



## Policy on the Implementation of Diversion for Child Offenders in Street Crimes (Klitih)

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### **Abstract**

This research aims to examine the policy of applying diversion to child perpetrators of street crime (klitih). Klitih itself causes unrest in the community and can also result in the loss of a person's life, thus making children face the legal process. In its implementation, a child's involvement with the legal process must not neglect the rights of children both physically and socially. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is present as a form of restorative justice that protects children's rights. this research uses normative legal research methods. The results of this study indicate that the success of the policy of applying diversion to child offenders can not only be influenced by the positive active response of law enforcement officials, but also the involvement of parents and the community as a companion and supervision of children. Although in its journey, diversion does not always get a positive response from the community because it assumes that child offenders must still be punished, which then creates obstacles faced in the application of this diversion. However, these obstacles can still be overcome with good cooperation between all parties.

**Keywords:** *Diversion; Restorative Justice; Juvenile Justice System*

### **Introduction**

Children are the nation's future and the heirs of development, serving as subjects in sustainable development and as the custodians of a country's future, including Indonesia. Child protection in Indonesia means safeguarding the potential of human resources and developing fully realized Indonesian

individuals, striving towards a just and prosperous society, both materially and spiritually, based on Pancasila and the 1945 Constitution.<sup>1</sup>

Law encompasses the entire set of behavioral regulations that apply within a specific territory and govern the social life of the community in that area, enforceable by the government through the imposition of certain sanctions on violators. The function of law is to regulate human behavior to conform to the prevailing norms. However, deviations from these norms sometimes occur, leading to legal problems and disturbances in public order and peace.<sup>2</sup>

As the successors of national ideals, children do not always behave according to existing laws. They can also commit crimes, just like adults. Crimes committed by children must be addressed promptly to ensure their future and uphold their human rights. This is articulated in Presidential Decree No. 36 of 1990, which states that the general principles of child protection are non-discriminatory, prioritizing the best interests of the child, their survival, development, and participation. Thus, human dignity and rights must be respected.<sup>3</sup>

Legal protection for children can be pursued as an effort to safeguard various freedoms and human rights. In this context, a procedure is needed within the justice system that can accommodate the resolution of cases, one of which is through the use of a restorative justice approach.<sup>4</sup> This is in line with Law Number 11 of 2012 concerning the Child Criminal Justice System, which positions juvenile offenders by providing alternatives for resolution using a justice approach in the best interests of the child.

The fundamental substance regulated in Law Number 11 of 2012 regarding the Child Criminal Justice System is the regulation of restorative justice and diversion, which are necessary to prevent and address children's involvement in judicial processes, thereby avoiding stigmatization. Restorative justice aims to treat children who violate the law with dignity, presenting itself as the best alternative for treating children as offenders by encouraging all parties involved in a specific crime to collaborate in addressing the consequences of the child's behavior in the future. Therefore, the roles of all stakeholders in working together to resolve issues are crucial.

The crimes committed by children are diverse, and one reason they engage in such acts is to gain recognition in their environments, whether in their neighborhoods or social circles. Their actions not only harm themselves but also others. One well-known crime committed by children in Yogyakarta is *klitih*. *Klitih*, in essence, is not a form of crime but a term for individuals wandering aimlessly outside their homes. According to JPW, street crimes in the Special Region of Yogyakarta (DIY) in 2023 recorded at least a dozen street crime cases, with many victims suffering injuries from sharp weapons.<sup>5</sup>

Several previous studies related to this research include Ghoni's study,<sup>6</sup> which examines that the Child Criminal Justice System Act (SPPA Law) has established measures for diversion and restorative justice approaches to resolve cases involving children in conflict with the law. Legal protection for children in conflict with the law can be seen from the diversion process, which is not merely a peace

<sup>1</sup> Narsriana. 2011. *Perlindungan Hukum Bagi Anak di Indonesia*. Jakarta : Rajawali Pers. hlm 1

<sup>2</sup> R. Soeroso. 2011. *Pengantar Ilmu Hukum*. Jakarta : Sinar Grafika. hlm 27

<sup>3</sup> Yenny Febrianty & Krisna Murti. 2022. Keadilan Restoratif Sebagai Wahana Kebijakan Non-Pidana Dalam Sistem Peradilan (Analisis Socio Legal Dalam Pengisian Kesenjangan Hukum Acara Di Indonesia Sebagai Upaya Untuk Memulihkan Kejahatan Anak). *PAJOU* (*Pakuan Justice Journal of Law*). Vol3(1). hlm 25

<sup>4</sup> Yasir. Diversi Dalam Kasus Kecelakaan Lalu Lintas Dengan Pelaku Anak Di Bawah Umur. *JUSTITIABLE*. Vol 3(1). hlm 29

<sup>5</sup> <https://www.rri.co.id/kriminalitas/500294/jpw-belasan-kejahatan-jalanan-di-diy-selama-2023> diakses pada 21 Juli, 13.41 WIB

<sup>6</sup> Mahendra Ridwanul Ghoni dan P.Pujiyono. 2020. Perlindungan Hukum Terhadap Anak yang Berhadapan dengan Hukum Melalui Implementasi Diversi di Indonesia. *Jurnal Pembangunan Hukum Indonesia*. Vol 2(3).331-342

effort between children in conflict with the law but a form of sanction against such children through non-formal means. Another study by Juni Damhudi<sup>7</sup> investigates that the implementation of criminal policy to address theft committed by children in the city of Prabumulih is not running optimally, facing constraints in both penal and non-penal implementations. Given these challenges, it is stated that an ideal criminal policy can be achieved by integrating the implementation of penal and non-penal policies and improving compliance with established regulations.

In line with the above description, this article will research the Policy of Implementing Diversion for Juvenile Offenders Involved in Street Crimes (Klitih) and discuss the obstacles faced in the provision of diversion.

### **Research Methods**

The type of research employed in this study is legal research. Normative Legal Research is a process aimed at discovering legal rules, principles, and doctrines to address the issues under investigation, primarily through literature review.<sup>8</sup> This research requires an approach that can gather information from various aspects regarding the issues being discussed and explored. In legal research, five types of approaches are recognized: the statutory approach, the case approach, the historical approach, the comparative approach, and the conceptual approach.<sup>9</sup>

This study utilizes the statutory approach to analyze and examine the regulation of just legal protection for children as perpetrators of the crime of "klitih." Additionally, the conceptual approach is applied to understand just legal protection for children involved in "klitih" crimes.

### **Discussion**

Crimes committed by children are often a culmination of emotional development. Social interaction during adolescence plays a crucial role, as this stage represents a transitional phase in a child's growth, potentially leading to deviant behavior. The phenomenon of "klitih," characterized as a crime committed by children, allows the perpetrators to feel satisfaction and pride after committing such offenses, fostering a sense of superiority over others, where the victims are typically strangers encountered on the streets. The emergence of "klitih" crimes creates unrest within the community, as victims not only suffer physical injuries but may also lose their lives.

There are two categories of juvenile behavior that may bring them into conflict with the law: **Status Offense**, which includes behaviors that are not considered crimes when performed by adults (e.g., disobedience, skipping school, or running away from home); and **Juvenile Delinquency**, which encompasses behaviors considered criminal or unlawful when carried out by adults.<sup>10</sup>

The formulation of the Child Criminal Justice System Law (SPPA Law) serves as a replacement for Law Number 3 of 1997 on Juvenile Courts, which no longer meets the legal needs of society and fails to comprehensively provide special protection for children in conflict with the law.<sup>11</sup> Under the SPPA Law, the resolution of crimes is addressed through non-penal pathways, focusing on preventive measures

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<sup>7</sup> Juni Damhudi. 2021. Kebijakan Kriminal Dalam Upaya Penanggulangan Tindak Pidana Pencurian Yang Dilakukan Anak: Studi Kasus Di Kota Prabumulih. *LexLATA Jurnal Ilmiah Ilmu Hukum*. Vol 3(2).

<sup>8</sup> Peter Mahmud Marzuki. 2017. *Penelitian Hukum (Edisi Revisi)*. Jakarta : Kencana. Hlm 55-56

<sup>9</sup> Ibid, Hlm.113

<sup>10</sup> M Nasir Djamil. 2013. *Anak Bukan Untuk Dihukum*. Jakarta : Sinar Grafika. hlm 33

<sup>11</sup> *Opcit*. Junia Damhudi. hlm 268

to avert criminal acts. The primary objective is to address the conducive factors that lead to criminal behavior, centering on social issues or conditions that may directly or indirectly foster crime.<sup>12</sup>

In accordance with the Convention on the Rights of the Child ratified by Indonesia through Presidential Decree No. 36 of 1990, Indonesia is committed to protecting the rights of children comprehensively. Furthermore, Law No. 23 of 2002 on Child Protection serves as an effort to safeguard children's rights, including education, health, religion, and social welfare, particularly for children in conflict with the law. Special protection for children in conflict with the law must be conducted as outlined in Article 59 of Law No. 23 of 2002.<sup>13</sup>

Policies for crime prevention are inherently an integral part of social defense and efforts to achieve community welfare. The aim of criminal policy is to protect society and foster its welfare. Criminal policy can be approached through two methods: penal and non-penal.<sup>14</sup> The SPPA Law implements crime prevention through a non-penal approach to ensure a sense of security and fairness for children, both as offenders and victims. The government's proposed resolution process for children is encapsulated in the concept of Diversion, which aligns with Restorative Justice principles. Restorative Justice can be normatively defined in Article 1, Number 6 of Law No. 11 of 2012, as a resolution process that involves all relevant parties to find a fair solution.

Additionally, Article 5 of the SPPA Law emphasizes that the application of the juvenile criminal justice system must prioritize a restorative justice approach. The objectives of restorative justice in this law are fundamentally aligned with the rationale that children should not bear criminal responsibility, as this avoids stigmatization and allows them to reintegrate into society as a form of diversion.<sup>15</sup>

Diversion is normatively defined in Article 1, Number 7 of Law No. 11 of 2012 on the Juvenile Criminal Justice System as the transfer of the resolution of children's cases from the criminal justice process to an extrajudicial process. The implementation of diversion employs a restorative justice approach, meaning all parties involved in a particular crime collaborate to address the issue and create obligations to improve, involving victims, children, and society in seeking solutions for reconciliation and peace without resorting to retaliation.<sup>16</sup>

The application of the diversion concept aims to protect children from the negative implications of the criminal justice system, including preventing them from entering the system and eliminating the label of criminality from victims who have suffered.<sup>17</sup> Article 6 of the SPPA Law also states that the objectives of diversion include achieving reconciliation between the victim and the child; resolving the child's case outside the judicial process; protecting the child from deprivation of liberty; encouraging community participation; and instilling a sense of responsibility in children.

In practice, when examining children's cases, diversion must be pursued, subject to certain conditions, including offenses punishable by less than seven years of imprisonment and not being a repeat offender. The importance of special protection through diversion also serves to prevent various social

<sup>12</sup> M. Hamdan. 1997. *Politik Hukum Pidana*. Jakarta: Raja Grafindo Persada. hlm 20

<sup>13</sup> Khoerina Azzizah dan Beniharmoni Harefa. 2023. Penegakan Hukum Pidana Terhadap Anak Pelaku Kejahatan Klitih. *Jurnal USM Law Review*. Vol 6(2). Hlm 474-475

<sup>14</sup> Barda Nawawi Arief. 2008. *Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KUHP Baru*. Jakarta: Kencana Prenada Media Group. hlm 5.

<sup>15</sup> Muhamad Aljabar Putra, Imas Novita Juaningsih, Pingky Pratiwi & Abel Parvez. 2022. Diseminasi Diversi dan Restoratif Justice Terhadap Masyarakat Pedesaan dalam Penyelesaian Tindak Pidana Anak. *Jurnal Dedikasi Hukum*. Vol 2 (3). hlm 259

<sup>16</sup> R. Wiyono. 2016. *Sistem Peradilan Pidana Anak Di Indonesia*. Jakarta : Sinar Grafika. hlm 4

<sup>17</sup> Jayantari Ribunu, Rafika Nur, & Nur Insani. 2023. Analisis Hukum Pemenuhan Hak Anak Untuk Memperoleh Diversi Terhadap Problematika Anak Residivis. *Jurnal Hukum, Politik dan Ilmu Sosial (JHPIS)*. Vol 2(3), September 2023. hlm 21

issues arising from the sentencing of minors, which can damage the future of the nation and disrupt national development.<sup>18</sup>

In principle, imposing criminal sanctions on youth involved in "klitih" only addresses the symptoms of the problem (crime) without effectively eliminating the root causes. Criminal law has not demonstrated sufficient preventive effects, leading to the absence of laws capable of addressing the underlying causes of crime itself.<sup>19</sup> This situation necessitates law enforcement officials to carefully consider these factors when investigating "klitih" cases among adolescents. Therefore, an appropriate choice is to prevent juvenile offenders from becoming involved in the formal criminal justice system. The application of diversion for juvenile offenders in "klitih" cases is expected to enable children to take responsibility for their actions while providing an opportunity for reintegration with their families, thus protecting their rights.

In the Beijing Rules, it is stated that there are three measures that can be applied when the offender is a child or adolescent.<sup>20</sup> These include returning the child to their parents so they can receive guidance from their family and access a proper education. This approach aims to educate the child without subjecting them to punishment in a correctional facility; it does not involve imprisonment or punitive measures. Instead, the child may be entrusted to the government, which will place them in state educational facilities until they reach the age of 18. The education of the child will then be transferred to an individual or organization/foundation. Punishment may be applied, but it must be educational and rehabilitative in nature, ensuring that the child can grow into a better individual and avoid recidivism.

Children who commit criminal acts cannot be held fully accountable for their actions. This is because their behavior is influenced by their environment and society, which play a crucial role in social control. Supervision is essential, whether by parents or the community, over juvenile offenders involved in petty crimes. This is necessary to realize a juvenile justice system that favors the child, ensuring their rights are upheld. Moreover, this supervision is required as part of the diversion efforts for the crimes committed, as parenting errors and a lack of supervision from parents and the community contribute significantly to the rise of juvenile delinquency.

The implementation of diversion for juvenile offenders requires cooperation not only between parents, the offender, and law enforcement officials but also substantial involvement from the community. A child's behavior can also be influenced by the social conditions of their surroundings, as discussed earlier. Particularly for minors, who still require guidance and development tailored to their individual characters.

However, in practice, the community often appears indifferent to the implementation of diversion, perceiving it as unfair because it can absolve juvenile offenders of punishment. In reality, diversion represents a shift in the paradigm of juvenile sentencing from a retributive approach to one focused on restoring the status quo. This societal behavior poses an obstacle to the implementation of diversion in Indonesia, stemming from a low level of legal awareness and understanding regarding diversion.<sup>21</sup>

Throughout this process, law enforcement officials continue to face various challenges on the ground. Muhammad, in his book, outlines some of these challenges, including:<sup>22</sup>

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<sup>18</sup> Ramli Atmasasmita. 1997. *Peradilan Anak di Indonesia*. Mandar Maju.

<sup>19</sup> Marlina. 2009. *Peradilan Pidana Anak di Indonesia*. Medan: Refika Aditama.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Opcit.* Muhamad Aljabar Putra, Imas Novita Juaningsih, Pingky Pratiwi & Abel Parvez. hlm 255

<sup>22</sup> Muhammad, A. 2018. Pendekatan Keadilan Restoratif Dalam Implementasi Sistem Peradilan Pidana Anak Di Indonesia. *JIKK*. Vol 1(2). hlm 79-90

1. Juveniles in conflict with the law still undergo criminal justice proceedings and receive prison sentences that are often quite lengthy.
2. Limited facilities and protections for juvenile offenders during the judicial process (both pre- and post-court decision) and a shortage of Special Child Development Institutions (LPKA) in each province, resulting in insufficient separation between LPKA and adult prisons, as well as Temporary Child Placement Institutions.
3. The real situation on the ground indicates that diversion data is not systematically recorded from the police level, from the local police stations to the police precincts, and from the Correctional Centers (Bapas).
4. There is no available nomenclature governing Temporary Child Placement Institutions (LPAS).
5. Coordination among law enforcement agencies (the police, the prosecutor's office, the Supreme Court, the Ministry of Law and Human Rights, the Ministry of Social Affairs, the Ministry of Education, and the Ministry of Health) is still not optimal in fulfilling their duties and functions.

Factors Influencing the Effectiveness of Diversion in the Framework of Restorative Justice in Handling Juvenile Offenders, Several factors influence the effectiveness of diversion within the restorative justice framework when addressing juvenile offenders (ABH). These factors include:

1. **Willingness of Offenders and Victims to Participate:** Diversion can only succeed if both the offender and the victim are willing to engage in the process. The offender must acknowledge their wrongdoing and take responsibility for their actions, while the victim must be open to forgiving the offender and accepting an out-of-court resolution.<sup>23</sup>
2. **Availability of Involved Parties:** In addition to the offender and the victim, diversion also involves other parties, such as the offender's parents or guardians, the victim's family, and the community. Participation from these parties is essential to ensure that the diversion process runs smoothly and effectively.<sup>24</sup>
3. **Mediator Skills:** The mediator plays a crucial role in facilitating the diversion process. Acting as a neutral party, the mediator assists all parties in negotiations to explore various potential solutions to the issues at hand.<sup>25</sup>
4. **Community Support:** Community backing is vital for the success of diversion efforts. The community should understand that diversion is a more effective means of addressing juvenile offenses than incarceration. Furthermore, the community must be willing to accept juvenile offenders who have participated in diversion and fulfilled their responsibilities.

Challenges encountered in implementing diversion are inevitable. There is often a lack of understanding regarding diversion and the appropriate methods for its application. Additionally, the level of community trust in diversion as a means of resolving issues poses a significant barrier to its implementation. In cases involving juvenile offenders, diversion is a crucial step that can protect children's rights from formal judicial processes that might infringe upon those rights. Moreover, the implementation of diversion must be supported by all involved parties from beginning to end to ensure the interests of both the juvenile offender and the victim are upheld. Support provided to juvenile offenders in resolving issues should not overlook the interests of the victim and the community.

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<sup>23</sup> Anward, B & Widodo, S. 2020. Kebijakan Penerapan Diversi Dalam Penyelesaian Perkara Tindak Pidana Yang Dilakukan Oleh Anak Melalui Pendekatan Restorative Justice. *Jurnal De Facto*. Vol 7(1), hlm 38-59

<sup>24</sup> Susanti, H. 2017. Diversi Dalam Sistem Peradilan Pidana Anak di Indonesia Dan Tinjauannya Menurut Hukum Islam. *Legitimasi*. Vol 6(2). Hlm 177-196

<sup>25</sup> Dewi, R. 2021. Peran Mediator Dalam Proses Mediasi: Upaya Penyelesaian Perkara Perdata (Studi Kasus Di Pengadilan Negeri Pasuruan). *MLJ Merdeka Law Journal*. Vol 2(1), hlm 35-41

## Conclusion

Policies for resolving juvenile cases must be implemented in accordance with the provisions outlined in legislation, specifically Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. This law encompasses the resolution of issues through diversion, which embodies restorative justice aimed at protecting children's interests and preventing recidivism. In criminal policy, diversion falls under a non-penal approach, wherein resolution involves deliberation by all parties concerned. Changes to the regulations governing the juvenile criminal justice system are also necessary to enhance the protection of children in conflict with the law. Furthermore, the resolution of juvenile cases through diversion should not solely involve the juvenile and law enforcement officers but must also include parents and the community, who play a significant role in both providing support and protecting the child.

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