

JUVENILE DIVERSION BY THE POLICE IN THE PERSPECTIVE OF PANCASILA JUSTICE: REFORMULATION AND OPTIMIZATION

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Abstract

Children require special protection, but diversion has not been optimized due to limitations in norms and the repressive approach of law enforcement agencies. Reformulation and optimization based on progressive law and Pancasila justice are necessary so that the judicial system truly protects and restores the future of children. The purpose of this study is to analyze the legal regulations and practices of diversion by police investigators for children in conflict with the law and to formulate a model of reformulation and optimization strategies based on the values of Pancasila justice. This study is a type of normative legal research. The results of the study show that the regulation and practice of diversion by police investigators has not been optimal despite having a normative basis, because it is still limited by the understanding of the authorities, formalistic attitudes, and legal cultural constraints. A reformulation of the law based on the values of Pancasila justice and a progressive approach through substantive discretion, adaptive operational guidelines, and capacity building for officials are needed so that diversion can truly become a means of transformative recovery for children.

Keywords: Diversion, Police Investigators, Pancasila Justice

1. Introduction

Children are legal subjects who require special treatment because they are in a stage of mental and emotional growth that is not yet complete (Eyasu *et al.*, 2020). A criminal justice system that is insensitive to these conditions has the potential to cause long-term effects such as trauma, stigmatization, and an increased risk of recidivism (Deriana&Puspasari, 2025). Data from the *Online* Information System for the Protection of Women and Children (Simfoni PPA) shows that thousands of juvenile criminal cases are processed each year, and the majority still use a litigative approach that places children in a repressive environment, rather than one of rehabilitation. Amidst the need for maximum protection for children, the current criminal justice system still has loopholes that ignore the principle of substantive justice.

Diversion as an alternative approach has been emphasized in Law Number 11 of 2012 concerning the Criminal Justice System for Children. Legally, diversion is an obligation

that must be considered at every stage of handling children's cases, including the investigation stage by the police (Utami, 2018). However, the construction of the norm in Article 7 paragraph (2) of the SPPA Law actually creates restrictions that deny the principles of justice and non-discrimination. Investigators are only allowed to conduct diversion for children who are threatened with less than seven years of imprisonment and are not repeat offenders (Mulani *et al.*, 2023). This provision excludes many children from the right to restorative justice, even though their actions are not serious victimization, such as petty theft with violence or possession of narcotics for personal consumption.

The following hypothetical case illustrates a gap in practice. A 15-year-old child, let's call him "B", was caught carrying a joint of marijuana for his own consumption. Although he was not a dealer, and there were no direct victims in this case, investigators continued with criminal proceedings without attempting diversion because the penalty was more than seven years. The investigation process ended with the case being transferred to the prosecutor's office and the court, without considering the child's psychological condition or the potential for recovery through mediation and dialogue. In fact, this case could have been handled with a restorative justice approach to restore B to his social environment without stigmatization.

The reasons for the ineffective implementation of diversion at the police level stem not only from weak norms (Wilson *et al.*, 2018), but also reflect dysfunction in the legal system as a whole. Lawrence M. Friedman explains that the legal system consists of three main components: structure, substance, and legal culture (Rofifah *et al.*, 2024). Legal structure includes law enforcement institutions such as the police; substance includes legal norms and regulations; while legal culture refers to the values, attitudes, and perceptions of officials and the community towards the law. Diversion has failed to be implemented not only because of regulatory limitations, but also because of the suboptimal structure of the implementing agencies and the weak legal culture that supports a non-punitive approach. Many investigators are still oriented towards punishment as a form of "legal certainty" even though it ignores the principles of humanity and restoration (Arifiani *et al.*, 2022).

The situation is further complicated by the fact that investigators in the field have a low capacity to understand and implement the principles of restorative justice (Sulaiman & Hosanna, 2022). There is no special diversion unit within the police force, no standardized systematic training, and no implementation evaluation instruments. Inter-agency coordination between investigators, correctional facilities, child advocates, and prosecutors is also partial. As a result, diversion is more often a normative option on paper, without meaningful actualization in the settlement of children's cases. The lack of synchronization between agencies confirms that the current system is still far from the integrated system paradigm as mandated in the SPPA Law.

This problem requires comprehensive reformulation and optimization. Reformulation is needed for norms that are restrictive in nature so as not to discriminate against children based on the type of offense they have committed. Diversion should not be tied to the severity of the criminal threat, but to its social impact and context. Optimization also requires institutional restructuring through the establishment of a special diversion unit within the police force, strengthening of investigator training based on restorative justice

and the issuance of cross-sectoral SOPs that integrate humanistic and participatory approaches.

Pancasila justice must be the philosophical foundation for these reformulation and optimization efforts. Pancasila promotes the principles of fair and civilized humanity, respect for human dignity, and social justice for all people (Arifin& Lestari., 2019). These values cannot be realized if the legal system continues to use an exclusive, legalistic, and retributive approach towards children. Justice in the perspective of Pancasila demands holistic legal treatment, substantive justice, and prioritizes social dialogue, not just formal punishment (Sari *et al.*, 2024). Diversion is not only a matter of efficiency, but also a representation of a legal system that favors human values and the future of children.

This research is relevant and significant in re-exploring the philosophical and institutional basis of the application of diversion by police investigators. The main objective is to analyze the imbalance between legal regulations and practices, as well as to develop a concept for reformulating and optimizing diversion strategies that are responsive to the values of Pancasila justice. Without critical and constructive efforts, the juvenile criminal justice system will continue to operate procedurally, but lose its essence in ensuring justice and real protection for children in conflict with the law.

Based on the introduction, the analysis aims this present study to answer the following questions, (1) How are the regulations and practices of diversion by police investigators applied to children in conflict with the law in the Juvenile Criminal Justice System? (2) How do police investigators reformulate and optimize diversion strategies from the perspective of Pancasila justice?. The objectives of this study are to analyze and describe the following. (1)To analyze the legal regulations and practices of diversion by police investigators for children in conflict with the law in the Juvenile Criminal Justice System, and (2) To formulate a model for reformulation and strategies for optimizing diversion by police investigators based on the values of Pancasila justice.

2. Literature Review

2.1 Juvenile Criminal Justice System

Law No. 11 of 2012 on the Criminal Justice System for Children (SPPA Law) provides a special approach for children in conflict with the law. This system is organized based on the principle of the best interests of the child, as emphasized in Article 2, and guarantees various procedural rights of children in Article 3, ranging from humane treatment, effective legal assistance, to guarantees of education, health, and protection from torture. This approach is intended to avoid the negative impact of criminal proceedings on the psychological and social development of children.

Structurally, this system involves the police, prosecutors, juvenile courts, correctional institutions, and social institutions, which work in an integrated manner. The stages begin with the investigation and continue through to guidance, with an emphasis on the application of diversion, which is explicitly regulated in Article 7 paragraph (1) as an obligation at every level of the process. This system aims not only to enforce the law but also to rehabilitate and reintegrate children into society through a restorative justice approach.

2.2 Diversion and Restorative Justice

Diversion is a mechanism for transferring the settlement of children's cases from the criminal justice process to a process outside the court, with the main objective of protecting children's best interests from the negative impacts of criminalization (Permatasari *et al.*, 2025). This concept is explicitly regulated in Article 1 point 7 of the SPPA Law and is mandatorily implemented at the investigation, prosecution, and trial stages in the juvenile court in accordance with Article 7 paragraph (1). Diversion can only be applied to children who have committed crimes with a maximum penalty of seven years and who are not repeat offenders. This limitation is often criticized for hindering the spirit of comprehensive child protection. Diversion is expected to provide space for case resolutions that do not emphasize punishment, but rather the restoration of social relationships between children, victims, families, and the community.

The main principle underlying diversion is *restorative justice*, which is an approach to case resolution that emphasizes dialogue, shared responsibility, and restoration of losses, rather than simply imposing punishment (Putri&Subroto, 2023). Howard Zehr, a pioneer of restorative justice, explains that this approach shifts the focus from violations of state law to the restoration of social and emotional damage caused by crime. In the context of children, restorative justice creates a more humane and participatory space for resolution. This is reflected in Article 6 of the SPPA Law, which states that the juvenile criminal justice system shall be implemented using a restorative justice approach. Therefore, diversion is not only an alternative procedure, but also the embodiment of a new paradigm in law enforcement that places the restoration and protection of children as the main orientation of the system.

2.3 The Role of Police Investigators in Diversion

Police investigators have a strategic position in determining the success of the application of diversion in the juvenile criminal justice system (Anzward, 2020). As the first party to handle the case, investigators have the authority to make an initial assessment of the eligibility for diversion, based on the legal criteria specified in Article 7 paragraph (2) of Law No. 11/ /2012, namely cases punishable by less than seven years of imprisonment and not repeat offenses. This function is not passive or administrative in nature, but rather active in encouraging the resolution of juvenile cases through deliberation, assistance, and the establishment of mutual understanding between the child, the victim, and their social environment. Investigators not only process the law, but also facilitate social dialogue as part of the restorative justice process.

The strengthening of the role of investigators is further regulated in Regulation of the Indonesian National Police Number 8 of 2021, which emphasizes that case resolution through restorative justice begins with the investigator's assessment of the motive, impact, and recovery of the victim. In practice, investigators are required to hold restorative case hearings, document peace agreements, and prepare recommendations to terminate investigations if all elements of justice are fulfilled. Articles 16 to 19 of this Perpol emphasize the importance of investigators' professionalism in assessing whether diversion truly reflects recovery, rather than merely a formality of peace. Weaknesses in implementation, such as a lack of training or limited understanding of the restorative approach, can hinder the substantive function of investigators in ensuring justice for

children. Therefore, the position of investigators in the diversion process requires not only an understanding of procedural law, but also ethical and social capacity in promoting the principles of child protection and participatory justice.

2.4 Progressive Legal Theory and Legal Reformulation

The progressive legal theory developed by Satjipto Rahardjo argues that law should not be trapped in rigid normative texts, but should be seen as an instrument to achieve substantive justice that favors humanity (Al Arif, 2019). In this framework, law is positioned as a tool to free society from injustice, especially when formal rules fail to provide protection. A distinctive feature of progressive law lies in its courage to "defy the law itself" if the applicable law does not guarantee the common good. In the context of the juvenile criminal justice system, this theory encourages the correction of regulations that limit the application of diversion to certain cases, as this approach can neglect the values of protection and rehabilitation of children as developing individuals.

The reformulation of law in the context of diversion requires changes to norms that are unresponsive to the principles of restorative justice. Overly formalistic criteria for diversion, as stipulated in Article 7 paragraph (2) of the SPPA Law, have limited the scope for investigators to resolve cases humanely, even though the type of violation does not have a significant impact on the victim. Progressive law provides intellectual and moral legitimacy for reorienting the legal structure. In practice, reformulation can be carried out by expanding the conditions for diversion, applying the principle of proportionality, and integrating humanitarian values into investigation SOPs. This means that reformulation is not merely a revision of norms, but a transformation of the legal paradigm towards a system that is more concerned with the future of children and social harmony. Thus, progressive legal theory becomes an important methodological foundation in formulating a more equitable and contextual diversion system in Indonesia.

2.5 Pancasila Justice as a Philosophical Perspective

Justice in the perspective of Pancasila is justice that is rooted in the noble values of the Indonesian people, not merely an adjustment to the retributive Western legal system. Pancasila not only contains written legal principles but also reflects the collective morality of a society that prioritizes the balance between individual rights and social interests (Efendy *et al.*, 2023). Values such as *fair and civilized humanity* and *social justice for all Indonesian people* place humans at the center of the legal process, including when dealing with criminal offenses (Budiyono *et al.*, 2024). In this framework, children who commit offenses are not positioned as objects of punishment, but as subjects who must be rehabilitated. This paradigm requires the law to not only ask "has the law been violated?", but also "how can the damaged balance be restored?".

The application of diversion by police investigators should reflect this Pancasila-based orientation toward justice. The value of deliberation in the fourth principle provides an ethical basis for resolving children's cases through dialogue involving the perpetrator, victim, and community, rather than the dominance of formal legal institutions. Pancasila justice is not procedural justice, but justice that places welfare, empathy, and restoration of social relations as its main objectives. Investigators play a role not only as law enforcers but also as guardians of values. Deviations from this approach cause the judicial system to lose its soul. Therefore, the integration of Pancasila values into the

diversion mechanism is not only relevant but also a necessity so that the juvenile criminal justice system in Indonesia truly reflects the nation's own legal identity.

3. Methodology

This research is a type of normative legal research, which is research based on literature review to examine positive legal norms, legal principles, and principles of justice in relevant laws and regulations. The approaches used are *the statute approach* and *the conceptual approach*. The statute approach is used to examine the normative constraints on investigators in applying diversion, while the conceptual approach is used to examine progressive legal theory and Pancasila justice as the philosophical basis for the reformulation of diversion policy.

The data sources in this study are secondary data, which are classified into three types of legal materials. Primary legal materials include legislation such as the 1945 Constitution of the Republic of Indonesia, Law No. 11 of 2012 concerning the Criminal Justice System for Children, the Criminal Code, the Criminal Procedure Code, Law No. 35 of 2014 amending Law No. 23 of 2002 on Child Protection and Police Regulation No. 8 of 2021 on the Handling of Criminal Acts Based on Restorative Justice, as well as Supreme Court Regulation No. 4 of 2014. Secondary legal materials include doctrines, textbooks, scientific journal articles, dissertation results, and the thoughts of legal experts such as Satjipto Rahardjo, and Hans Kelsen. Tertiary legal materials include legal dictionaries, legal encyclopedias, and regulation indexes. Data collection was conducted through document studies of relevant legal sources, while data analysis used systematic and argumentative legal interpretation techniques to critically construct and evaluate norms based on the principles of substantive justice and the theoretical framework used.

4. Result and Discussion

4.1 Regulations and Practices of Diversion by Police Investigators for Children in Conflict with the Law in the Juvenile Criminal Justice System

Diversion as a mechanism for resolving juvenile criminal cases outside the formal justice system is a concrete manifestation of the shift in the criminal law paradigm towards a more humanistic and restorative approach. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System has provided a clear legal framework regarding the obligation of diversion from the outset of the legal process. Article 7 paragraph (1) states that at the level of investigation, prosecution, and examination of juvenile cases in district courts, diversion must be sought. Furthermore, paragraph (2) states that diversion can only be implemented for juvenile cases where the criminal offense is punishable by imprisonment of less than seven years and is not a repeat offense. This provision shows that diversion is not a policy option, but a legal mandate that must be carried out by law enforcement officials, especially police investigators (Udjariet *al.*, 2025).

In practice, investigators have primary responsibility as the first point of entry into the juvenile criminal justice system. This responsibility is reinforced by Indonesian National Police Regulation No. 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice. Article 2 paragraph (1) of this Protocol emphasizes that the handling of criminal acts based on restorative justice is carried out at the investigation stage. Thus, investigators are not only obliged to assess evidence, but also to take a social approach to

facilitate deliberations between the child perpetrator, the victim, and the community. The general and specific requirements for the application of restorative justice are explained in Article 3, while the formal and material requirements are explicitly set out in Articles 5 to 10. Investigators are required to ensure that there is a peace agreement, that the victim is compensated, and that there are no objections from the community to the non-litigious settlement of the case.

However, in practice, the implementation of diversion by police investigators is often suboptimal. One of the main causes is the narrow interpretation of Article 7 paragraph (2) of the SPPA Law, which is often used to reject diversion proposals for cases that are actually socially eligible for restoration through a deliberative approach. For example, cases involving children who commit petty theft with low losses or cases of minor violence between peers are often still prosecuted because they carry a criminal penalty of more than seven years, even though the victims did not suffer serious losses and were willing to reconcile. This shows an imbalance between the normative-formal approach and the substantial objective of diversion, which is to protect the future of children.

Conceptually, the approach used in the implementation of diversion should be based on restorative justice theory. According to Howard Zehr, restorative justice is a resolution model that emphasizes restoration of losses, participatory dialogue, and social reconciliation, rather than mere punishment. Therefore, investigators, as key actors in the early stages of the legal process, must understand their role as facilitators of recovery, not merely as executors of the investigation process. The failure to apply diversion at this early stage not only harms children but also undermines the principle of justice desired by the SPPA Law.

From the perspective of Lawrence M. Friedman's legal system theory, the legal structure (institutions and apparatus), legal substance (SPPA Law, Perpol No. 8 of 2021, PERMA No. 4 of 2014), and legal culture (values, understanding, and attitudes of the apparatus and society) must work in harmony. The legal structure and substance in the juvenile criminal justice system are already adequately in place, but at the level of legal culture, serious obstacles remain. Many investigators still favor a repressive approach and formal legal proof rather than the principle of rehabilitation. This is exacerbated by the lack of training or understanding of the restorative justice approach, which is not yet evenly distributed at the lower levels.

Furthermore, the diversion approach must also be viewed from the perspective of Pancasila justice as the philosophical foundation of the Indonesian legal system. The values of the second principle of just and civilized humanity and the fourth principle of deliberation form the ethical basis that the settlement of juvenile criminal cases should be carried out in a dialogical and participatory manner that does not damage the child's future. Rigid, procedural, and punitive law enforcement is contrary to the fifth principle, which emphasizes social justice. In this context, investigators have a moral responsibility not only to enforce formal law but also to uphold the noble values of justice rooted in the nation's culture.

Thus, it can be concluded that the diversion arrangements by police investigators have a solid legal framework and support the application of restorative justice from the outset of the legal process. However, the reality of its implementation still faces serious challenges in terms of understanding values, interpreting rules, and legal culture.

Therefore, policy reformulation, intensive training for investigators, and strengthened cross-sector coordination are needed to ensure that diversion truly becomes a means of recovery, not just a procedure that is ignored. Diversion must be interpreted as the main instrument for saving children, not as an optional procedure that is easily avoided.

4.2 The Concept of Reformulation and Strategies for Optimizing Diversion by Police Investigators in the Perspective of Pancasila Justice

The application of diversion in the juvenile criminal justice system, as regulated in Law Number 11 of 2012, has shown a paradigm shift from a retributive approach to restorative justice. However, the application of diversion by investigators still does not fully reflect the values of substantive justice. The rigid and narrow interpretation of Article 7 paragraph (2), which limits diversion to criminal acts punishable by less than seven years and not to repeat offenses, has become a major normative obstacle. Many cases that are minor in moral and social terms, such as petty theft, minor violence between children, or first-time offenses, cannot be transferred to the diversion process because they do not meet the formal requirements. This situation creates an imbalance between the values of justice promised by the juvenile justice system and the legal practices carried out by law enforcement officials.

The progressive legal theory proposed by Satjipto Rahardjo is the main basis for understanding why the law needs to be dismantled when it no longer serves justice (Marilang, 2017). The law should not be an anti-corrective and absolute institution. When legal texts become obstacles to human values, they must be deconstructed and reformulated. Reformulation in the context of diversion means expanding the legal basis for diversification, which is no longer fixated on the severity of the criminal penalty, but opens up space for assessment based on social impact, the age of the perpetrator, motive, and the potential for restoring relationships between parties. Investigators should not only assess whether the article meets the requirements for criminal punishment, but also evaluate ethically whether it is better to resolve the case through deliberation for the sake of the child's future.

The reformulation of the legal substance needs to begin with a change in the norm in Article 7 paragraph (2) of the SPPA Law. This provision needs to be revised through an amendment so that it no longer closes access to diversion for cases that have high restorative value but are constrained by the wording of the criminal threat. Instead, the diversion arrangement needs to consider the principle of proportionality and an approach based on the needs of the child. Ethical discretion must be given to investigators as the initial implementers of the legal process to conduct substantive assessments, not merely administrative ones. Within a progressive legal framework, investigators become agents of justice, not merely operators of the law. This kind of discretion is also supported by the principles of deliberation and social justice in Pancasila, which emphasize conflict resolution through peace and dialogue, not legal retribution.

The legal structure must also be accompanied by responsive and contextual operational guidelines. Guidelines for the implementation of diversion by investigators must reflect ethical values and not merely technical procedures. Investigators must be directed to holistically evaluate the condition of the child, the situation of the victim, and the possibility of long-term social reconciliation. These guidelines must be supplemented

with criteria for victim recovery (), social risk assessment, and indicators of the success of the deliberation process. Progressive law requires that legal guidelines not be dogmatic, but rather open to the renewal of values.

Optimizing diversion also requires increasing the capacity of investigators as facilitators of restorative justice. Investigators cannot be positioned as mere procedural law enforcers, but must be able to become mediators, mentors, and communicators between parties. Values-based legal education, child psychology training, restorative communication techniques, and other multidisciplinary understandings must be part of the internal training system. The values of Pancasila justice teach that fair law enforcers are not only those who obey the rules, but those who have a moral commitment to the protection of humans, especially children.

Pancasila justice also requires deliberation in every decision-making process. Diversion as a form of legal deliberation must be a living process, not a formality. Therefore, it is necessary to build synergy between institutions, including between investigators, prosecutors, community counselors, social workers, and community leaders. This collaboration not only speeds up the legal process but also forms a social support network for the rehabilitation of children. This system requires cross-sectoral cooperation with a shared vision: to build social justice that saves, not punishes.

The effectiveness of diversion will also not be optimal without a value-based monitoring and evaluation system. Evaluation cannot be limited to measuring the number of cases that have been successfully diverted. More important are the quality of rehabilitation, victim participation, and the psychosocial impact on children. This evaluation must be reflective, narrative, and oriented toward institutional learning. Progressive law rejects mechanical evaluations that ignore human stories in the implementation of the law. Therefore, the diversion evaluation system must be able to record the experiences of perpetrators and victims as part of efforts to reform the juvenile justice system.

The principles of Pancasila justice as a whole provide ethical direction in the formulation and implementation of law. The second principle demands humane treatment, the fourth principle emphasizes deliberative consensus, and the fifth principle emphasizes the importance of social justice for all Indonesian people. These three principles form a package of principles that can be used as the philosophical foundation for the reformulation of diversion. Every legal effort must contain values of humanity, collective wisdom, and protection of vulnerable groups. Diversion is an instrument to bring these values back into judicial practice.

Thus, the reformulation and optimization of diversion by investigators is a strategic agenda that cannot be delayed. This reform must begin with changes to legal norms, the development of living guidelines, values training for officials, synergy between institutions, and the establishment of a humane evaluation system. This entire agenda must be supported by a spirit of progressive law that favors substantive justice and guided by the ethics of Pancasila justice, which makes law a means of honoring human dignity, not merely enforcing regulations. When law enforcement officials are able to move beyond the text and work with conscience, the juvenile criminal justice system will become a system that not only enforces the law but also delivers true justice.

5. Conclusions

The regulation and practice of diversion by police investigators show that although the Indonesian legal system, through the SPPA Law and Perpol No. 8 of 2021, has provided an adequate normative basis for the implementation of diversion as a measure to protect children, its implementation is still not optimal due to limited understanding, the formalistic attitude of officials, and legal cultural constraints that are not yet fully in line with the principles of restorative justice and the values of Pancasila justice. Therefore, normative reformulation and a progressive approach are needed so that diversion can truly become a comprehensive and transformative recovery mechanism for the future of children.

Meanwhile, the concept of reformulation and optimization strategies for diversion shows that current normative limitations and rigid implementation have hampered the principles of restorative justice promised by the juvenile criminal justice system. Therefore, legal reformulation based on an ethical approach and the needs of children is necessary through the granting of substantive discretion to investigators, the development of adaptive operational guidelines, the strengthening of the capacity of officials as facilitators of justice, and value-based evaluation that reflects the principles of progressive law and Pancasila justice, in order to realize a legal system that is not only legally formal, but also humane and transformative.

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