



The Procedure for Implementing Diversion in the Juvenile Criminal Justice System in Cases Involving Offenses under Emergency Law: A Critical Study on the Application of Restorative Justice Principles

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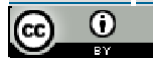
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ABSTRACT

This study discusses the application of Diversion for Children in Conflict with the Law (ABH) in criminal cases based on the Emergency Law, especially when the criminal threat exceeds the limit of 7 (seven) years as stipulated in Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). The focus of this study is to analyze the interpretation and legal discretion of law enforcement officers, the implementation model of Diversion that remains oriented towards restorative justice, and the obstacles faced in practice. The research method used is normative-empirical with a statutory, conceptual, case, and sociological-juridical approach. Data were obtained through literature studies, interviews, and documentation, then analyzed qualitatively. The results of the study indicate that normatively, cases in the Emergency Law generally do not meet the formal requirements for Diversion because the criminal threat is above 7 years. However, the spirit of child protection and restorative justice can still be pursued through a humanistic, educational, and rehabilitative approach. The main obstacles include legal, structural, and sociological aspects. Therefore, clearer technical guidelines, increased capacity of law enforcement officers, and strengthened roles of families and support institutions are needed to ensure that the handling of children's cases continues to ensure the best interests of the child.

INTRODUCTION

The Juvenile Criminal Justice System (JCCS) in Indonesia prioritizes child protection. This aligns with the constitutional mandate and various international instruments, such as the Convention on the Rights of the Child (CRC), ratified through Presidential Decree No. 36 of 1990. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System subsequently became the legal basis, affirming that every child in conflict with the law must be treated humanely, taking into account their developmental needs and fundamental rights as a minor.

One of the main instruments in the JCCS is diversion, the process of diverting juvenile cases from formal justice channels to non-litigation processes that emphasize amicable resolution and remedial action. Diversion is not merely an alternative option but a legal obligation for law enforcement officials at every level of investigation, including the police, prosecutors, and courts, as long as legal criteria are met. This demonstrates the state's strong commitment to mitigating the negative impacts of the formal justice process on children.

The implementation of diversion is closely related to the restorative justice paradigm, an approach focused on post-crime recovery, rather than retaliation. Restorative justice views crime as not merely a violation of the state, but also a social conflict that impacts the relationship between the victim, the perpetrator, and the community. Therefore, its resolution must prioritize dialogue, the active participation of all parties, and the achievement of a just agreement.

Through the diversion mechanism, children in conflict with the law have a greater opportunity to safeguard their future without having to go through a rigid, lengthy, and potentially traumatic judicial process. Research shows that children involved in formal justice processes are at risk of experiencing social stigma, psychological distress, and impaired emotional development. Therefore, diversion is expected to mitigate these negative impacts and encourage a more humane and educational resolution.

In addition to benefiting children, diversion also benefits victims and the community. Victims are given a space to directly express their feelings, losses, and hopes for recovery. The community can play a role in facilitating reconciliation and affirming violated social values, so that the case resolution process is not only oriented towards the law but also oriented towards restoring social relationships. The state also benefits because the diversion mechanism can reduce the caseload of law enforcement agencies and minimize child recidivism.

Thus, diversion and restorative justice are not just technical instruments, but are the core of the SPPA philosophy which places children not as criminals who must be punished, but as individuals who still have ample opportunities to be repaired, educated and returned to their social environment in a healthy and dignified manner.

However, the implementation of diversion in certain cases often faces various legal and practical obstacles. One of the most prominent obstacles arises in cases regulated by the Emergency Law, such as Emergency Law Number 12 of 1951 regarding possession of sharp weapons, firearms or explosives without a permit. This law was born in a different political situation, namely in the early days of independence when national security was very vulnerable. Therefore,

criminal provisions tend to be formulated with quite serious threats as an effort to maintain public order and security.

This has an impact on the perception of law enforcement officials today. Cases involving violations of the Emergency Law are often seen as dangerous criminal acts and have the potential to threaten public order, giving rise to doubts about implementing diversion. Many investigators, prosecutors and judges believe that diversion is not appropriate because this crime is considered to have a high social risk - even though the perpetrator is a child who legally must still be treated within the framework of guidance, not retaliation.

In addition, law enforcement officials often interpret the seriousness of the criminal threats in the Emergency Law as a reason that the case does not meet the requirements for diversion. In fact, according to the provisions of the SPPA Law, the determination is not just based on the perception of the danger of a criminal act, but rather on the normative formulation of criminal threats, namely whether the threat of imprisonment is less than 7 years and is not a repetition of a criminal act. However, in practice, the lack of synchronization between the norms of the Emergency Law and the SPPA Law often confuses law enforcement officials in categorizing cases that are or are not worthy of diversion.

From a practical perspective, Emergency Law cases also raise concerns among the authorities regarding aspects of security and social control. For example, in the case of children carrying sharp weapons, authorities are often concerned that diversion could be seen as a form of leniency that reduces the deterrent effect, thereby potentially provoking criticism from the public. It is not uncommon for there to be pressure from the social environment, victims, and even the police themselves not to carry out diversion in order to maintain the "authority of the law".

In the field, other obstacles also arise due to the authorities' limited understanding of the nature of restorative justice in the context of criminal acts that are considered dangerous. Many officers focus more on repressive aspects and public security, rather than looking at criminogenic factors that influence children's behavior, such as the environment, relationships, group pressure, or ignorance of the dangers of sharp weapons. As a result, approaches that should be humanistic and educational become marginalized.

The hesitation of law enforcement officials in implementing diversion in Emergency Law cases demonstrates the ongoing gap between the legal idealism established by the Child Protection and Child Protection Service (SPPA) and the reality of implementation on the ground. This situation demands critical review and practical normative solutions to ensure that the principles of child protection and restorative justice can continue to be implemented without neglecting public safety.

This situation raises important questions: is diversion still mandatory in cases regulated by the Emergency Law? What are the diversion procedures in the context of crimes labeled as serious threats? And to what extent do law enforcement officials understand the limitations and scope of restorative justice in such cases?

The lack of uniformity in practice on the ground demonstrates the need for in-depth study of diversion procedures in juvenile cases that intersect with the Emergency Law. Variations in interpretation among law enforcement officials, including investigators, prosecutors, and judges, are a major factor contributing to the suboptimal implementation of diversion. In some cases, diversion is not implemented on the grounds that crimes regulated by the Emergency Law carry a high criminal penalty and pose a risk to public order. However, these assessments are often based solely on subjective perceptions of the level of danger of a crime, rather than on normative provisions as stipulated in the Juvenile Justice System (SPPA).

In addition to the issue of perceived criminal threats, officials' lack of understanding regarding the categories of crimes eligible for diversion also impacts the practice of handling juvenile cases. Many officials assume that all crimes arising from the Emergency Law are automatically ineligible for diversion. However, the primary parameter is the maximum penalty in the law's formulation, not the type of law. If the maximum penalty is less than seven years, then legally, diversion must still be pursued, regardless of whether the crime is considered dangerous or sensitive.

On the other hand, concerns about security aspects also contribute to the reason for not implementing diversion. Officials often feel that providing diversion opportunities to children involved in possession of sharp weapons or explosives can create a stigma that the law is lenient on high-risk behavior. Social pressure from the community or institutions often influences officials' decisions to reject diversion, especially when the case receives public attention. As a result, the preventive and constructive approach advocated by restorative justice is displaced by a more repressive approach.

In fact, the Child Protection and Child Protection Law explicitly states that diversion is mandatory at every level of investigation, provided two main requirements are met: (1) the sentence is less than seven years, and (2) it is not a repeat offense. This provision is imperative and designed to ensure that children do not experience the negative impacts of a lengthy and potentially traumatic formal justice process. Failure to implement diversion undermines the fundamental goals of the Child Protection and Child Protection Law, namely the protection, guidance, and social recovery of children.

This gap between normative regulations and implementation in the field highlights the disharmony in the understanding and implementation of the law. This not only has the potential to violate the principles of child protection but can also lead to injustice and inconsistency in decisions. Therefore, it is crucial to conduct a critical and systematic review of how diversion procedures should be applied within the context of the Emergency Law, the implementation obstacles faced by authorities, and strategies to strengthen understanding and consistency in the application of restorative justice as mandated by the Child Protection and Child Protection Law.

Furthermore, the application of restorative justice principles in Emergency Law cases remains controversial. On the one hand, restorative justice prioritizes the restoration of social relationships. On the other hand, crimes regulated by the

Emergency Law involve broad public interest and are therefore considered unsuitable for a restorative approach. This is where critical research is crucial to assess whether a restorative justice approach is truly applicable and how its procedures should be modified or adjusted.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) explicitly abandons the retributive justice model and adopts a restorative justice model. Its primary goal is to protect children from formal justice processes that can potentially lead to stigma (labeling) and disrupt their development. The primary instrument of this philosophy is diversion, which must be pursued at every stage of the investigation.

Article 7 paragraph (2) of the SPPA Law stipulates that diversion can only be implemented if the penalty is not more than 7 (seven) years' imprisonment. Meanwhile, criminal cases regulated by Emergency Law Number 12 of 1951 (specifically Article 2 paragraph 1, concerning possession of sharp weapons) carry a maximum penalty of 10 years' imprisonment. This creates a conflict at the implementation level: normatively, cases involving children under the Emergency Law do not meet the formal requirements for diversion. However, philosophically, processing children who commit crimes through formal courts contradicts the spirit of the Child Protection and the best interests of children.

This gap between norms and practice requires law enforcement officials (APH) to exercise discretion or broad interpretation. This study aims to map how law enforcement officials (APH) address this dilemma: do they strictly adhere to the seven-year limit, or do they seek legal loopholes (such as amending the articles of indictment or implementing alternative articles) to allow diversion to be implemented for the benefit of children.

Based on this explanation, this study is relevant for academically and practically analyzing how diversion procedures are implemented in criminal cases under the Emergency Law, as well as assessing their compliance with the principle of restorative justice, the core spirit of the SPPA. This study is expected to contribute to legal reform and improvements in the handling mechanisms for children in conflict with the law, particularly in sensitive cases that have the potential to disrupt public security. From the discussion above, several problem formulations are raised, as follows:

1. How do law enforcement officials (APH) interpret and exercise legal discretion in addressing the 7-year prison sentence limit in Article 7 paragraph (2) of the Juvenile Justice and Child Protection Law (SPPA) in cases of Emergency Law crimes involving children?
2. How can an effective diversion implementation model aligned with the principles of restorative justice be pursued for Emergency Law cases, even if the formal requirements for a criminal penalty are not met?
3. What are the main obstacles (legal, structural, and sociological) in implementing diversion in Emergency Law crimes, and what are the policy recommendations for overcoming these obstacles?

LITERATURE REVIEW

The juvenile justice system has undergone a significant paradigm shift from a retributive approach toward a restorative justice model that prioritizes the best interests of the child. According to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), diversion serves as a mandatory mechanism aimed at resolving juvenile cases outside formal court proceedings. Diversion seeks to protect children from the negative consequences of criminal proceedings, including stigmatization, psychological trauma, and social exclusion. This approach is closely associated with labeling theory, which argues that formal criminal labeling may reinforce deviant behavior and hinder a child's social development. Therefore, restorative justice emphasizes rehabilitation, accountability, victim participation, and social reintegration rather than punishment. The implementation of diversion reflects the state's commitment to safeguarding children's rights while promoting a more humane and constructive resolution of criminal cases involving minors.

However, the application of diversion becomes legally complex when children are involved in offenses regulated under Emergency Law No. 12 of 1951, particularly crimes related to the possession of sharp weapons, which carry a maximum penalty exceeding seven years of imprisonment. Article 7 paragraph (2) of the SPPA Law limits diversion to offenses punishable by imprisonment of less than seven years and that do not constitute repeat offenses. This normative restriction creates a tension between the formal legal requirements of diversion and the philosophical objectives of child protection embodied in the SPPA framework. Legal scholars have highlighted the importance of legal interpretation and discretionary decision-making by law enforcement authorities in addressing such conflicts. Theories of legal discretion suggest that police officers, prosecutors, and judges may exercise interpretative authority to balance legal certainty with substantive justice, particularly when rigid application of statutory provisions may undermine the welfare of children. Consequently, the debate concerning the applicability of restorative justice and diversion in Emergency Law cases involving children remains an important area of legal inquiry, requiring an examination of normative constraints, institutional practices, and policy alternatives to ensure that juvenile justice principles are effectively upheld.

METHODOLOGY

This study employs a normative-empirical legal research approach, a mixed approach that combines analysis of written legal norms with a study of their application in practice. This approach was chosen because the issues studied are not only at the regulatory level but also relate to how these legal provisions are implemented in the field by law enforcement officials. From a normative perspective, the study examines various laws, doctrines, and legal principles that form the basis for case resolution, including provisions regarding investigators' authority, the principle of restorative justice, and regulations on conflict resolution mechanisms within the criminal justice system. The normative analysis also aims to assess the conformity of investigators' actions with applicable positive legal provisions.

Meanwhile, from an empirical perspective, the study examines facts on the ground through interviews, observations, and analysis of case documents. Empirical research focuses on the behavior of law enforcement officials, community responses, social dynamics, and practical obstacles to implementing legal provisions. Through this approach, the research can demonstrate whether legal regulations have been implemented effectively, consistently, and in accordance with their stated purpose.

By combining these two approaches, normative-empirical legal research enables researchers to examine the gap between ideal law (*das sollen*) and the law in practice (*das sein*), while simultaneously providing a comprehensive picture of the effectiveness of the application of legal norms in actual social contexts. This mixed approach is particularly relevant for examining legal issues that require both theoretical and practical understanding.

In normative-empirical legal research, the research approach used is combinative, as it combines the study of written legal norms with the reality of what occurs on the ground. Therefore, this research utilizes several approaches, as follows:

1. **Statutory Approach.** This approach is used to examine various legal provisions governing the research topic. Researchers examine relevant laws and regulations, including statutes, government regulations, and other implementing regulations. This approach is crucial for understanding how positive law regulates the research object, as well as the applicable limitations, authorities, and procedures. Article 7 paragraph (2) of the Child Protection and Child Protection Law (which imposes a 7-year prison sentence) and relevant articles in the Emergency Law (which imposes a sentence of more than 7 years) are thoroughly examined to identify any discrepancies.
2. **Conceptual Approach.** This approach is used to understand the legal concepts that form the basis of the analysis, such as the concepts of investigation, inquiry, evidence, and criminal responsibility. Through this approach, researchers use legal theories from experts as a foundation for developing arguments. The main philosophies of the Child Protection and Child Protection are analyzed, namely the principles of Restorative Justice and the Best Interests of the Child.
3. **Case Approach.** The case study approach is used to examine court decisions or concrete cases related to the research object. Through this approach, researchers can observe how the law is applied in practice, the reasoning patterns of judges, and the development of legal interpretations by law enforcement officials. Case data or decisions related to crimes committed under the Emergency Law by children are used to illustrate implementation challenges.
4. **Sociological-Legal Approach.** This approach is used to obtain data directly from the field through interviews, observations, or documentation with relevant parties (investigators, prosecutors, forensic experts, and others). The purpose of this approach is to understand how legal provisions are

implemented in practice, the obstacles encountered, and the factors influencing the effectiveness of law enforcement.

The data sources in this study consist of:

1. Primary Data: Results of in-depth interviews with PPA investigators, public prosecutors, juvenile judges, and community guidance counselors (PK).
2. Secondary Data: Primary Legal Materials (Laws), Secondary Legal Materials (journals, books, research results), and Tertiary Legal Materials (legal dictionaries).

The data collection techniques in this research were:

1. Library Research
This was conducted by collecting and reviewing various legal materials and literature relevant to the research. This technique was used to obtain a theoretical and normative foundation.
2. Interviews
In-depth interviews were conducted with purposively selected informants, namely parties deemed to have knowledge and direct involvement.
3. Documentation
Documentation was conducted by reviewing documents related to the research object, such as minutes, settlement letters, case settlement documents, and other relevant administrative documents.

The data obtained were analyzed qualitatively, namely by describing, connecting, comparing, and interpreting data obtained from legal materials and interviews to answer the research problem formulation. The analysis was conducted using deductive thinking, namely drawing conclusions from general provisions to specific conditions encountered.

RESEARCH RESULT

A. Interpretation and Legal Discretion of Law Enforcement Officers Regarding the 7-Year Prison Sentence Limit in Article 7 Paragraph (2) of the Juvenile Criminal Justice System Law in Emergency Law Cases Involving Children

Normally, Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (JUV Criminal Justice Law) stipulates that diversion can only be implemented if the crime committed by the child is punishable by imprisonment of less than 7 (seven) years and is not a repeat offense. In practice, this provision creates problems when children are involved in crimes regulated by Emergency Law Number 12 of 1951, particularly those related to possession of sharp weapons, because the formal penalty exceeds the limit permitted for diversion.

In such circumstances, law enforcement officers (UU) generally find themselves in a dilemma between legal certainty and the best interests of the child. From a legal certainty perspective, investigators, prosecutors, and judges tend to adhere to the normative formulation of Article 7 paragraph (2) of the Child Protection and Child Protection Law, thus Emergency Law cases are deemed not to meet the formal requirements for diversion. However, from a child protection perspective, there is a push for law enforcement officers to

consider not only the severity of the criminal threat but also the child's motives, social situation, age, environment, and the concrete level of danger posed by their actions.

In practice, legal discretion usually arises in the early stages of case handling, particularly in the construction of the alleged article. If the legal facts indicate that the child's actions are more appropriately qualified under another article with a lesser criminal threat, then the opportunity for diversion can theoretically open up. However, this discretion should not be used arbitrarily but must be based on legal facts, the principle of proportionality, and the principle of the child's best interests. Thus, law enforcement officers' interpretation and discretion regarding the 7-year limit in Emergency Law cases are still very limited and tend to depend on the interpretive courage of officials in balancing child protection with the interests of public order.

B. Effective Diversion Implementation Model Aligned with Restorative Justice Principles in Emergency Law Cases

Although formally, cases involving children under the Emergency Law generally do not meet the requirements for diversion, a restorative justice approach can still be pursued within a broader framework as part of child protection. This means that when formal diversion cannot be implemented due to constraints under Article 7 paragraph (2) of the SPPA Law, a restorative spirit can still be implemented through a more humane, educational, and rehabilitative handling model.

An effective model in this context is restorative-oriented handling, which prioritizes deliberation, social assessment, guidance, and the involvement of family and community counselors (BAPAS), even as the case formally proceeds through the judicial system. In this model, law enforcement officials can utilize community research reports (litmas), the child's social background, and rehabilitative recommendations as primary considerations at every stage of the legal process. Thus, the legal process is not solely directed at punishment, but also at the child's recovery and social reintegration.

In addition, a restorative approach to Emergency Law cases can also be implemented through informal social mediation, such as apologies, commitments to family development, school supervision, guidance by community leaders, or behavioral counseling programs. While these forms are not always identical to diversion as defined in the SPPA Law, their substance still reflects the principles of restorative justice, namely repairing disrupted social relationships and preventing children from becoming further trapped in the criminal justice system. Therefore, the most realistic implementation model is not to "force diversion" on cases that do not meet formal requirements, but rather to integrate the spirit of diversion into the entire process of handling children's cases.

C. Main Obstacles to Implementing Diversion in Emergency Law Cases and Policy Recommendations

Obstacles to implementing diversion in Emergency Law criminal cases involving children can be classified into three main aspects: legal, structural, and

sociological. From a legal perspective, the most fundamental obstacle lies in the normative conflict between the spirit of child protection in the SPPA Law and the formal requirements for diversion, which are limited by the threat of imprisonment under seven years. In Emergency Law cases, the high criminal penalties automatically preclude formal diversion, although philosophically, children still require a developmental approach.

From a structural perspective, the main obstacle lies in the lack of uniform understanding among law enforcement officials in applying child protection principles to cases deemed sensitive to public security. Not all investigators, prosecutors, and judges share the same orientation toward restorative justice; some still tend to use a repressive and formalistic approach. Furthermore, the limited capacity of facilitators, community counselors, and social workers, as well as the lack of specific standard operating procedures (SOPs) for "grey area" cases such as those under the Emergency Law, also weaken the opportunity for more progressive and just solutions for children.

Meanwhile, from a sociological perspective, obstacles arise from the societal stigma against children carrying sharp weapons or involved in cases associated with security threats. The community and even the victims' families often perceive such cases as requiring strict punishment to serve as a deterrent. As a result, the recovery and development approach is often considered too lenient, even though it is precisely the approach that best aligns with child protection principles. Based on these constraints, the policy recommendations that can be put forward are: first, the need for clearer interpretation guidelines for law enforcement officers in handling cases of children who are related to high-threat crimes; second, increasing specific training for law enforcement officers related to restorative justice in sensitive cases; and third, strengthening the role of BAPAS, social workers, families, and schools as part of the child recovery system. Thus, even though formal diversion cannot always be implemented, the spirit of child protection and restorative justice can still be operationalized more effectively in law enforcement practices.

CONCLUSION AND RECOMMENDATION

A. Conclusion

The application of diversion for children in conflict with the law (ABH) in criminal cases under the Emergency Law in practice still faces normative and implementation issues. Legally, the provisions of Article 7 paragraph (2) of the SPPA Law limit diversion to crimes punishable by imprisonment of less than 7 (seven) years, while several crimes under Emergency Law Number 12 of 1951 carry a penalty exceeding this limit, thus formally not meeting the requirements for diversion. However, from the perspective of child protection and restorative justice, the resolution of children's cases should prioritize the development, recovery, and best interests of the child. Therefore, law enforcement officials in certain situations need to use an interpretive, professional, and proportional approach so that the handling of children's cases is not solely repressive but remains oriented towards the child's future. The main obstacles to implementing diversion in Emergency Law cases include legal constraints in the form of normative limitations of the law, structural constraints in the form of a lack of

uniform understanding among law enforcement officials, and sociological constraints in the form of social pressure, public perception, and concerns about public safety.

B. Recommendations

There is a need for stronger regulations or clearer technical guidelines regarding the handling of child cases in crimes that carry high penalties, particularly those stipulated in the Emergency Law, to prevent differences in interpretation among law enforcement officials. Furthermore, the capacity of law enforcement officials is needed through ongoing training on diversion, child protection, and restorative justice, so that the approach to children is not only oriented towards formal law enforcement but also focuses on social development and recovery.⁶ Furthermore, the involvement of families, community counselors, social workers, and the community needs to be strengthened so that the resolution of child cases can truly guarantee the best interests of the child, without neglecting the victim's sense of justice and the interests of public order.

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