



Legal Protection Through Diversion in Child Crimes Based on the Juvenile Justice System Law (SPPA Law)

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Abstract

Child protection issues in Indonesia are regulated in the Law on the Juvenile Criminal Justice System (SPPA Law). Legal protection efforts for children can be carried out through diversion. Diversion in its implementation is an action taken as a change from the process of resolving cases that occur to children to a settlement process outside the court. If a child commits a criminal offense before turning eighteen, and if the child is turned into the juvenile court after turning eighteen but before turning twenty-one, they are still turned over to the juvenile court. Article 20 of Law No. 11/2012 on the Juvenile Criminal Justice System (SPPA Law) states as much. This article's goal is to investigate how the Juvenile Justice System Law (SPPA Law) protects juvenile criminals legally through diversion. The primary and secondary legal resources served as the data sources for this normative legal study. Qualitative procedures argue that problems differ in their nature, this research approach is more likely to use in-depth analytical tools, specifically looking at problems based on legal protection. The research material collected will be examined in accordance with the relevant legal and regulatory framework by way of comparison with actual practice. The results state that the legal protection of children through diversion is related to the transfer of cases from the formal process to the informal process, or removing the perpetrator from the juvenile criminal justice system. Legal protection can be understood as efforts to enforce the law in support of children's various freedoms (including their basic rights and freedoms) and interests relating to their welfare. As such, all children are protected, including those involved in legal disputes (ABH).

Keywords: *Legal Protection; Diversion; Child Crimes Based; Juvenile Justice System Law*

Introduction

The application of good laws in Indonesia becomes the central principle in the legal system in Indonesia. This concept is important because it serves as a set of rules, guidelines, and penalties used to control behavior on the part of society, maintain social peace, ensure justice, and prevent disorder. Over

time, Indonesian law enforcement has made a move that has won the approval of countries around the world.¹ A variety of judicial instruments has appeared on national and international scales, demonstrating progress toward achieving legal objectives, particularly maintaining public order and peace.²

Children in Indonesian life have the potential as the successor of the nation's struggle and have the ability to build a nation. Therefore, child protection requires protection from discrimination and crime. Therefore, it is necessary for hujum's enforcement qualities to materialize in the protection of human rights³. In accordance with article 28b (2) the 1945 bill states that children represent future generations of countries have the right to develop, to be safe from violence and discrimination. Children who commit crimes before the age of 18 and who are handed over to juvenile courts after age 18 but before age 21 are still considered under the jurisdiction of the child court. It is under section 20 the law Number 11 in 2012 on the Juvenile Criminal Justice System (SPPA Law).⁴

The issue of child protection is governed by Juvenile Criminal Justice System (SPPA Law). The rule states that; Every child involved in the criminal justice system has the right to receive fair treatment based on their age; Separating from adults; Securing other types of support, such as legal aid; Participating in recreational activities; Does not endure torture, discipline, or other forms of cruel, barbaric, or degrading treatment; No life or death penalty was given; Is not arbitrary imprisonment or arrest unless absolutely necessary and for a short period of time; Getting justice in a closed trial; Impartial; Her identity is concealed; Getting kites from parents/parents and other adults to obtain social advocacy, personal life, accessibility, especially for children with disability, education and health services; And gain additional rights as outlined in the legislation.⁵

Rule of law number 11 in 2012, makes a criminal attempt on children via version. The version of the implementation is the act of changing the settlement process that happens to the child to the settlement process outside the court. The most important aspect of the law pertains to the terms of restoration justice and strict distraction, intended to keep children away from the court system and avoid the stigmatization of children with legal matters (ABH) and expected to return to the social environment in the proper way. As a result, it is vital for all parties to participate in protective activities.⁶

Child abuse cases in Indonesia in 2020-2023, according to data from the directorate general of the ministry of law and human rights, increased. In August 2023, as many as 1,467 children were arrested and involved in judicial proceedings, then 526 were sent to prison. Data from the "children's justice system" of the 2020 Indonesian children protection commission shows that 29,228 children are dealt with by police during their 2017-2020 period. 4,126 children live on diversions, but only 14.1% of the total is completed through reversion over the past four years.⁷

¹ Fifink Praiseda Alviolita dan Barda Nawawi Arief, "Kebijakan Formulasi Tentang Perumusan Tindak Pidana Pencemaran Nama Baik Dalam Pembaharuan Hukum Pidana Di Indonesia," *Law Reform: Jurnal Pembaharuan Hukum* 15, no. 1 (2019): 130–48, doi:10.14710/lr.v15i1.23359.

² Rifdah Alifayah dan Isa Anshori, "Legal Protection for Children in Cases of Domestic Violence in the Indonesian Households," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (30 Desember 2023): 348, doi:10.22373/ujhk.v6i2.19153

³ Barda Nawawi Arief. (2018). *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, 5 ed. Jakarta: Kencana.

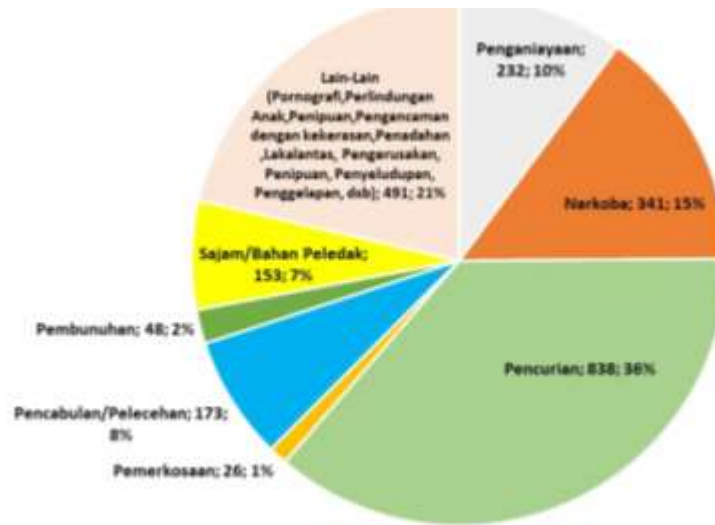
⁴ Andi Fajar Agusnawan, Hambali Thalib, dan Nur Fadhilah Mappaseleng (2023). Perlindungan Hukum Terhadap Anak Sebagai Korban Kejahatan Eksploitasi Secara Ekonomi. *Journal of Lex Generalis (JLS)* 3, no. 3 pp: 404–17.

⁵ Muhammad Aksa Ansar, Hambali Thalib, dan Kamri Ahmad. (2022). Efektivitas Penyidikan Terhadap Anak Pelaku Tindak Pidana Kekerasan Fisik: Studi Polres Pelabuhan Makassar, *Journal of Lex Generalis (JLS)* 3, no. 8.

⁶ Akhmad Munawar, Sudiyono Sudiyono, dan Muhammad Deny Sugiyanto. (2023). Penyelesaian Tindak Pidana yang Dilakukan Anak Melalui Diversi Dalam Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak, *Al-Adl: Jurnal Hukum* 15, no. 2: 447, doi:10.31602/al-adl.v15i2.8066.

⁷ Harris Y. P. Sibuea. (2023) Upaya Memperkuat Perlindungan Hak Anak yang Berkonflik dengan Hukum," *Isu Sepekan Bidang Polhukum, Komisi III*, 1–3, [https://berkas.dpr.go.id/pusaka/files/isu_sepekan/Isu Sepekan---V-PUSLIT-Agustus-2023-215.pdf](https://berkas.dpr.go.id/pusaka/files/isu_sepekan/Isu%20Sepekan---V-PUSLIT-Agustus-2023-215.pdf).

Total: 2,302 Child Abuse



Images 1.1. Child Abuse Case In Dindonesia
Source: National Legal Building

The types of crimes committed by minors are also different, the data shows that there are violent crimes, pedophiles/sodomy, theft, abortion, car accidents, murder, terrorism, possession of sharp objects, and abduction. The number of perpetrators of juvenile crime is growing. A lot of different types of crime, both in terms of increasing frequency and criminal rates of violation.

The most common act of theft and fraud in Indonesia is that of children. Children in criminal ACTS are also affected by the environment of life, one of which is a drug perpetrated by children. This led to legal proceedings for minors and ended up in prison. For protection, a child should receive assistance from social services or lawyers. Current circumstances are quite alarming because a large number of children have to deal with the legal system and are jailed and detained with adults, leaving them open to harassment and violence.

The enacted version should not be performed on all children involved in criminal ACTS because it can be valid if children are convicted under 7 years of pecara and there is no repeat of the crimes under rule article 7 section 2 a and b. the process of the release of child criminals is new because of various factors or in the execution of a sentence on children over 7 years in prison. According to data directorate general of the ministry of law and human rights penitentiary in August 25, 2023, 1.089 children or 72.3% of all child inmates who have received more than one year's imprisonment. This suggests that there are signs that the version strategy used in ABH is still not well executed⁸

Research done by yoserwan (2019) flagged by the completion of the criminal child committed by police through version gained results that the child as a nation's asset should obtain legal protection from the party of the law. One of the police is a safeguard for the children's welfare system to make a deviation of the cause. In this case, the restorative process is associated with the diversion of the regulatory rules.

Later, research done by siregar (2020) was linked to analysis of expansion in resorative diversion applications in criminal justice. In the study, the diversion executioners get limited parameters because the

⁸ Ibid

alternative settlement case in order to prevent criminal justice systems from being abolished in the event of a non-disclosure agreement or if the conditions are not properly implemented. The case settlement parameters through diversion-based justice must not merely refer to diversionary deliberations; Instead, they should also refer to the implementation of the transfer agreement as proof of the settlement, which, in turn, may serve as a basis for the publication of the letter ending the investigation or prosecution. Although more precise in practice, criminal actions include APH deliberations, family deliberations, and community deliberations, the diversionary mechanism can adopt the SPPA Law at any length of investigation, prosecution, and trial examination.

Based on research being done relating to the altered child law. Child crime is governed in a reversion procedure on the child's penal system (SPPA Law) has a number of flaws in preventing it from being used to the fullest. Constitutional court ruling 110/ PUU-X/2012 in the rule of law 11 in 2012, chapters 96, 100, and 101 May experience a mistrial of other legal interests and provide no binding legal effect on the issue.⁹ These regulations set the requirements that law enforcement agencies, including investigators, public prosecutors, and judges, make a distraction. When deliberate treatment is carried out, it can be risky for children involved in a criminal offense. Based on the background the author was interested in doing research with the title, "legal protection through inversion of child crime under child justice (SPPA Law)." The study is intended to explain the application of child criminal law protection through substitution.

Research methods

The method used in this study was qualitative research done under the rule of law. Legal research is done to present the law in comprehensive accord with the requirements of a legal study, requiring the use of research methods to give comprehensive direction to the study¹⁰. The study USES legislation to examine more deeply and in accordance with the rule of law on divorce for the protection of child crimes in accordance with SPPA Law. Application of content to remove perpetrators from the youth criminal justice system or transfer child offenses from formal to informal. This implies that not all issues relating to a child's case must be solved by formal legal proceedings.

The study done on child criminal protection law through version on was a normative legal study. The study examined the application of the rule of law related to diversion. The data collected through library research comes from primary and secondary legal documents from laws and regulations related to the research topic, with primary and secondary data.

- a) Data relevant with deep secondary data studies is obtained through library investigation.
- b) Primary data data of legislation relating to child offenses, child protection, children's justice systems, laws number 11, 2012, and other legislation relating to research needs became a major source of legal material.
- c) Secondary law data consists of associated studies, papers, journals, and laws relating to the protection of children in criminal fraud.

Qualitative data analysis techniques tend to be more tangible a process with selected data analysis to understand a thorough problem based on existing facts than to examine the problem for

⁹ Noveria Devy Irmawanti dan Barda Nawawi Arief. (2021) Urgensi Tujuan Dan Pedoman Pemidanaan Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana," *Jurnal Pembangunan Hukum Indonesia* 3, no. 2 (2021): 217–27, doi:10.14710/jphi.v3i2.217-227.

¹⁰ Mahendra Ridwanul Ghoni dan Pujiyono Pujiyono. (2020). Perlindungan Hukum Terhadap Anak yang Berhadapan dengan Hukum Melalui Implementasi Diversi di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 pp: 331–42, doi:10.14710/jphi.v2i3.331-342.

generalizing. Qualitative procedures argue that problems differ in nature, this research approach is more likely to use an in-depth analysis tool, specifically to view issues based on legal protection.¹¹ This research approach attempted to give an overall understanding of the problem being researched rather than creating generalities. The accumulated research materials will be examined according to the relevant framework of laws and regulations, in a way that contrasts with actual practice.

Discussion

1. Legal Protection On Child Crimes

Special consideration is given to children involved in the legal system. The purpose of law number 11 in 2012 that regulates the Juvenile Criminal Justice System of children is to protect and protect children better so they can look forward to a bright future. This is achieved through differentiation and threat treatment arrangements. In addition, this differentiation is intended to give children the opportunity to develop their identity through guidance to become self-reliant, accountable, and valuable members of their families, communities, countries, and states.¹²

In the case of children, legal protection can be understood as an effort to enforce the law in support of children's freedoms (including their rights and basic freedoms) and interests related to their welfare. All children are thus protected, including those involved in legal disputes (ABH). The purpose of protection in the law is to provide security for children's rights enforced so that they can live, grow, and thrive, participate to the fullest extent possible according to human dignity, and be protected from discrimination and violence in order to realize the potential of Indonesian children to be superior, noble, and prosperous.¹³

The widespread distribution of social and crime has concerned law enforcement agencies, parents, and the widespread community. The problem of child crime relating to violent crime, pedophilia/sodomy, theft, kidnapping, traffic accidents, abortion, sharp objects of possession, terrorism, and murder requires child protection. Legal actions involving child protection have legal consequences. As a result, legislative guarantees are needed for the child protection initiative. To maintain an ongoing child protection effort and to avoid abuse that can have an undesirable negative effect at their execution, legal certainty must be sought. Therefore, the policies and legal frameworks that regulate the protection of a child's rights and the application of those regulations are the focus of child protection activities.¹⁴

The criminal justice system act, provides an explanation that a police investigator with prior investigative experience, a deep interest, commitment, and understanding of the child's problems and participation in the technical training on child justice. It is carried out by those who make inquiries into children who pose as victims or actors. Child protection is carried out during the legal process, beginning with the sequence of investigations, prosecution, judicial proceedings, and the execution of a judicial ruling. The rights of the child must be upheld during legal procedures according to the relevant laws, so that those involved in the settlement of the child's case should act accordingly.¹⁵

¹¹ Feny Wahyuni (2022). *Metodologi Penelitian Kualitatif, Global Eksekutif Teknologi*, edition 1. Padang : Global Production <https://scholar.google.com/citations?user=O-B3eJYAAAAJ&hl=en>.

¹² Aksa Ansar, Thalib, dan Ahmad. (2022). Efektivitas Penyidikan Terhadap Anak Pelaku Tindak Pidana Kekerasan Fisik: Studi Polres Pelabuhan Makassar.

¹³ Agusnawan, Thalib, dan Mappaselleng, (2022). Perlindungan Hukum Terhadap Anak Sebagai Korban Kejahatan Eksploitasi Secara Ekonomi

¹⁴ Alifiyah dan Anshori. (2019). Legal Protection for Children in Cases of Domestic Violence in the Indonesian Households.

¹⁵ Nur Afdhaliyah, Ismansyah, dan Fadillah Sabri. (2019). Perlindungan Hukum Terhadap Anak Sebagai Korban Pencabulan Legal Protection on Children As Victims of Sexual Abuse, *Kanun Jurnal Ilmu Hukum* 21, no. 1 pp 112-123.

2. Diversion in Child Crimes Under the Laws of the Child Justice System

The verdict of a criminal sentence results from a process in the judiciary of a child troubled by law for committing a criminal act, so the enforcement of a criminal against a child who is unlawful or conflicts with the law is always bound to a child court. The juvenile court is the original source of the Indonesian juvenile justice act. The court ruling marks the conclusion of the proceedings in cases in which the SPPA Law requirements for handling cases include the investigation, prosecution, and the prosecution. The Indonesian criminal laws against minors who commit crimes vary widely and have changed from time to time, as do SPPA Law, which now serves as a new warning against juvenile crime in Indonesia¹⁶

The criminal justice system of the child is one of the initiatives aimed at preventing and preventing the child facing the current legal system according to the rules of the (SPPA). Sentencing of criminals is not a primary goal of the organization of the criminal justice system. This punishment, also known as the restorative justice system, emphasizes more on criminal accountability. Restorative justice aims to promote the well-being of the affected child while upholding the rights of the victim and society.¹⁷

The criminal justice system of children consists of components that collaborate through formal and informal processes. This process starts with the investigative stage and ends with the mentoring stage after the criminal process. Rules, law enforcement, and other social workers who have goals based on principles established by law complement the judicial process. This is because child abusers are still in the developmental stage and have more boundaries than adults, the concept of the criminal justice system puts high priority on their protection and rehabilitation. Long-term protection of state and society is necessary for children. In general, each child can receive extra protection. A child who receives special protection is one who, under certain circumstances, is guaranteed to be safe from harm that could jeopardize their development and well-being.

Part of the justice system of children is diversion. A version relates to a case transfer from formal processes to informal processes, or removing the perpetrator from the child's criminal justice system. This means that not all issues relating to the child's case must be solved through official legal channels. On the other hand, a fair approach that takes into account the victim's right to justice and the best interests of the child can be used as an alternative to settlement. One of the strategies used to keep the perpetrators out of the official criminal justice system is distraction. In an effort to prevent children from growing up to commit crime, a distraction is used to protect and rehabilitate the perpetrator.

Application of diversion in the SPPA Law act is done to achieve the following goal:

- a) Establish harmony between victims and children
- b) Solved a child case outside the legal system
- c) Keeps children from losing their independence
- d) Stimulated civic engagement
- e) Gives the kids a sense of responsibility.

The high levels of child crime in Indonesia that are constantly upping need for a diversionary strategy against the abh to improve the implementation of the version. As those responsible for diverting minors against the law, law enforcement and allied rule played a key role in the legal system's success in handling ABH. In the implementation of the parliament Commission III The ministry of law and human

¹⁶ Trian Diarsa dan Sarwirini, (2022). Menggali Hakikat dan Makna Pidana Peringatan sebagai Pidana Pokok dalam Sistem Peradilan Pidana Anak, *Media Iuris* 5, no. 3 (2022): 507–28, doi:10.20473/mi.v5i3.35865.

¹⁷ Virginia Garcia, Hari Sutra Disemadi, dan Barda Nawawi Arief. (2020). The Enforcement of Restorative Justice in Indonesia Criminal Law,” *Legality: Jurnal Ilmiah Hukum* 28, no. 1: 22–35, doi:10.22219/ljih.v28i1.10680.

rights and the state police of the republic of Indonesia are engaged in child protection. The meeting of this work as a surveillance of development of application was made under the law of the child justice system (SPPA Law) so that actions of children in prison could be minimized.¹⁸

Versions in the diversion have an important function, especially in keeping the human rights of children involved in criminal cases. When a child commits a crime, closure must be reached. The completion of the case through the formal criminal justice route has a negative effect on the development of the child. As hereinafter referred to in chapter chapter of the book of criminal law of the child, from the proceedings of the criminal that occurred a possible violation during investigation by the child rights police. Followed the prosecution phase until the trial. There would likely be criminal or other sentences during a juvenile court hearing.¹⁹

The role-playing is organized in article 8 verse 1 which states a version must be done by allowing believing parties to participate in the deliberations attended by:

- a) Perpetrator and parent/guardian
- b) Victims and parents
- c) Legal personnel in accordance with restrictive requirements

The basic principle of the transfer involves deliberations involving justice of the victims' interests to obtain prosperity and avoidance of actions that can lead to a negative stigma.

In the application of child criminal offenses must pay attention to two important requirements, as follows:

- a) Penal threat under seven years
- b) No repeat crimes

The reversion is not mandatory for children who commit crimes with more than seven years in prison. However, repetition is significant because it is a serious crime when a child faces a sentence of over seven years. The repetition can be understood as a child committing a crime, which is then repeated by a child, proving that the intended result of a distraction involving children in the responsibility of repaying evil is not fulfilled. Thus, diversion is not necessary.

By avoiding the stigmatization of minors, offenders, and victims, transfer law enforcement procedures help reduce the number of cases ended in court, which reduce the burden of the state to manage the criminal justice system. Any breaches against children can use a restorative justice approach, a process of diverting children from formal legal systems and getting out of the courtroom, protecting them from psychological trauma, stigma, and the negative effects of breaking law enforcement. The main principle of the application of a concept of distraction, which is the use of non-punishment or persuasive action to give someone the opportunity to grow from their mistakes and return to being a good person. The version was intended to deliver justice to the law-enforcement authorities in the case of minors who had committed the crime.

The criminal justice system of the child is based on nondiscrimination principles, so article 2 letter c and article 7 sets the transfer of the SPPA Law differently. Chapter 7 verses (2) letter (a) the SPPA Law is viewed as contrary to the principle of protecting children that promotes nondiscrimination and child welfare. When they are over 7 (seven) years of age, this provides no protection for children who commit criminal ACTS or endanger others. Nondiscrimination principles are believed to provide legal

¹⁸ Sibuea. (2023). Upaya Memperkuat Perlindungan Hak Anak yang Berkonflik dengan Hukum. Polhukam Komisi III.

¹⁹ Ghoni dan Pujiyono.(2020). Perlindungan Hukum Terhadap Anak yang Berhadapan dengan Hukum Melalui Implementasi Diversi di Indonesia. Jurnal Pembangunan Hukum Indonesia, 2(3), 331–342. <https://doi.org/10.14710/jphi.v2i3.331-342>

protection to children and stop law enforcement from targeting children they deem participating in illegal activities without cause. The concept of non-discrimination is one of 4 (four) the principal principles of child protection. This principle provides the basis for the application of child protection laws in all countries. It's based on a convention on the rights of the child and then adopted under the 2002 statute of child protection.

The rule of law based on section 9 of the article (2), in which the covenant of distraction requires the consent of the victims' families and the willingness of the children and their families, under section 7 article (2) the letter a of distraction is considered a limiting action. Modern legal matters involve the distraction of cases involving underage victims; These cases must be pursued under the guise that the victim was unwilling to make amends. When a child does evil, it is perfectly appropriate to address the situation through restorative justice in a way that avoids vengeance and is carefully considered, either through the use of discretion or distraction. This application is said to be essential to preventing children's trauma by labeling them as criminals, which can adversely affect how well children grow up.²⁰

The formal judicial juridical approach tends to place more emphasis on vengeance. In the criminal justice system children are set up for the means of reforming juvenile court laws. Criminal activity serves more than revenge or rewards those who commit crimes; It also serves several worthwhile purposes. Thus, the purpose of justification forms the basis. Therefore, the purpose of criminal sanctions (asa kind of law enforcement) imposed on minors who commit crimes should be to prevent them from committing similar transgressions in the future rather than to placate the victim. Creating, preserving, and upholding peace and community welfare are other purposes of law enforcement.²¹

Conclusion

Children in Indonesian life have the potential as the successor of the nation's struggle and have the ability to build a nation. Hence, children of protection from violence and discrimination. Children who engage in criminal ACTS face to face with the law require legal protection as a mandatory protection of transfer in the completion of child crime has been provided by laws on the youth criminal justice system. Criminal justice systems with the aid of affiliated parties to achieve results like mediation. There are alternative methods for handling child crime, such as the transfer of restorative justice, criminal mediation, or customary law settlement, which is basically a treaty made outside the criminal justice system of youth and can provide more protection to children with legal problems. The transfer refers to the transfer of the perpetrator from the youth criminal justice system or the transfer of cases from formal to informal processes. This means that not all issues relating to the child's case must be solved through official legal channels. In contrast, a fair approach that takes into account the victim's right to justice and the best interests of the child can be used as an alternative to resolving criminal crimes in the law.

As specified in diversion treaties, police, prosecutor offices, and courts make attempt at version, and law enforcement at every stage of the process supervising the proceedings. In the Indonesian juvenile criminal justice system, the idea of diversion refers to the transference of formal legal cases to non-formal cases. The purpose of these versions is to protect children who are involved in criminal and have trouble with the law. The basic idea behind the implementation of the concept was promoted with persuasive action ora non-punishment strategy asa legal front from someone who gives the opportunity to learn from the mistakes made by the perpetrators of the crime.

²⁰ Lutfia Nazla, (2019). Implikasi Putusan Mk Nomor 68/Puu-XV/2017 Terhadap Jaksa Penuntut Umum Dalam Sistem Peradilan Pidana Anak," *Media Iuris* 2, no. 1. pp. 89, doi:10.20473/mi.v2i1.10884.

²¹ Diah Ratna Sari Hariyanto dan Gde Made Swardhana. (2021). Optimalisasi Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak Yang Berorientasi Pada Restorative Justice Di Kota Denpasar," *Jurnal Legislasi Indonesia* 18, no. 3 (2021): 394, doi:10.54629/jli.v18i3.787.

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