot be applied to all

juvenile cases, particularly crimes punishable by more than seven years or serious cases exempted by law. Furthermore, mediation carries risks, such as reaching an unfair agreement for the victim.

Victims who lack adequate support or face social pressure may accept an agreement that does not meet their financial or psychological needs. This undermines the essence of restorative justice, which prioritizes meeting the needs of victims. If diversion is not implemented with sound principles, it can create room for new injustices that ignore victims' rights and the true goal of recovery. Therefore, diversion must be implemented carefully and with due regard for victims' needs to achieve true restorative justice.

DISCUSSION

Research shows that although the analytical framework for justice in criminal justice practices for juvenile offenders is well-structured, its implementation remains uneven and suboptimal. Key challenges include a lack of understanding among law enforcement officials, limited child-friendly facilities, and inadequate human resource capacity in the juvenile justice sector. Furthermore, social pressure is also a factor hindering the implementation of diversion.

The findings of this study have important implications for government policy, including more focused and structured policy evaluations to ensure uniform diversion implementation across all regions. Furthermore, ongoing training for law enforcement officers is needed to enhance their ability to implement restorative justice approaches. Investment in infrastructure and network-based services is also crucial to increase the accessibility of juvenile justice services in remote areas. The role of communities and families is also crucial in supporting the success of diversion and reducing stigma against children in conflict with the law.

The gap between law and practice in the field shows that the implementation of the principles of best interest of the child and ultimum remedium in the SPPA Law still faces challenges. Law enforcement officials often fail to translate these principles into action, indicating implementation problems caused by a lack of resources, training, and a supportive institutional culture. The success of diversion as a policy depends heavily on the understanding and attitudes of law enforcement officials. If officials are not prepared, diversion will be ineffective and will tend to be a situational policy, rather than a standard procedure. Therefore, it is necessary to increase the capacity of law enforcement officials to support the effective implementation of diversion. The role of

the community and family is crucial in supporting the success of diversion. However, family and community participation in the diversion process is still suboptimal, thus reducing the success of children's social reintegration. Therefore, efforts are needed to increase public awareness and participation in supporting the success of diversion.

CONCLUSION

Based on the research and analysis conducted, it can be concluded that the implementation of justice in criminal justice practices for child offenders in Indonesia still faces various challenges, both from a legal perspective, law enforcement officials, and the implementation system. Although Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) provides a legal basis for protecting the rights of children in conflict with the law, in practice the principle of restorative justice has not been fully realized.

Cases continue to be found in which the legal process for children is carried out repressively and does not prioritize the best interests of the child. This indicates that the law enforcement paradigm oriented towards development, protection, and restoration has not been fully and consistently implemented. Furthermore, limited facilities at development institutions, lack of coordination between agencies, and poor public and official understanding of the values of restorative justice are also major obstacles to achieving just justice for children. Therefore, justice in juvenile criminal justice should not be measured solely by the aspect of punishment, but also by the extent to which the system is able to restore the child's social, moral, and psychological well-being. The application of a restorative justice approach that involves victims, perpetrators, families and communities is the main key to achieving humane and sustainable substantive justice for children as perpetrators.

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