

Analysis of the Conformity of Restorative Justice and Diversion Principles in the Juvenile Justice System Law with the Equality Principles of the Convention on the Rights of the Child

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Abstract

This study discusses the suitability of the principles of restorative justice and conversion stipulated in the Juvenile Justice Act (UU SPPA) with the principle of equality in the Convention on the Rights of the Child. The approach used in this study is normative law to analyze the various legal regulations in Indonesia, such as Law No. 11/2012 concerning the Juvenile Criminal Justice System and the Convention on the Rights of the Child. The target of this study is to review the concept of restorative justice and the principle of diversion and assess their consistency with the principle of equality stipulated in the Convention on the Rights of the Child. This study uses two theories, namely the theory of restorative justice and equality. The results of the study indicate that the principles of restorative justice and diversion in the UU SPPA aim to provide protection and justice for children in conflict with the law. Both principles focus on child welfare and encourage a humane approach in resolving child crimes. In addition, these principles are consistent with the principle of equality in the Convention on the Rights of the Child, especially with Articles 2 and 40 paragraph (1).

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1. INTRODUCTION

Protection of children, especially those involved in crime, is an important issue in the Indonesian legal system. Children who commit crimes such as rape, abuse, theft and murder often become public knowledge through mainstream media coverage. Various factors which influencing their behavior, including a bad environment, the influence of technology, and changes in lifestyle. In this context, as explained by Romli Atmasasmita, child deviation or juvenile delinquency is a violation of legal norms carried out by unmarried children under the age of 18. (Rosita et al 2023, 118) Even though this behavior is detrimental, it is not necessarily a crime, but is considered deviant behavior that requires special protection and caution. (Adi 2019, 2-3) Children as potential legal successors have the right to receive protection for their basic rights, especially when involved in criminal proceedings as victims or perpetrators. (Nurusshobah 2019, 3) To ensure the realization and protection of children's rights, countries recognize the importance of support in the form of binding guidelines. The aim of this policy is to ensure consistent child protection practices across the country. Children's rights are regulated by rules agreed by various

countries. Another important guideline is the Convention on the Rights of the Child, an international treaty that establishes the legal rights of children. This Convention establishes general legal principles and standards regarding the status of children. Broadly speaking, the Convention on the Rights of the Child covers three main aspects: the first is to recognize that protecting children's rights is the responsibility of the state. Second, children are the beneficiaries of these rights. Third, there are many children's rights that must be guaranteed, protected, implemented and further developed by the state. The agreement has been ratified by every country in the world except Somalia and the United States. (Lestari 2017, 6) Indonesia has demonstrated its commitment to safeguarding children's rights by adopting the Convention on the Rights of the Child through Presidential Policy Number 36 of 1990. This convention includes principles such as the principle of equality, which guarantees that children in conflict with the law, whether victims or perpetrators, are treated without discrimination and with respect for their rights and dignity. (Nurusshobah 2019, 3 and 5)

Article 2 of the Convention on the Rights of the Child states that all children, regardless of social, economic or other background, have the right to equal protection and the realization of the same rights. From an equality perspective, this article emphasizes that all children, including victims and perpetrators, need to be treated fairly and have the same direction regarding basic rights such as education, health and legal protection. This article also highlights the importance of treating children involved in litigation humanely and without discrimination. Article 40 paragraph (1) of the Convention on the Rights of the Child emphasizes the importance of the principle of equality: a child suspected of, accused of, or convicted of a criminal offense must be treated with respect in accordance with his or her rights and dignity. This article emphasizes that handling of naughty children must be age appropriate and rehabilitative. In the context of equality, this provision ensures that all children, including perpetrators and victims, are treated fairly and equally in the justice system. Every child has the right to humane treatment without discrimination and the opportunity for rehabilitation. This principle ensures that the rights of children as perpetrators receive the same protection as the rights of children as victims. (Adi 2019, 17 and 19) Indonesia has passed the Child Protection Law Number 23 of 2002 which was later replaced by Law Number 35 of 2014. This law as a whole reflects the Convention on the Rights of the Child and is considered a legal instrument that is consistent with international standards. Apart from that, Indonesia also has a Juvenile Justice Law, namely Law Number 11 of 2012 which specifically regulates legal procedures for children involved in criminal proceedings, both as victims and perpetrators.

The Juvenile Criminal Justice System Act was created to guarantee legal protection for children involved in law violations. Like the Child Protection Law, this law aims to protect children's rights, with a particular focus on criminal law issues. This law contains two main principles: "*restorative justice*" and "*diversion.*" Principle *restorative justice* aims to find a solution that involves victims, perpetrators, families and judicial officials in resolving criminal cases involving children, while the principle of diversion aims to resolve lawsuits and prevent the recurrence of these cases. However, several observers are of the opinion that legislation regarding the juvenile criminal justice system does not fully reflect the principles of the Convention on the Rights of the Child, especially Articles 2 and 40 paragraph (1). Erasmus Napitupulo, a researcher at the Institute for Criminal Justice Reform (ICJR), said that child perpetrators still face legal obstacles in the process because the juvenile justice system still prioritizes the interests of victims. As a result, the principle of equality between children as victims and children as perpetrators in the legal process has not been fully implemented. (ICJR 2014, November 21) Criticism of the Juvenile Criminal

Justice System Law continues to grow. Erasmus Napitupoulou and many others argued that principles "*restorative justice*" and the "diversion" contained in the law is actually a priority, but it is still far from being a no-no for the welfare of children and for victims and perpetrators. This raises the question of how restorative justice and the principle of diversion in the juvenile criminal justice system act in solving criminal cases which include children as victims and perpetrators. Therefore, it is important to analyze the current regulations that truly guarantee fair protection for children, in accordance with the standards of the Convention on the Rights of the Child, especially articles 2 and 40 paragraph (1), which emphasize the principles of equity and equality or are actually flawed.

2. RESEARCH METHOD

This study uses a normative legal approach, namely an approach that aims to consider and understand existing statutory regulations, such as Law Number 11 of 2012 and the Convention on the Rights of the Child. Data collection was carried out through library research and considering various official sources such as law books, legal journals and other academic references. In addition, a literature review was carried out by examining the results of previous studies regarding the topics discussed in this research. (Wahyuni 2022, December)

3. RESEARCH RESULTS AND DISCUSSION

3.1 Principle Concept *Restorative Justice* and Diversion in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

3.1.1 Draft *Restorative Justice* in the Juvenile Criminal Justice System

restorative justice is an effort to repair relationships outside the court process and correct the mistakes committed by the perpetrator against the victim. The aim is to resolve legal issues that arise due to criminal cases through agreements between the parties involved. *Restorative justice* is a mechanism where various parties, including victims, perpetrators, their respective families, the community, and other stakeholders, resolve cases outside of court in a way that is fair to both parties. This approach focuses on remediation of the situation before the violation rather than retaliation. According to Lynn N. Henderson's article "victim's rights", draft *restorative justice* has changed the way criminal behavior is viewed as a social problem, which was previously only seen as a personal problem of criminal behavior. Meanwhile, according to Fruin J.A., the concept "*restorative justice*" as stated by Paul from Hadithroupt in dealing with children who commit crimes emphasizes cooperation and participation of victims, perpetrators and the community. *Restorative justice* is key to achieving justice by acting fairly and impartially, participating actively in the justice process, and benefiting from relationships with the juvenile justice system. On the other hand, Tony F. Marshall defines restorative justice as a process in which parties who participated in a crime collaborate to find answers. To address the impact and consequences of crime in the future. In situations where children are in conflict with the law, this approach must be implemented in a family manner to ensure the child's participation in the formal legal process. Court should be the final step after various efforts have been made to resolve the problem through a family approach. (Primasari 2012, 4)

Restorative justice In essence, it is a set of basic guidelines for resolving criminal disputes outside of court through mediation and counseling. The aim of this approach is to find the best solution through peaceful means to achieve the justice desired by the parties. *Restorative justice* is called a philosophy of settlement outside of court because it is the basis of the peace process between the perpetrator and the victim who suffered losses due to crime. In general *Restorative justice* has several basic principles, namely

1. Resolve disputes between perpetrators and victims peacefully outside of court.
2. Provide space for perpetrators to correct their negligence and accept responsibility, including providing compensation to victims for all losses suffered.
3. Legal problems can be resolved if the perpetrator and victim reach an agreement. (Hasibuan, n.d)
4. Providing opportunities for perpetrators to take positive responsibility for the criminal acts they have committed.
5. The conflict resolution process involves various parties, including the victim, parents, siblings, school and co-workers.
6. creating a joint forum to find solutions to the problems faced by establishing a direct link between the criminal acts committed and the officially expressed public response. (Primasari 2012, 5)

Application of principles *restorative justice* The Juvenile Criminal Justice System Law is regulated in Article 5 Paragraph 1. This article regulates the provisions for implementing the principles of *restorative justice* throughout the process of resolving children's legal cases, from the initial stages of investigation to case handling. (Hasibuan, n.d.) Application *restorative justice* must focus on protecting children's rights, interests and responsibilities and preventing negative stigma and retaliation. This principle also aims to maintain social harmony by paying attention to decency, morality and public order. The recovery process occurs through counseling between the victim, the perpetrator, the families of both parties, and community leaders at the scene of the incident. It is hoped that criminal acts that occur can be resolved outside the formal justice system, with community support. The goal is not to punish, but to make decisions that balance recovery and responsibility between the juvenile offender, the victim, and society. (Primasari 2012, 5)

Restorative justice available to children who have served less than seven years and are not at risk of re-offending. This step only applies to children between the ages of 12 and 18. *Restorative justice* must contain the consent of the victim or his family and the support of the child and his family. Exceptions apply for minor incidents, victimless crimes, or if the loss is less than the county minimum wage. In the juvenile justice system, *restorative justice* occurs in 4 stages, namely: initial stages (examination of reports, initial, and determination of steps), investigation, prosecution, and trial in court.

Application example *restorative justice* is a case of bullying carried out by junior high school students in Bandung. In this case, the police tried to implement an approach of *restorative justice* by involving various parties before carrying out the mediation process. The police will involve social workers and prison officers before mediation begins. Their involvement aims to assess the

perpetrator's condition and find alternative solutions outside criminal punishment. In addition, social workers and correctional institutions establish appropriate educational procedures, such as rehabilitation and counseling programs, to address the causes of bullying and improve the perpetrator's behavior. After evaluation by social workers and correctional staff, a solution that focuses on rehabilitation rather than criminal punishment is recommended. The goal of this approach is to give the perpetrator the opportunity to learn from his mistakes and prevent similar behavior from happening again in the future. The police try to prevent these cases from reaching court, but maintain a deterrent effect through targeted educational advice. However, although steps to restore justice have been taken, peace between victims and perpetrators has not been achieved. After initial mediation, the victim's parents reported that the bullying occurred again, indicating that the recovery process had not been effective enough. The application of restorative justice in this case shows a humane and balanced law enforcement approach that aims to protect the rights of victims and perpetrators fairly. However, the final results show that this process did not completely resolve the conflict. (Alhamidi 2023, June 13)

3.1.2 Diversion in the Juvenile Criminal Justice System Act

Diversion is a program designed to divert children facing legal problems from formal processes in court to solutions outside of court. Referring to Article 1 point 6 of Law No.11/2012 concerning the Juvenile Justice System (UU SPPA), diversion means moving the handling of children's cases from criminal proceedings to informal proceedings outside the justice system.

Diversion has several main objectives, namely:

1. Prevent child detention.
2. Prevent children from receiving a negative stigma as perpetrators of criminal acts.
3. Improving the life skills of children of perpetrators.
4. Encourage children to be responsible for their actions.
5. Prevent children from repeating the same behavior.
6. Intervention with victims and perpetrators outside formal legal procedures.

Diversion also aims to protect children from the negative impacts of the criminal justice system, such as social prejudice and psychological pressure. The basic principle of diversion is to prioritize the "Best Interests of the Child" in a welfare-oriented approach. This philosophy is represented in various juvenile justice regulations that ensure the protection of children at all stages of the law. Article 6 of the Juvenile Criminal Justice System Law outlines the targets for diversion as follows:

1. Creating peace between children and victims.
2. Settle lawsuits outside of court.
3. Preventing children from being sentenced to prison.
4. Invite the community to participate in the resolution process.
5. Foster a sense of responsibility in children.

As well as *restorative justice*, Diversion is available to children who have received sentences of less than seven years and are not at risk of re-offending. This measure only applies to children aged between 12 and 18 years. The diversion agreement must contain the consent of the victim or his family and the support of the child and his family. Exceptions apply for minor incidents,

victimless crimes, or if the loss is less than the county minimum wage. In the juvenile justice system, diversion occurs in three stages, namely:

1. Investigation stage.
2. Prosecution stage.
3. Trial in District Court.

Similar to *restorative justice*, diversion occurs through a consultative process involving many stakeholders, including children, families, community counselors, and professional social workers. The main focus of diversion is on the child's relationship with the perpetrator, victim, and society, as well as avoiding participation in the formal criminal justice system, which can have a negative impact on the child's intellectual and social growth. The main aim is to safeguard children's rights and not subject them to pressure. Diversion is a concrete step in providing legal protection to children mitigation of potential negative impacts arising from involvement in the formal criminal justice system. [10]

Example of implementing this diversion is incidents of violence against children that occurred on December 31, 2023 in the village Collision Banyu, South Daha District, South Hulu Sungai Regency. Investigators from the Women and Children Protection Agency (PPA) Baleskrim PoliHSS resolved the case using a diversion mechanism in line with Article 7 of Law Number 11 of 2012 concerning the Juvenile Justice System. The aim of this procedure is so that both parties can obtain their rights in an official judicial process because both parties are still minors, the perpetrator is not a repeat offender, and the perpetrator admits his mistake and apologizes to the victim. This diversion is carried out through mediation techniques, where children are involved as victims and perpetrators, and both parties agree to find a peaceful solution to the problem.

The diversion process begins with an initial investigation by investigators to ensure the case meets the diversion criteria. Investigators then met with the families of the victims and perpetrators, explained the diversion process, and obtained consent from all parties involved. This mediation is supported by PPA investigators, prison wardens and social workers. During the mediation, the perpetrator realized his negligence and sincerely apologized to the victim. Usually, the parties agree to resolve the problem peacefully without filing a lawsuit. The results of the mediation will be formally documented and submitted to the juvenile court for review. This diversion process reflects an approach that focuses on protecting and educating children while still prioritizing a sense of justice in the juvenile justice system. (Fathurrahman 2024, January 6)

From the explanation of the principle of *restorative justice* and diversion, researchers concluded that these two principles are the main concepts laid out in Law Number 11 of 2012 concerning Juvenile Justice (UU SPPA). These two principles intend to provide protection and justice for children who are entangled in the legal process by prioritizing the child's best interests at every stage of the process. *Restorative justice* focuses on resolving children's legal problems by paying attention to the relationship between the perpetrator, victim and society. These two principles also emphasize that all children have the right to be treated fairly, without distinction and respect for dignity. Therefore, *restorative justice is not* just punishment, but also rehabilitation and recovery of children who have

fallen into legal problems. On the other hand, diversion gives children the opportunity to resolve legal issues without having to go through formal court, which can have negative emotional and social impacts. Draft *restorative justice* and diversion is an approach that focuses on humane treatment for children who are caught in legal trouble. Restorative justice focus is in extrajudicial mediation, which aims to create peace, restore order, and resolve problems based on mutual agreement between the parties. This approach focuses on restoring social relationships and is used from the investigative stage through post-conviction counseling. On the other hand, diversion as a diversion mechanism for resolving cases also focuses on protecting children's welfare, avoiding negative stigma, and providing opportunities for improvement for children.

3.2 Principle *Restorative Justice* and Diversion in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in Accordance with the Principle of Equality Existing in the Convention on the Rights of the Child Article 2 and Article 40 Paragraph 1

3.2.1 Comparison of Principled Policies *Restorative Justice* and Diversion with the Principle of Equality of the Convention on the Rights of the Child

Convention on the Rights of the Child is a global agreement adopted by the UN General Assembly on November 20, 1989. The target of this agreement is to protect and guarantee the rights of children throughout the world, including civil, economic, social and cultural rights. Indonesia has demonstrated its commitment to the realization of children's rights by implementing the Convention on the Rights of the Child through Presidential Policy Number 36 of 1990, in accordance with the provisions of the Convention on the Rights of the Child. One of the main principles of the Convention on the Rights of the Child is the principle of equality or non-discrimination. This principle is a fundamental element of the Convention on the Rights of the Child which was ratified by the UN in 1989. (Marzuki 2016, October 24) In the context of the Convention on the Rights of the Child, equality means that all children, regardless of origin, social status, race, gender or other circumstances, have the same rights and the same opportunities to obtain education and development. This provision is contained in Articles 2 and 40 paragraph (1) of the CRC, and states that Contracting States must respect and protect the rights of children, regardless of birth or social status or other determined status. In addition, children who are entangled in legal proceedings must be treated in a dignified manner, according to their age and needs, including the right to protection and assistance during the legal process. (Nations 1989) This declaration reflects a global commitment to ensure that all children, especially vulnerable children, are treated fairly and equally. The principle of equality requires not only recognition of children's rights, but also the state's responsibility to create a safe and supportive environment for the protection and realization of these rights. (Nations 2007)

The principle of equality plays a very important role in the emergence of legal violations against children. Children entering the justice system often face unique and complex challenges. they have the right to fair treatment, including legal representation, protection from discrimination, and equal access to justice. Children's right to be heard ensures that they have the opportunity to express their views on issues that affect their lives, including the legal processes they face. This principle is in line with the value of participation in the Convention on the Rights

of the Child which emphasizes the importance of children's participation in all decision making that impacts their health. (Unicef 2006)

Apart from that, Law Number 17 of 2016 regulates that children involved with the justice system must receive special protection to prevent exploitation and violence. The state has the responsibility to provide mechanisms to ensure that children's rights are respected and safeguarded at all stages of the legal process. This includes creating safe and supportive areas where children feel safe to express their views and seek justice. The application of the principle of equality before the law leads not only to equal treatment, but also to the development of fair institutions that take into account the special needs of children and ensuring that their rights are respected, ensuring equal rights for children who violate the law is an important step towards comprehensive child protection and contributes to building a more just and sustainable society.

| Aspect | Principle <i>restorative justice</i> and diversion in the Criminal Justice System Law | The principle of equality articles 2 and 40 of the Convention on the Rights of the Child |
|------------|---|---|
| Definition | <i>Restorative justice</i> : together looking for ways to resolve child criminal cases involving victims, perpetrators, families and other parties Diversion: resolving children's criminal cases outside of court | Equality: children involved in violations of the law must be treated fairly and equally without discrimination (article 40 paragraph (1) of the Convention on the Rights of the Child). Equal treatment without discrimination towards all children regardless of status, gender or background (article 2 of the Convention on the Rights of the Child) |
| Objective | Restoring relationships between perpetrators, victims and society and avoiding the stigma of child crime | Creating a justice system that protects children from discrimination (article 2 of the Convention on the Rights of the Child) and ensures that they are treated in a manner that is fair, responsible and socially reintegrated (article 40 paragraph (1) of the Convention on the Rights of the Child) |
| Approach | Focus on reconciliation and healing rather than punishment, in accordance with article 5 of the Criminal Justice System Act | Eliminate discrimination based on background (article 2 of the Convention on the Rights of the Child) and ensure the legal process is age appropriate and child welfare and rehabilitation (article 40 paragraph (1) of the Convention on the Rights of the Child) |

| | | |
|------------------------------|--|---|
| Treatment of children | Children are treated as individuals who need special protection, not just perpetrators of criminal acts. Diversion is mandatory for children who commit crimes that carry a sentence of under 7 years. | Children in conflict with the law must continue to be viewed as subjects with full rights, including the right to obtain justice without discrimination (Article 2 of the CRC) and protection in the legal process (Article 40 paragraph 1 of the CRC). |
| Involvement of other parties | Involving perpetrators, victims, families and communities to find the best solution for all parties. | Give equal rights to children to voice their opinions in the decision-making process (Article 12 of the CRC) and ensure the involvement of parties who help children's social reintegration (Article 40 paragraph 1 of the CRC). |
| Equality concept | Emphasizes the importance of avoiding stigma and ensuring children have equal opportunities to develop back into society. | Affirms that all children have the same right to be treated humanely in justice, without discrimination (Article 2 of the CRC), and to be promoted to become a productive part of society again (Article 40 paragraph 1 of the CRC). |
| Relevance in implementation | Diversion and <i>restorative justice</i> should consider the social and cultural background of the child, so that there is no discrimination in the resolution of the matter. | Principle <i>restorative justice</i> and diversion in line with Article 2 of the CRC which prohibits discrimination, as well as Article 40 paragraph 1 of the CRC which requires the justice system to support rehabilitation, social reintegration and respect for the dignity of children |

From the comparison of the tables above, the researcher analyzes that principle *restorative justice* (RJ) and Diversion in the Juvenile Criminal Justice System Law (UU SPPA) are the same as the principle of equality regulated in the Convention on the Rights of the Child, especially Article 2 and Article 40 paragraph 1. Principle *restorative justice* and diversion provides a more humane approach in dealing with children who are entangled in legal issues. This approach prioritizes reconciliation and restoration of social relations, not just punishment, which is in line with Article 40 paragraph 1 CRC concerning dignified treatment to promote social reintegration and children's sense of responsibility for their actions.

Furthermore, the principle of diversion which prevents children from entering the formal justice system is a concrete application of the principle of non-discrimination (Article 2 of the Convention on the Rights of the Child). Diversion ensures that children do not receive detrimental treatment based on their social,

economic or background status. This also reflects enthusiasm for restorative *justice* which respects the rights of children as legal subjects. Thus, it can be concluded that *restorative justice* and Diversion not only protects children's rights, but also provides space for them to improve themselves, grow, and become a productive part of society again.

4. CONCLUSION

Principle *restorative justice* and Diversion in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it can be concluded that these two principles are designed to ensure security and justice for children in conflict with the law. Both have conditions, such as a peace agreement and provisions that the case is not a repetition of a criminal act, as well as going through stages involving investigation, prosecution, trial, and post-criminal guidance. Both place the best interests of children as a priority, with a focus on rehabilitation and recovery, and prioritize a humanist approach in resolving child criminal cases. Principle *restorative justice* and diversion in the juvenile criminal justice system is in line with the equality principle of the Convention on the Rights of the Child, especially Article 2 and Article 40 paragraph 1. These two principles provide a more humanist approach by prioritizing reconciliation and restoration of social relations, as well as preventing discrimination against children. Diversion allows children to improve themselves without being trapped in the formal justice system, supports social reintegration, and safeguards their rights. Thus, *restorative justice* and diversion protects children's rights and provides opportunities for them to grow as responsible individuals in society.

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