

## The Concept Of Diversion As An Effort To Handl Children In Conflict With The Law

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### Abstract

This study aims to describe the position of diversion in the resolution of cases involving children. The handling of cases involving children differs significantly from those involving adult offenders; the process must take the child's psychological state into account to avoid causing further trauma. This study employs a library research method—a scientific approach that focuses on examining written sources as primary data. A qualitative approach is utilized, with data gathered from various literature sources, including law books, articles, scholarly papers, and online resources. Data analysis is conducted using an inductive method. The findings indicate that child protection is a shared responsibility involving parents, the community, the government, and the state. While every effort should be made to prevent children from coming into contact with the legal system, if such contact occurs, the case resolution process must prioritize the child's status and psychological well-being. For children facing legal issues or criminal charges, it is crucial to prioritize a resolution method known as diversion. Maximizing the use of diversion is essential to ensuring optimal protection for children.

### Keywords

Children, Diversion, Law.



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## INTRODUCTION

Children are a gift from God who must be nurtured and cared for in the best possible way, with their growth, development, and essential needs guaranteed to secure their future. Every child has the fundamental right to a decent life, equal treatment, and comprehensive protection so that they can develop optimally and be well prepared to face various challenges throughout life. As the future generation who will continue the leadership and development of the nation, children represent valuable human resources whose well-being and development must be ensured by the

state through appropriate policies and legal protections (United Nations, 1989; UNICEF, 2021).

Children, as one of the most vulnerable groups in society, require special protection for their rights. Human rights are inherent from birth, and among these are fundamental rights that are absolute and must be respected and protected by everyone. While children possess the same fundamental rights as all human beings, they also enjoy specific rights arising from their unique developmental needs and their limited physical, psychological, and emotional capacities. These special rights have led the international community to recognize that child protection is indispensable for safeguarding human dignity and ensuring a better future for humanity (United Nations, 1989; Committee on the Rights of the Child, 2023).

Children must be cared for and protected with the utmost responsibility by ensuring access to quality education, adequate affection, proper healthcare, and sufficient nutrition to support their physical, mental, and emotional development. Consequently, every form of violence against children constitutes a serious violation of their rights and must be addressed through firm legal action. Child development should be safeguarded from the prenatal stage, emphasizing the importance of maternal health and early childhood care to ensure optimal growth and development. Such comprehensive protection aims to guarantee that children are able to enjoy their rights fully and grow in a safe and supportive environment (World Health Organization, 2022; UNICEF, 2021).

Child protection encompasses all activities undertaken to guarantee and safeguard children's rights so that they may live, grow, develop, and participate optimally in accordance with human dignity while being protected from violence, exploitation, abuse, neglect, and discrimination. Violence against children has long been a major concern worldwide because children, who should receive the highest level of protection, often become victims of various forms of mistreatment. Furthermore, children may come into conflict with the law, either as victims, witnesses, or perpetrators of criminal offenses. In all such situations, the protection of children's rights remains a fundamental obligation of the state and society (United Nations, 1989; United Nations Office on Drugs and Crime, 2021).

Individuals who violate criminal law are subject to legal proceedings conducted by the state through its law enforcement institutions. Criminal law functions as an instrument of social control by imposing sanctions that may restrict an individual's liberty, property rights, or other legal interests to preserve public order and protect the fundamental rights of others. When children violate criminal law and become

involved in the criminal justice system, they must bear legal responsibility for their actions. Nevertheless, despite their status as offenders, children remain entitled to the protection of all rights guaranteed under national and international legal frameworks, including treatment that prioritizes their best interests and future development (United Nations, 1989; United Nations Office on Drugs and Crime, 2021).

The settlement of criminal cases involving children differs fundamentally from proceedings involving adult offenders. Cases involving children should prioritize restorative approaches aimed at achieving reconciliation, repairing harm, and facilitating the child's reintegration into society. Diversion measures should therefore be maximized to avoid formal judicial proceedings whenever possible, emphasizing the resolution of cases outside the courtroom through restorative justice mechanisms that promote accountability, victim recovery, and the child's rehabilitation rather than punishment alone. This approach reflects the international principle that deprivation of liberty should be used only as a measure of last resort and for the shortest appropriate period (Committee on the Rights of the Child, 2019; United Nations, 1989).

## **METHODS**

This study employed a library research design, a scientific approach that emphasizes the systematic examination of written sources as the primary data for investigation. In this methodological framework, documents, legal texts, archives, books, scholarly journal articles, research reports, and relevant digital sources served as the principal objects of analysis and were critically, systematically, and comprehensively reviewed to generate meaningful findings. The study adopted a qualitative approach, which seeks to understand social phenomena in their natural context by interpreting reality as it exists rather than as it ought to be, thereby requiring researchers to maintain an open-minded and interpretive perspective throughout the research process (Creswell & Poth, 2018; Merriam & Tisdell, 2016). The data were collected exclusively from secondary sources, including legal textbooks, scientific articles, academic publications, legislation, official documents, internet-based resources, and other relevant literature. Data analysis was conducted using an inductive analytical approach, whereby categories, themes, and patterns emerged directly from the collected data rather than being predetermined. The qualitative data analysis followed non-mathematical analytical procedures, allowing interpretations and conclusions to be developed through careful examination, comparison, synthesis, and interpretation of the literature to produce comprehensive and credible research findings (Miles et al., 2020; Bowen, 2009).

## FINDINGS AND DISCUSSION

### Child Protection Within the Indonesian Legal Framework

Child protection in Indonesia is founded on the principle that every child possesses inherent rights that must be respected, protected, and fulfilled through the collective responsibility of parents, families, communities, local governments, and the state. This multi-stakeholder approach reflects the recognition that children are vulnerable individuals whose physical, psychological, social, and moral development requires a supportive environment. Indonesian child protection law emphasizes the principle of the best interests of the child, ensuring that every policy and legal intervention prioritizes children's survival, growth, participation, and overall well-being. Effective child protection therefore extends beyond legal norms and requires coordinated implementation involving all sectors of society (Fitriani, 2016; Hidayati, 2020).

Parents and families constitute the primary institutions responsible for nurturing children's development. The family is the first social environment in which children acquire values, norms, and behavioral patterns that shape their personalities. Consequently, parents have both legal and moral obligations to provide affection, education, protection, and supervision throughout a child's developmental stages. Numerous studies have demonstrated that inadequate parental attention, domestic violence, and dysfunctional family environments significantly increase children's vulnerability to delinquency, victimization, and psychological disorders. Therefore, strengthening family resilience represents one of the most effective preventive measures for protecting children's rights and promoting healthy development (Prameswari, 2017; Wahyuni & Hidayat, 2022).

Beyond the family, society also bears substantial responsibility for establishing child-friendly environments that encourage children's social, educational, and emotional development. Communities that uphold social cohesion, mutual respect, and collective responsibility contribute significantly to reducing violence, bullying, discrimination, and juvenile delinquency. However, Indonesia continues to experience numerous violations of children's rights, including physical violence, psychological abuse, sexual exploitation, neglect, child labor, trafficking, online exploitation, and child marriage. These challenges demonstrate that legal protection cannot rely solely on public awareness but must be reinforced through responsive legislation, effective law enforcement, accessible social services, and comprehensive child protection policies. Recent empirical studies indicate that strengthening community participation and institutional collaboration substantially improves the effectiveness of child protection programs throughout Indonesia (Putri et al., 2021; Sari & Nurwati, 2021).

One of the most critical dimensions of child protection concerns children in conflict with the law, whether as offenders, victims, or witnesses. The Indonesian juvenile justice system

has undergone significant reform through the adoption of restorative justice principles, emphasizing rehabilitation, education, reconciliation, and reintegration rather than punishment. Research consistently demonstrates that exposing children to conventional criminal justice procedures, including detention with adult offenders or adversarial courtroom processes, often produces long-term psychological trauma, stigmatization, and increased recidivism. Consequently, legal procedures involving children should prioritize diversion, mediation, family participation, and professional psychological assistance to protect children's dignity while ensuring accountability for unlawful behavior (Nashriana, 2019; Marlina, 2012).

The implementation of restorative justice within Indonesia's juvenile justice framework reflects international standards established under the Convention on the Rights of the Child while accommodating national legal values. Court proceedings involving children differ fundamentally from adult criminal trials, as judges, prosecutors, and defense attorneys are encouraged to create a child-friendly atmosphere that minimizes intimidation and emotional distress. Court officials avoid wearing formal judicial robes during hearings, questioning is conducted sensitively, and children's privacy is protected throughout the proceedings. Although children remain legally accountable for criminal acts they commit, sanctions are designed to promote rehabilitation and social reintegration rather than retribution. Strengthening the effectiveness of Indonesia's child protection system therefore requires continuous legal reform, professional capacity building among law enforcement officers, stronger inter-agency coordination, and greater public awareness to ensure that every child receives equal protection and justice consistent with the principles of human rights and the best interests of the child (Yuliartini, 2021; Kusumawardhani & Kurniawan, 2023)

## **B. Diversion as a Form of Protection for Children in Conflict with the Law**

One of the primary objectives of criminal law is to ensure justice by imposing proportionate sanctions on individuals who commit criminal offenses. The principle of retribution is based on the premise that offenders must be held accountable for their unlawful conduct and receive punishment that corresponds to the seriousness of their crimes. Criminal sanctions commonly involve restrictions on personal liberty through imprisonment, during which offenders are separated from society to undergo rehabilitation for a period determined by the court in accordance with applicable legal provisions. While this punitive approach is considered appropriate for adult offenders, it is not fully compatible with the treatment of children because the juvenile justice system emphasizes children's developmental needs, rehabilitation, and future reintegration rather than punishment alone (Marlina, 2012; Hidayat, 2021).

Children who come into conflict with the law require a different legal approach because their involvement in criminal behavior is often influenced by various social, psychological, and environmental factors. Family neglect, inadequate parental supervision, poverty, peer influence, discrimination, exposure to violence, and unhealthy social environments frequently contribute to juvenile delinquency. Consequently, children should be viewed not merely as

offenders but also as individuals requiring guidance, education, and protection. The Indonesian juvenile justice system therefore prioritizes interventions that encourage children to recognize their mistakes, accept responsibility, and successfully reintegrate into society without experiencing unnecessary psychological trauma or social stigma (Fitriani, 2016; Nashriana, 2019).

The principal mechanism adopted to achieve these objectives is diversion, which refers to the transfer of the settlement of juvenile criminal cases from the formal criminal justice process to alternative dispute resolution mechanisms outside the court system. Diversion is regulated under Indonesia's Juvenile Criminal Justice System and reflects the principles of restorative justice by prioritizing dialogue, reconciliation, and rehabilitation over retributive punishment. Diversion recognizes that children possess greater capacity for behavioral change than adults and therefore deserve opportunities to repair the harm caused by their actions without acquiring a criminal record that may negatively affect their future education, employment, and social relationships (Marlina, 2012; Yuliartini, 2021).

The implementation of diversion seeks to achieve several important objectives. First, it promotes reconciliation between the child and the victim through dialogue and mutual agreement. Second, it encourages the settlement of juvenile cases outside formal judicial proceedings whenever legally permissible. Third, it prevents unnecessary deprivation of children's liberty by minimizing detention and imprisonment. Fourth, it encourages active participation from families, communities, social workers, and other relevant institutions in resolving disputes. Finally, diversion instills a sense of responsibility in children by requiring them to acknowledge the consequences of their actions while encouraging personal growth and behavioral improvement (Kusumawardhani & Kurniawan, 2023; Sari & Nurwati, 2021).

Diversion is closely associated with the concept of restorative justice, which focuses on restoring relationships rather than imposing punitive sanctions. Through restorative processes, victims are provided opportunities to express the harm they have suffered, while children are encouraged to apologize, provide restitution where appropriate, and participate in measures that facilitate reconciliation. Where material losses have occurred, parents or guardians may compensate the victim, whereas psychological harm may require counseling, mediation, or other recovery-oriented interventions. Such an approach seeks to restore social harmony while protecting children's dignity and promoting accountability without exposing them to the long-term negative consequences of incarceration (Prameswari, 2017; Putri et al., 2021).

Community participation also plays a crucial role in the success of diversion because children's social development is strongly influenced by their surrounding environment. Families, educators, community leaders, social institutions, and law enforcement agencies must collaborate to create supportive conditions that enable children to learn from their mistakes and return to society as responsible individuals. Without community acceptance, children who have completed legal processes often experience discrimination, stigmatization, and social exclusion, increasing the likelihood of repeated offending. Therefore, strengthening

diversion practices through effective institutional coordination, professional mediation, and community involvement represents one of the most effective legal strategies for protecting children's rights while simultaneously promoting justice, rehabilitation, and sustainable social reintegration in accordance with the best interests of the child (Hidayati, 2020; Wahyuni & Hidayat, 2022).

## CONCLUSION

Based on the findings and discussion, it can be concluded that children are the future generation of the nation whose rights and welfare must be protected through the collective responsibility of parents, families, communities, governments, and the state. Child protection extends beyond normative legal provisions and must respond to actual social conditions in which children are vulnerable to various forms of violence, exploitation, and involvement in the criminal justice system. One of the most critical aspects of child protection arises when children come into conflict with the law, either as offenders, victims, or witnesses. Although every effort should be made to prevent children from entering the criminal justice process, when such involvement is unavoidable, legal proceedings must prioritize the child's best interests, psychological well-being, and future development. Accordingly, the settlement of juvenile criminal cases should emphasize diversion as the primary mechanism for resolving disputes outside formal court proceedings. Diversion aims to achieve reconciliation between the child and the victim, resolve cases through non-judicial processes, prevent unnecessary deprivation of children's liberty, encourage active participation from families and communities, and instill a sense of responsibility in children for their actions. By emphasizing restorative justice rather than punitive measures, diversion minimizes stigmatization, supports children's rehabilitation and social reintegration, and ultimately represents one of the most effective legal instruments for ensuring comprehensive child protection and safeguarding children's rights within Indonesia's juvenile justice system.

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