



# Legal protection for child criminals through diversion and restorative justice in the judicial system

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**Abstract:** Legal protection for child criminals is a crucial issue in the Indonesian criminal justice system, given that children are viewed as individuals still developing and requiring a special approach. The application of diversion and restorative justice offers a solution to prevent children from experiencing formal justice processes that can potentially cause trauma and hinder their future. However, in practice, the implementation of both approaches still faces obstacles, such as a lack of understanding among law enforcement officials, a lack of supporting facilities, and suboptimal involvement of the community and victims in the recovery process. This study uses a normative juridical method with a legislative approach and conceptual analysis to assess the effectiveness of diversion and restorative justice as forms of legal protection for children. Data were obtained through a literature review of the Juvenile Criminal Justice System Law and various previous studies. The results show that diversion and restorative justice have been proven effective in reducing recidivism rates, restoring offender-victim relationships, and providing a more humane developmental environment for children. However, their effectiveness is highly dependent on the professionalism of law enforcement officials and the support of the social environment. In conclusion, the implementation of both approaches needs to be strengthened through increased law enforcement capacity, cross-institutional synergy, and public education.

**Keywords:** Child Criminal Acts, Legal Protection, Restorative Justice

## 1. Introduction

Forms of injustice or inconsistency towards children who commit crimes are evident when juvenile justice practices do not align with the constitutional mandate regarding children's rights, particularly the right to protection, education, and rehabilitation. For example, children may be subjected to excessive detention or processed through legal procedures that emphasize punishment over rehabilitation, thus neglecting their psychological and social needs. Furthermore, disparities in the application of the age of criminal responsibility and a lack of attention to a child's socioeconomic background or the trauma they have experienced demonstrate systemic injustice. These conditions pose a risk of stigmatization, hinder children's reintegration into society, and ultimately contradict constitutional principles that emphasize the protection and development of children as integral citizens. In the context of the psychological and sociological development of Indonesian children, revising or strengthening the concept of the age of criminal responsibility is increasingly urgent because children's cognitive, emotional, and social development varies greatly and is influenced by their family, educational, and community environments. Children, who are still in the stages of moral development and immature impulse control, are vulnerable to legal decisions that fail to consider their capacity to understand the consequences of their actions. Furthermore, the increasingly complex phenomenon of child crime demands a balance between child protection and legal responsibility. By strengthening or revising the age of criminal responsibility, the legal system can be fairer, more responsive to children's psychological needs, and simultaneously promote effective social rehabilitation, rather than solely punishment, thus supporting children's healthy reintegration into society. Children are a trust and gift from God Almighty, possessing the dignity and worth of a complete human being. Ac-

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According to the Indonesian Dictionary, "Harkat" is defined as a level or rank. According to the Indonesian Dictionary, "Martabat" is defined as a level or rank as a complete human being, and therefore, it needs to be protected. Protection is providing protection to human rights that have been harmed by others, and this protection is provided to the community so that they can enjoy all the rights granted by law. Protection of children's rights is a form of human rights protection (Mahyani & Hidayat, 2017). Children's human rights are a set of rights inherent in the nature and existence of children as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the state, law, government, and every person for the sake of honor and protection of human dignity and worth. Children's rights must be protected, whether they are victims or perpetrators of crimes, considering that every child has the right to survival, growth, and development, and the right to protection from violence and discrimination, as mandated by the 1945 Constitution of the Republic of Indonesia (Pancasilawati, 2014). Children are an asset in national development and require protection for their growth and development. Protection is provided not only to children as victims but also to children as perpetrators. As stipulated in the considerations of Law Number 35 of 2014 concerning Child Protection, children are referred to as the "shoots, youth, and successors" of the nation. Therefore, children deserve protection and the broadest possible opportunities for optimal growth and development, both physically and mentally, to ensure their well-being and guarantee their rights (Narkotika, 2020).

Children who commit crimes are referred to as children in conflict with the law under Law Number 11 of 2012 concerning the juvenile criminal justice system. Criminal acts committed by children are often similar to those committed by adults, such as theft, rape, murder, and others. However, this does not mean they can be subjected to the same judicial process as adults (Sudarmaji et al., 2023). Considering one of the principles of the juvenile justice system, the principle of protection, this principle is intended to protect and nurture children in conflict with the law so that they can face their long future and provide opportunities for them to develop their identity through guidance and become independent and responsible individuals. Therefore, legal protection is necessary for children in conflict with the law (Rizqian et al., 2021). This raises the question of who the parties are involved in juvenile criminal justice and how legal protection is guaranteed for children who commit crimes. The juvenile criminal justice system differs from the adult justice system in various respects. Juvenile criminal justice encompasses all activities of examining and deciding cases concerning the interests of children (P. Hukum et al., 2019). One inherent characteristic of the juvenile criminal justice system is that law enforcement can terminate the judicial process at any time, provided the circumstances become known to the authorities (Aziz et al., 2018).

Criminal accountability varies widely across countries. This depends on how a country defines juvenile and delinquency. These differences contribute to the varying approaches used to address juvenile delinquency (Harahap, n.d.). Differences in criminal responsibility impact not only how the criminal justice system handles children but also organizations and institutions such as social workers and child services (Asmadi, 2020). Furthermore, these differences are closely related to societal culture, expectations for children, and the role of the state. In Indonesia, children who violate societal norms and commit crimes are considered Children in Conflict with the Law (ABH). These children, if proven to have violated criminal law, can be punished or sanctioned, as mandated by Law Number 11 of 2012 concerning the Juvenile Justice System (Fitri et al., 2022).

In the juvenile criminal justice system, children are classified as children in conflict with the law, children who are victims, and children who are witnesses to criminal acts. A child in conflict with the law is a child aged 12 but under 18 who is suspected of committing a crime (Hak et al., 2018). A child victim is a child under 18 who experiences physical or mental suffering, or economic loss, as a result of a crime. A child witness is a child under 18 who can provide information for the purposes of the legal process, from the investigation, prosecution, and trial stages, regarding a criminal case they have heard, seen, or experienced (P. Hukum et al., 2019).

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System regulates the mechanisms and procedures for handling cases of children in conflict with the law. In Indonesia, criminalization of children may only be carried out if the child is over 14 years old and commits a crime punishable by a sentence of more than 7 years. Outside of these two provisions, children may only be subject to criminal action. Article 68 of Law Number 11 of 2012 stipulates that children over 14 years old can be punished if the child commits a crime punishable by a sentence of more than 7 years. In other words, child protection under Indonesian law only applies to children under 14 years old. Others must follow proper trial procedures and may be detained. For example, for child perpetrators who commit crimes against morality punishable by a sentence of more than 7 years, diversion and restorative justice cannot be applied (Mulyadi, 2018).

Cases of children committing crimes in Indonesia are numerous and varied. Data from the Indonesian Child Protection Commission (KPAI) indicates that cases of children in conflict with the law, particularly those involving children as perpetrators, continue to increase year after year (Mulyadi, 2018). Meanwhile, the number of Special Child Development Institutions (LPKA) remains very limited. The perceived rigidity of Indonesia's juvenile justice system makes children susceptible to prosecution for their actions, especially for law enforcement officials (P. Hukum & Juliana, 2019).

## 2. Materials and Methods

In determining primary and secondary legal materials, the criteria used must ensure the analysis has conceptual depth and argumentative strength, including the relevance, authority, and topicality of the sources. Primary legal materials such as laws, government regulations, court decisions, and international treaties are selected based on their direct relevance to the legal issue being studied and their formal legitimacy as primary legal references. Meanwhile, secondary legal materials such as academic books, journal articles, expert opinions, and research reports are evaluated based on their methodological quality, the reputation of the author or institution, and their analytical ability to critically explain legal principles, interpretations, or practices. A carefully selected combination of primary and secondary materials allows for the formation of logical, in-depth, and evidence-based arguments, ensuring that the analysis is not only normative but also contextual and empirical. The research method used is a normative legal research method to produce an answer that aligns with the problem description above. The approaches used are the statutory approach and the conceptual approach. The legal materials required for this research are sourced from literature, books, legislation, and other legal materials. The data collection technique used is document study. The analysis of the legal materials used in this research uses the interpretation method (P. Hukum & Juliana, 2019).

## 3. Results and Discussion

When children are held in Special Child Development Institutions (LPKA), they face complex legal and social consequences, which can directly impact their opportunities for rehabilitation, education, and social reintegration. Legally, detention in LPKA is intended to be both protective and rehabilitative, but inadequate practices or limited facilities often hinder children's access to education and skills training programs. Socially, children are at risk of stigmatization, loss of positive social networks, and disconnection from their families, which can reduce their motivation and ability to reintegrate. This imbalance between punitive and restorative functions has the potential to lead to recidivism and undermine the restorative goals of juvenile justice, highlighting the need for ongoing evaluation of LPKA mechanisms to ensure they truly support children's psychological, social, and cognitive development. If the juvenile justice system continues to maintain a rigid procedural formalism approach that does not consider the child's psychological condition and background, the legal risks are significant, including unfairness in determining responsibility, disproportionate sanctions, and an increased potential for recidivism. Children who are emotionally immature or come from vulnerable social environ-

ments may experience legal pressures that exceed their capacity to understand the consequences of their actions, resulting in the neglect of their rights. This rigid approach also risks weakening the rehabilitative function of the justice system, giving rise to social stigmatization, and undermining the legitimacy of the law from the perspective of children's rights and social development, as the system emphasizes procedures over child protection and rehabilitation. Children are vulnerable to environmental influences. Their characteristics are shaped by their environment, both family and social. Therefore, from a sociological perspective, children who commit crimes are also victims of their environment. Therefore, children involved in criminal acts require attention and protection, especially when facing the legal process (Mulyadi, 2018). Children who are awaiting trial face additional moral and psychological challenges. However, an important issue to examine is the criminal justice process they must face and how legal protection is implemented in the examination of criminal cases for children whose physical and mental abilities are still vulnerable. The Indonesian juvenile justice system stipulates that the age of criminal responsibility for children is 12 (twelve) years old, and for those under 18 (eighteen) years old and have never been married (J. D. Hukum, 2018). Philosophical ideas regarding the age limit for criminal responsibility for children are based on the consideration that psychologically, at this age, children already have a sense of responsibility (Ilmu et al., 2020). Consequently, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System was enacted, specifically regulating the criminal responsibility of children. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System stipulates that children aged 14 (fourteen) may have their liberty deprived, provided that the child commits a crime that carries a sentence of more than 7 (seven) years or is categorized as a serious crime (Agama et al., 2019).

Children under 14 years of age who commit crimes punishable by more than seven years in prison can be subject to criminal penalties. Indonesia recognizes the terms restorative justice and diversion, which require the resolution of juvenile cases through peaceful means between both parties. However, this diversionary legal remedy may only be applied to children under 14 years of age. Furthermore, children must continue to follow court procedures and may even be detained for their actions. The Indonesian juvenile justice system does not consider factors beyond the law. It does not consider the perpetrator's circumstances at the time of the crime, such as the background of the crime and whether the child knew whether their actions were right or wrong. Most importantly, if a child meets the requirements for criminal prosecution, they will be immediately detained in a Special Child Development Institution (LPKA). Furthermore, children who are permitted to enter the criminal justice system are those aged 14 (fourteen) and over. However, *doli in capax* is not absolute. This presumption (known in common law as *doli in capax*) can be challenged, presuming a child between the ages of 10 and 14 is incapable of committing a crime. This can only be done if the prosecution can rebut this presumption by demonstrating that the accused child was sufficiently capable at the relevant time to distinguish between right and wrong (Restia, 2020).

If a child over the age of 14 (fourteen) commits a crime and does not yet understand that what they are doing is wrong, they cannot be punished, and vice versa. In the juvenile justice system in New South Wales, the law is not rigid or absolute; the criminal justice system is not fully bound by statutory regulations. Juvenile justice laws in this state tend to consider or differentiate whether the act is right or wrong, and the child's psychological and psychological state at the time of the crime. After the enactment of Law Number 11 of 2012 concerning the juvenile criminal justice system, legal protection for children has a strong legal basis, especially in the regulation of the limits of criminal responsibility of children. An effort that deserves appreciation is that the government has carried out legal reforms in the field of updating laws or legal substances, but the most significant weakness in the enforcement of the juvenile criminal justice system lies in its legal structure, namely law enforcement (Agnetha et al., n.d.).

who are still very rigid in reading the law, both by the police, prosecutors, and judges. In Law Number 11 of 2012, legal reforms have indeed been made in favor of children's interests. The rights of children in conflict with the law have been accommodated and protected since the enactment of Law Number 11 of 2012, namely regarding the increase in the age limit of responsibility of children to 12 to 14 years for the imposition of action and 14 to 18 years for criminal acts of imprisonment, as stated in Article 69 (2) which implies that children under 14 (fourteen) years of age can only be subject to action (Ghoni et al., 2020). If in substantive law a child in conflict with the law is threatened with cumulative penalties in the form of imprisonment and a fine, then the fine is replaced with job training for a minimum of 3 months and a maximum of 1 year. The maximum sentence imposed on a child restricting liberty is half the maximum prison sentence imposed on an adult (Article 79 paragraph 2 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System), while the specific minimum prison sentence does not apply to children (Article 79 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System) (Inclusion et al., 2022).

However, the provisions of this article do not further explain the circumstances that prevent a child from being punished or the conditions under which a child cannot be punished. Therefore, law enforcement officials understand the law conceptually. With regard to legal protection for children, the principles of child protection are regulated in various international conventions, such as the Convention on the Rights of the Child, the Beijing Rules, the Riyadh Guidelines, and the United Nations Convention on the Protection of Juveniles Deprived of Liberty of 14 December 1990, as well as existing national laws and regulations. Thus, it is clear that the government has long been striving to protect children. Regarding legal protection efforts for children, particularly those who commit crimes, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System specifically regulates diversion and restorative justice in resolving juvenile cases, with the goal of better protecting and guaranteeing the rights of children in conflict with the law. The Juvenile Criminal Justice System Law stipulates that diversion efforts are mandatory at the investigation, prosecution, and examination levels of juvenile cases in district courts, as emphasized in Article 7 paragraph 1 of the Juvenile Justice System Law (Peraturan et al., n.d.).

The Concept of Diversion and Restorative Justice a) Diversion during the investigation stage: The police are the primary point of entry or initial examination of the juvenile criminal justice system and are the primary authority to determine the status of a child in conflict with the law (Mestika et al., 2022). Article 7 of the Juvenile Criminal Justice System Law clearly states that investigators are required to attempt diversion. Investigators are required to attempt diversion within a maximum of seven days after the investigation begins. The diversion process must be implemented no later than thirty days after the diversion begins. Furthermore, if the diversion process successfully reaches an agreement, the investigator submits the diversion report and the diversion agreement to the chief justice of the district court for a decision. If diversion fails, the investigator is required to continue the investigation and refer the case to the public prosecutor, attaching the diversion report and a community research report (Erdianti et al., 2019).

Diversion at the prosecution stage. In accordance with the Welfare Approach principle in handling Juvenile Delinquency and in accordance with the provisions of the Child Criminal Justice System Law, the Prosecutor as Public Prosecutor clearly has the right to conduct diversion, where the Public Prosecutor is obliged to attempt diversion no later than 7 (seven) days after receiving the case file from the Investigator and the diversion is implemented no later than 30 (thirty) days (Nurlani, 2021). If the diversion process is successful in reaching an agreement, the Public Prosecutor submits a diversion report along with the diversion agreement to the Chief Justice of the District Court for a decision. However, Article 42 Paragraph 4 of the Juvenile Justice System Law states that if the

diversion effort fails, the public prosecutor is obliged to submit a report and transfer the case to the court, attaching the results of the community research. Submitting the report constitutes an effort to prosecute the case in accordance with the Criminal Procedure Code. Diversion at the Juvenile Court examination stage. Children who commit crimes in every judicial process, whether dealing with the police, prosecutors, or during court proceedings, basically have the right to have their rights as child suspects protected. As previously explained, diversion through a restorative justice approach is a fair resolution of children's cases involving the perpetrator, victim, Their families and other parties involved in a criminal case work together to resolve the crime and its implications, emphasizing restoration to the original state(Afdhaliyah, 2019).

Restorative justice is defined as a process in which all parties involved in a particular crime come together to solve the problem and consider future consequences. Restorative justice is then implemented as an effort to resolve cases of children in conflict with the law, involving families, community leaders, perpetrators, victims, and other relevant parties, with an emphasis on returning to the original state. However, the problem is that Law Number 11 of 2012 concerning the Juvenile Criminal Justice System stipulates that restorative justice and diversion may only be implemented on children under 14 years of age. Furthermore, children must still follow proper court procedures(Asmadi, 2020).

However, according to the author, a child's level of intellectual maturity is not influenced by age; even children aged 17-18 years tend not to think wisely. This is what the state adopted under the principle of *doli in capax*, which allows for greater discretion in sentencing children. This involves considering whether the child was fully aware of the wrongdoing when committing the deviant act, considering the child's environmental conditions and tendencies, and then deciding whether the child deserves punishment or simply needs guidance(Pendekatan et al., 2018).

In reality, the current judicial process has not been child-centered, but rather focused on the interests of the target group that must be met in handling cases, resulting in stigmatization of children. Therefore, considering the weaknesses mentioned above, a formulation is needed to address these shortcomings in the juvenile criminal justice system, namely: Expanding the rules on diversion and restorative justice. The implementation of restorative justice should be expanded to apply to all children in conflict with the law without exception. Peaceful or non-legal channels must be prioritized before taking other actions. After diversion has been pursued, if diversion cannot be implemented, the judge has absolute authority to determine the next course of action. One of them is with an individual paradigm that focuses on emphasizing the problems faced by the perpetrator, not on the actions or losses caused. This responsibility rests with the system's responsibility to meet the needs of the perpetrator. Sanctions imposed in the juvenile criminal justice system, based on the individual development paradigm, are irrelevant, incidental, and generally inappropriate. The achievement of sanction objectives is emphasized by indicators related to whether the perpetrator needs to be identified, whether the perpetrator has been requested to be rehabilitated in a special development program, and the extent to which the program has been completed.

Sudarto, in his book "Selected Chapters on Criminal Law," states that all activities related to the juvenile justice process must always benefit or promote the welfare of the child for the sake of their personal development. Van Bemmenlen argues that in deciding sanctions against children, three main objectives must be considered: a. That the punishment and treatment of minors must take into account the child's interests in improving themselves. The punishment and actions should be tailored to the child's personality, as much as possible. Therefore, the resolution of cases involving children in conflict with the law must strictly consider the child's best interests. Punishment should not be used as a means of revenge/retaliation, and punishment should be considered as a last resort (ul-

tinum remedium). Punishment of children must take into account the perpetrator (child) and not just their actions.

#### 4. Conclusions

If the principle of *ultimum remedium* is adopted as the primary basis for resolving all juvenile cases in the national criminal justice system, the resulting policy implications would emphasize the use of criminal penalties only as a last resort, after alternative measures such as mediation, counseling, and restorative justice programs have been tried. This would encourage the development of policies that are more responsive to children's psychological, social, and educational needs, and strengthen the focus on rehabilitation and reintegration into society. Structurally, the implementation of this principle requires revisions to legal procedures, increased capacity of juvenile justice institutions, and the allocation of resources for effective alternative programs. Conceptually, such a policy could reduce the risk of stigmatization, prevent recidivism, and ensure the juvenile justice system aligns with the constitutionally protected rights of children, thus emphasizing its restorative rather than purely repressive character. Further research that can enrich studies on the implementation of restorative justice should emphasize empirical and socio-legal approaches, for example through field studies documenting the experiences of children, families, and communities in restorative processes, as well as comparative analyses of their effectiveness with formal legal mechanisms. Empirical research can explore the psychological, social, and cultural factors that influence the success of reconciliation and reintegration of children into society, while a socio-legal approach allows for in-depth studies of regulations, judicial practices, and public perceptions related to restorative justice. With this combination, studies not only produce concrete quantitative and qualitative data but also provide relevant, evidence-based policy recommendations, strengthen legal legitimacy, and adapt restorative practices to Indonesia's socio-cultural context. In the Indonesian juvenile justice system, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System contains an absolute formulation, that for children over 14 years of age who commit crimes that carry a sentence of more than 7 (seven) years or are categorized as serious crimes, they must be punished. This is also evident from the legal structure, both the police, prosecutors and judges who make the Law as the main source of law. Law enforcement in Indonesia does not pay attention to and consider the condition or state of the child when committing a crime. The implementation of Diversion and Restorative as much as possible must always be attempted at every stage in the criminal justice system, for all children without exception, both for minor and serious crimes, both for children under and already 14 years old, because the punishment of children must be made as a last resort (*ultimum remedium*) and must consider the best interests of the child (the best interest of the child).

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