

Differences in the Implementation of Diversion in the Juvenile Criminal Justice System: Analysis of the Karawang Court Decision

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Abstract: *The use of diversion in Indonesia's juvenile justice system aims to protect children from harmful stigmatization and provide rehabilitation. The objective of the study is to analyze the application of diversion in two court decisions: Decision Number 9/Pid.Sus-Anak/2022/PN Kwg and Decision Number 14/Pid.Sus-Anak/2022/PN Kwg. The research employs a normative juridical and descriptive-analytical approach through a literature review. The findings demonstrate that the application of diversion depends on the type of offense and the condition of the child. Decision Number 9 sentenced the child to 3 years and 6 months of imprisonment for a case of child sexual intercourse, whereas Decision Number 14 imposed 120 hours of community service for theft. The analysis reveals that judicial considerations are influenced by the severity and impact of the offense, and underscore the importance of balancing law enforcement with the protection of the child's future. This research shows that judicial discretion plays a crucial role in determining the implementation of diversion, highlighting the importance of aligning legal enforcement with restorative justice and child protection principles.*

Keywords: *Diversion, Juvenile Criminal Justice System, Restorative Justice*

Abstrak: Penggunaan pengalihan pada sistem peradilan pidana anak di Indonesia berupaya melindungi anak-anak dari stigma yang merugikan dan menyediakan rehabilitasi. Tujuan penelitian adalah menganalisis penerapan diversifikasi dalam dua putusan pengadilan: Putusan Nomor 9/Pid.Sus-Anak/2022/PN Kwg dan Putusan Nomor 14/Pid.Sus-Anak/2022/PN Kwg. Metode yang dipakai pendekatan yuridis normatif dan pendekatan deskriptif analitis melalui studi kepustakaan. Temuan studi membuktikan jika penerapan diversifikasi bergantung pada jenis tindak pidana dan kondisi anak. Putusan Nomor 9 menjatuhkan hukuman penjara 3 tahun 6 bulan untuk kasus persetubuhan anak, sedangkan Putusan Nomor 14 memberikan sanksi pelayanan masyarakat 120 jam untuk pencurian. Analisis menunjukkan bahwa pertimbangan hakim dipengaruhi oleh beratnya tindak pidana dan dampaknya, serta menekankan keseimbangan antara penegakan hukum dan perlindungan masa depan anak. Penelitian ini menegaskan pentingnya kebijakan yudisial hakim dalam menyeimbangkan penegakan hukum dan perlindungan anak.

Kata Kunci: *Diversi, Sistem Peradilan Pidana Anak, Keadilan Restoratif*

A. Introduction

Child protection is a crucial legal and social issue, especially in this era of rapid technological advancement. As the next generation, children have the right to be protected from physical and psychological threats. Children in conflict with the law often face negative stigma that can harm their future, making a humane and rehabilitative approach in handling their cases highly necessary. Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA) provides a legal foundation for building a justice system that employs diversion tactics to emphasize rehabilitation and development. Protection is defined as direct or indirect actions taken to shield children from threats or dangers that may harm their physical or emotional well-being. According to Wiyono, protection can also be understood as services provided by law enforcement or security officers to ensure that individuals feel safe and protected, both physically and emotionally.¹ Children, as the future generation of the nation, have the right to be protected, especially when they are involved in legal proceedings. In Indonesia, the juvenile criminal justice mechanism has undergone significant normative changes with the enactment of the Juvenile Criminal Justice System Law (UU SPPA). This law establishes a justice system that focuses on rehabilitation rather than retribution, with an emphasis on diversion.

The younger generation must be protected from the negative consequences of rapid development, global challenges in communication media, and advancements in science and technology. Shifts in lifestyle and parenting patterns also influence social conditions, affecting children's values and behavior. Children's deviant behavior is often influenced by external factors. Therefore, the Convention on the Rights of the Child, which has been acknowledged by the Indonesian government through Presidential Decree No. 36 of 1990, must be followed by providing legal protection for children.²

Simply put, diversion is a strategy to redirect children away from the formal justice system toward social services or counseling, so that they are not processed directly through the courts, but instead have their cases resolved outside of judicial proceedings. This approach aims to prevent the negative stigma that could adversely

¹Rizanizarli Rizanizarli et al., "The Application of Restorative Justice for Children as Criminal Offenders in the Perspective of National Law and Qanun Jināyat," *Samarah* 7, no. 1 (2023); Dedy Sumardi, Mansari Mansari, and Maulana Fickry Albaba, "Restoratif Justice, Diversi Dan Peradilan Anak Pasca Putusan Mahkamah Konstitusi Nomor 110/Puu-X/2012," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 11, no. 2 (2022): 248–65; Saidah, "Counterproductive Of Diversion For Children In Conflict With The Law: The Context Of Legal Imposition From The Perspective Of Islamic Law," *Russian Law Journal* 11, no. 3 (2023); Pasemah, *Juvenile Criminal Justice System in Indonesia* (Jakarta: Sinar Grafika, 2016), 27.

²Shannon M. Sliva and Mark Plassmeyer, "Effects of Restorative Justice Pre-File Diversion Legislation on Juvenile Filing Rates: An Interrupted Time-Series Analysis," *Criminology and Public Policy* 20, no. 1 (2021); Lisnawaty W. Badu and Julisa Aprilia Kaluku, "Restorative Justice in The Perspective of Customary Law: A Solution to The Settlement of Narcotics Crimes Committed by Children," *Jambura Law Review* 4, no. 2 (2022); Gerry Rizky Putra El Pasemah, *Guide to Diversion in the Juvenile Justice System in Indonesia* (Jakarta: Class 1 Correctional Guidance Center), 1.

affect the child's future.³ The English word "diversion," meaning redirection, is the root of the term *diversi*. In the context of the Juvenile Criminal Justice System (UU SPPA), the responsibility to divert the resolution of a child's case toward more developmental forms of engagement lies with law enforcement agencies, including the police and the courts. This diversion can take various forms, such as returning the child to their parents, issuing a warning, imposing fines, requiring compensation for damages, or providing guidance and counseling services.⁴ This is in accordance with Article 7 of the Juvenile Criminal Justice System Law (UU SPPA), which mandates the implementation of diversion in all juvenile criminal cases starting from the investigation stage.

The criminal justice system must address cases involving children who have committed or are accused of committing crimes. However, a child's involvement in the system should be minimized as much as possible. In practice, children are often treated merely as objects, receiving inadequate treatment and even experiencing harm. As a result, the concept of justice through diversion has emerged as an effort to protect children from formal judicial procedures.⁵

Law No. 11 of 2012 on the Juvenile Criminal Justice System introduces the concept of diversion, which refers to shifting from the formal criminal justice system to extra-judicial methods for resolving juvenile cases. In District Courts, diversion must be applied at every stage investigation, prosecution, and trial. However, since diversion is a relatively new concept in Indonesia, its implementation remains challenging across all levels. Moreover, there is a lack of clear guidelines on how diversion should be applied to juvenile offenders.⁶

A child who is at least 12 (twelve) years old but not yet 18 (eighteen) years old and is charged with committing a criminal offense is considered a child in conflict with the law, as referred to in Article 1 point 3 of Law Number 11 of 2012 on the Juvenile Criminal Justice System.

According to Article 1 of Law No. 11 of 2012 on the Juvenile Criminal Justice System, the entire process of handling cases involving minors in conflict with the law from the investigation stage to post-release guidance is referred to as the juvenile criminal justice system.

Article 5 of Law No. 11 of 2012 on the Juvenile Criminal Justice System states:

³Edhei Sulisty, Pujiyono, and Nur Rochaeti, "Restorative Justice as a Resolution for the Crime of Rape with Child Perpetrators," *International Journal of Criminology and Sociology* 10 (2021).; Koesno Adi, *Diversion in Juvenile Narcotics Crimes* (Malang: Setara Press, 2015), 122.

⁴Nur Rochaeti and Nurul Muthia, "Socio-Legal Study of Community Participation in Restorative Justice of Children in Conflict with the Law in Indonesia," *International Journal of Criminology and Sociology* 10 (2021); Ani Purwati, *Restorative Justice and Diversion in the Resolution of Juvenile Criminal Cases*. (Surabaya: Jakad Media Publishing, 2020), 201.

⁵Nashriana et al., "Enhancing Restorative Justice in Indonesia: Exploring Diversion Implementation for Effective Juvenile Delinquency Settlement," *Sriwijaya Law Review* 7, no. 2 (2023); Mita Dwijayanti, "Diversion for Juvenile Recidivism," *Rechtidee Jurnal Hukum* 12, no. 2 (2017): 225.

⁶Paula Miranda Sánchez et al., "Restorative Juvenile Penal Mediation in the Framework of the New National Youth Social Reintegration Service in Chile: Principles and Foundations of a Technical Standard," *Politica Criminal* 17, no. 33 (2022); Wahab Aznul Hidayat, "The Implementation of Diversion in the Juvenile Justice System," *Justisi* 5, no. 2 (2019): 86-87.

1. The Restorative Justice method must be the primary priority in the juvenile criminal justice system.
2. The components of the juvenile criminal justice system referred to in paragraph (1) include:
 - a. Investigation and prosecution of juvenile offenses carried out in accordance with the provisions of the laws and regulations;
 - b. Juvenile trials are conducted by courts within the general judiciary system. This includes guidance, direction, supervision, and/or assistance both during the commission of the offense and after prosecution.
3. Diversion is mandatory in the Juvenile Criminal Justice System as referred to in paragraph (7) letters a and b.

According to Law No. 11 of 2012 on the Juvenile Criminal Justice System: "The transfer of the resolution of a child's case from the criminal justice system to an alternative procedure is known as diversion."

According to Article 6 of Law No. 11 of 2012 on the Juvenile Criminal Justice System, the objectives of diversion are:

1. To establish harmony between the victim and the child;
2. To resolve the child's case outside the legal process;
3. To avoid the deprivation of the child's freedom;
4. To encourage community involvement;
5. To foster a sense of responsibility in the child.

Although the Juvenile Criminal Justice System Law (UU SPPA) provides a legal framework for the application of diversion, its practice still faces significant challenges, especially in serious criminal cases that do not qualify for diversion. This creates a gap between theory and practice, where children are often treated merely as legal objects without proper care. This study will analyze two court decisions to understand the application of diversion in different cases and the challenges faced in its implementation. The study examines two court rulings: *Decision Number 9/Pid.Sus-Anak/2022/PN Kwg*, involving a child sexual abuse case that did not qualify for diversion, and *Decision Number 14/Pid.Sus-Anak/2022/PN Kwg*, involving theft, which allowed for the application of diversion. The objective of this research is to understand how diversion is applied in juvenile criminal law in Indonesia and to provide recommendations for improving the legal system to better focus on child protection and rehabilitation. The selection of these two cases highlights the challenges in implementing diversion and the need for a thorough evaluation regarding the protection of children's rights and the goals of rehabilitation within the Juvenile Criminal Justice System.

This study employs a normative juridical approach, examining legal issues related to the use of diversion within the juvenile criminal justice system by analyzing written legal standards. Law No. 11 of 2012 and other relevant regulations serve as the primary legal framework. The implementation of diversion in the Juvenile Criminal Justice System is methodically explained in this descriptive analytical research,

focusing on the analysis of legal norms and their application in practice, as reflected in *Decision Number 9/Pid.Sus-Anak/2022/PN Kwg* and *Decision Number 14/Pid.Sus-Anak/2022/PN Kwg*. Using core legal documents such as Law No. 11 of 2012 and court decisions, along with secondary sources like books and scientific journals, data is collected through literature review, legal analysis, legal theory, and court decision examination. Primary, secondary, and tertiary legal sources are reviewed and analyzed, including statutes and court rulings, to evaluate how legal norms are applied in practice.

B. Mechanism of Diversion Implementation in the Juvenile Criminal Justice System

The use of diversion in laws governing the juvenile criminal justice system is specifically regulated in the Juvenile Criminal Justice System Law (UU SPPA). Diversion is the process of redirecting a child's case from the criminal justice system to an alternative outside the court. Besides preventing the criminalization of children, its purpose is to ensure the protection of children's rights and to achieve restorative justice. Upholding the principle of equality before the law is seen as requiring the application of the Restorative Justice concept.⁷

The legal basis for the implementation of diversion in the juvenile criminal justice system in Indonesia is regulated under the Juvenile Criminal Justice System Law (UU SPPA). This law serves as the primary foundation for the special treatment of children undergoing trial. According to Article 1, Point 7 of UU SPPA, diversion is the process of transferring the resolution of a child's case from the criminal justice system to another party. Further provisions regarding diversion are outlined in Articles 6 through 15, which explain the objectives, conditions, stages, and mechanisms of diversion implementation. Additionally, the Supreme Court Regulation (Perma) Number 4 of 2014 supports diversion by providing technical guidelines for judges during trial processes, including the procedures to follow if diversion is successful or fails.

Philosophically, the basis of diversion aligns with the mandate of Law No. 35 of 2014 on Child Protection, which emphasizes that "Every child has the right to protection from violence and treatment that harms their future." The Convention on the Rights of the Child (CRC), ratified by Indonesia through Presidential Decree No. 36 of 1990, outlines the fundamental principles of child protection. According to the Convention, criminal punishment should only be used as a last resort and for the shortest possible period, prioritizing the best interests of the child within the juvenile justice system. Thus, diversion represents a concrete form of implementing this principle within national law.

⁷Elena Mitskaya, "Theoretical Thoughts on Legal Regulation of Mediation in Criminal Process in Kazakhstan," *International Journal of Criminal Justice Sciences* 15, no. 1 (2020); Reda Manthovani et al., *Restorative Justice in the Practice of Criminal Case Handling in Indonesia* (Jakarta: Publica Indonesia Utama, IKAPI, 2023), 93.

The Juvenile Criminal Justice System Law stipulates that “juvenile courts will continue to examine offenses committed by minors under the age of 18, even if the trial process takes place after the child has reached 18 years old, as long as they are not yet 21 years old.” The child remains under supervision and subject to legal provisions in accordance with Article 20. However, handling cases involving minors who commit offenses but are still below the age of criminal responsibility presents various challenges. Questions arise, such as whether these children can be subjected to criminal sanctions, what actions can be taken, and what legal basis underpins the treatment of children below the minimum age of responsibility.⁸

In Law No. 11 of 2012, provisions regarding sanctions are outlined in Chapter V and Chapter XI. While Chapter XI regulates Administrative Sanctions, Chapter V governs Criminal Sanctions and Acts. From the titles of these chapters, it is clear that Law No. 11 of 2012 categorizes sanctions into criminal sanctions, actions, and administrative sanctions.⁹

“If a child’s criminal act is punishable by imprisonment of less than seven years and is not categorized as a repeated offense, the district court is obligated to apply diversion at the investigation stage of the child’s case. Based on this article, diversion cannot be applied if the minor commits a serious criminal offense punishable by more than seven years of imprisonment or if the offense is committed repeatedly. Under this classification, crimes punishable by more than seven years are considered serious offenses and therefore do not qualify to be resolved through the diversion mechanism.”¹⁰

Therefore, the level of criminal threat imposed on the child determines the applicability of diversion. If a child commits a serious crime punishable by more than seven years of imprisonment, diversion cannot be applied because the offense is considered a serious crime. Furthermore, minors who repeatedly commit offenses do not qualify for diversion. The recurrence of criminal acts indicates that the principle of diversion, which aims to encourage the child’s accountability and prevent the repetition of criminal behavior, is not fulfilled.¹¹

⁸Tushar Dakua, Margubur Rahaman, and K. C. Das, “An Analysis of the Spatial and Temporal Variations of Human Trafficking in India,” *Cogent Social Sciences* 10, no. 1 (2023); Krisna Liza Agnesta, *Child Protection Law* (Yogyakarta: Deepublish, 2016), 80; Chepi Ali Firman Zakaria, Ade Mahmud, and Aji Mulyana, “Legal Protection for Child Victims of Sexual Assault in a Restorative Justice Perspective,” *Jurnal Penelitian Hukum De Jure* 23, no. 1 (2023).

⁹Fajar Ari Sudewo, Hamidah Abdurrachman, and Fajar Dian Aryani, “The Application of Restorative Justice System through the Diversion of Children in Conflict with Laws in Central Java Polda (Regional Police of the Republic of Indonesia),” *International Journal of Psychosocial Rehabilitation* 24, no. 2 (2020); Wiyono, *Juvenile Criminal Justice System in Indonesia*, 139.

¹⁰Dyah Listyarini, “JUVENILE JUSTICE SYSTEM THROUGH DIVERSION AND RESTORATIVE JUSTICE POLICY,” *Diponegoro Law Review* 2, no. 1 (2017); Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, “Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia,” *Samarah* 5, no. 1 (2021): 426–49; Hera Susanti, “Diversion in the Juvenile Criminal Justice System in Indonesia and Its Review from the Perspective of Islamic Law,” no. 2 (2017): 180.

¹¹Faiz Rahman, “Contextualizing Restorative Justice Through Diversion Mechanism: A Study Of Indonesia’s Juvenile Justice System,” *Indonesia Law Review* 9, no. 3 (2019); Ulang Mangun Sosiawan, “Perspektif Restorative Justice Sebagai Wujud Perlindungan Anak Yang Berhadapan Dengan Hukum

Handling minors with legal issues by diverting their cases from the formal criminal justice system is known as the principle of diversion. According to the explanation of Law No. 11 on the Juvenile Criminal Justice System of 2012, protecting children from the harmful effects of the legal system, such as possible stigmatization, must be a top priority when dealing with criminal cases involving minors. Children who commit offenses like theft are often shunned by their peers. Therefore, the implementation of diversion is crucial to ensure that children have the opportunity to rehabilitate themselves and be reintegrated into society with dignity and acceptance.¹²

The stages of the diversion mechanism in the juvenile criminal justice system are carried out gradually and progressively, starting from the earliest stage of case handling, namely investigation, followed by prosecution, and finally trial in court.

"Article 7, paragraph (1) of Law No. 11 of 2012 states that investigators, public prosecutors, and judges reviewing juvenile cases at the district court examination level must attempt to carry out diversion if the child is involved in a criminal offense."

"Law No. 11 of 2012 Article 29 paragraph (1) states that investigators are required to carry out diversion within a maximum of 7 (seven) days from the commencement of the investigation."

Once a child is designated as a suspect during the investigation stage, the detective must attempt to initiate diversion. The child, parents or guardians, victims and/or their families, legal advisors, community counselors, and other relevant parties are involved in discussions as part of the diversion process. The Diversion Report stipulates that the discussion must be conducted no later than seven days from the start of the investigation. An order to terminate the investigation (SP3) may be issued by the investigator as a form of resolution if an agreement is reached, and the matter will not be pursued further.

If diversion is unsuccessful at the investigation stage, the obligation to pursue diversion continues to the prosecution stage. At this stage, the public prosecutor conducts a diversion deliberation following a similar procedure. If an agreement is reached, the prosecutor will not refer the case to the court, and the outcome of the agreement is reported for documentation. However, if diversion at the prosecution stage fails, the case will be forwarded to the court for regular trial proceedings.

At the trial stage, diversion is a mandatory effort that must be undertaken before the examination of the main case. The judge is required to inquire about and facilitate the implementation of diversion at the first hearing, allowing a maximum of 30 days for deliberation. The judge will assess the feasibility of diversion based on the case conditions, the child's background, and recommendations from the community guidance officer. If diversion is successful, the judge will issue a decision to discontinue

(Perspective Of Restorative Justice as A Children Protection Against The Law)," *Jurnal Penelitian Hukum De Jure* 16, no. 4 (2017).

¹²Bilher Hutahaeen, "Penerapan Sanksi Pidana Bagi Pelaku Tindak Pidana Anak Kajian Putusan Nomor 50/Pid.B/2009/PN.Btg IMPoSING," *Jurnal Yudisial* 6, no. 1 (2013); Sulaksono Hadi, "Application of Diversion Principles in Juvenile Theft Cases at Sleman District Court (Yogyakarta, 2016), 23.

the examination and declare that the legal process is resolved through diversion. If no agreement is reached, the examination process will proceed to the evidence presentation and verdict reading stages.

The implementation of diversion cannot be carried out unilaterally by law enforcement officers. The participation of the victim in the diversion process is a crucial element as part of the restorative justice approach, which places the victim in a central position to obtain recovery. In this context, the agreement resulting from diversion, or the diversion agreement, can take the form of reconciliation between the offender and the victim, with or without compensation; returning the child to their guardian; attending training organized by schools or Social Welfare Institutions (LPKS) for a maximum of 3 months; or performing community service.¹³

If diversion cannot be applied or if an agreement in the diversion process fails to be reached, then the provisions of Article 13 of the Child Criminal Justice System Law (UU SPPA) will govern the subsequent proceedings. Diversion will not be carried out, and the child justice process will continue if:

- a) No agreement is reached through the diversion process, or
- b) The agreement is not implemented.

However, even if diversion is unsuccessful, it does not mean that the child will be immediately sentenced. The judicial process continues to uphold principles of child rights protection, ensuring treatment appropriate to the child's needs and psychological development. These measures still prioritize the principle of restorative justice, even when diversion agreements are not reached. Throughout the criminal process, the focus on rehabilitation and reintegration of the child into the social environment remains a priority, in accordance with the objectives of the Child Criminal Justice System Law (UU SPPA).

C. Judicial Considerations in the Divergence of Verdicts in Case No. 9/Pid.Sus-Anak/2022/PN Kwg and No. 14/Pid.Sus-Anak/2022/PN Kwg

In deciding a case, judges must consider various aspects of the defendant, including whether the defendant committed the alleged act, their awareness of the legal violation, and their capacity to be held responsible for their actions. Judges must investigate and understand the legal principles prevailing in society in their capacity as law enforcement officials. To ensure that the decisions made represent the law and fulfill the community's sense of justice, judges not only apply the law but also create the ideals of justice that emerge.¹⁴ All parties involved in the legal process concerning

¹³Mahendra Ridwanul Ghoni and Pujiyono Pujiyono, "Perlindungan Hukum Terhadap Anak Yang Berhadapan Dengan Hukum Melalui Implementasi Diversi Di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (2020); Sumardi, Mansari, and Albaba, "Restoratif Justice, Diversi Dan Peradilan Anak Pasca Putusan Mahkamah Konstitusi Nomor 110/Puu-X/2012.," Syahriful Khaerul Hidayat, Hijrah Adhyanti Mirzana, and Dara Indrawati, "The Urgency of Implementing Diversion for Juveniles Involved in Narcotics Crimes" 5, no. 2 (2021): 367.

¹⁴Israr Hirdayadi and Hera Susanti, "Diversi Dalam Sistem Peradilan Pidana Anak Di Indonesia Dan Tinjauannya Menurut Hukum," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 6, no. 2 (2017);

children must always prioritize the best interests of the child, and this consideration must be taken into account in all decisions involving children facing legal issues.¹⁵ In accordance with the principle of the best interests of the child, the judges' decisions in both cases demonstrate efforts to reach a compromise between protecting the child's future and upholding the law.

Based on the judge's considerations in "Decision Number 9/Pid.Sus-Anak/2022/PN Kwg," all the requirements in Article 81 Paragraph (1) of Law No. 17 of 2016 and Law No. 11 of 2012 have been fulfilled, as it was proven legally and convincingly that the child committed violence by forcing another child to engage in sexual intercourse. The court took into account both mitigating and aggravating factors in determining the appropriate punishment, such as the child's behavior disturbing the community and lack of calmness, namely the child's polite attitude during the trial, no prior convictions, remorse for the actions, and status as an active student in the first grade of vocational high school.¹⁶

The judge's considerations in Decision Number 14/Pid.Sus-Anak/2022/PN Kwg revealed that the social investigation report recommended that the child with the initials (K) be given a criminal sanction in the form of Community Service, with the aim of educating and increasing the child's awareness of positive activities. This recommendation was based on several considerations, including the child's age of only 16 years, remorse for the act, and the hope that this sanction could help the child develop their potential before reintegrating into society. The judge emphasized that the purpose of sentencing is rehabilitation, not revenge, and this sanction is expected to prevent the child from repeating the offense. The judge considered mitigating factors such as the child's polite behavior during the trial, admission and remorse for the action, and the fact that the child had no prior convictions in determining the appropriate punishment. Aggravating factors included the child's actions causing disturbance to the community.¹⁷

In the context of the application of diversion, "Decision Number 9/Pid.Sus-Anak/2022/PN Kwg and Decision Number 14/Pid.Sus-Anak/2022/PN Kwg" demonstrate significant differences in the judges' considerations. In Decision Number 9, the judge handled a case of child sexual intercourse by (DA), emphasizing that specific requirements for sexual violence against a child had been met, supported by medical evidence (visum) and psychological examination results showing trauma to the victim. Diversion was not applied because this criminal act is an exception under

N., & Rahmiati, R. Nurhafifah, "Judges' Considerations in Sentencing Regarding Aggravating and Mitigating Factors," *Kanun Jurnal Ilmu Hukum* 17, no. 2 (2015): 343.

¹⁵Yutirsa Yunus, "Analisis Konsep Restorative Justice Melalui Sistem Diversi Dalam Sistem Peradilan Pidana Anak Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 2, no. 2 (2013); Rusli Muhammad, *Sistem Peradilan Pidana Anak Indonesia* (Yogyakarta: FH UII Press, 2022); Abintoro Prakoso, *Pembaharuan Sistem Peradilan Pidana Anak* (Yogyakarta: Laksbang Grafika, 2013); Aida Dewim, Fifink Praiseda Alviolita Fuad, "The Application of Diversion for Juvenile Theft Committed Alongside Adults," *Jurnal Yudisial* 15, no. 3 (2022): 370.

¹⁶"Putusan_9_pid.Sus-Anak_2022_pn_kwg_20250319130043," n.d.

¹⁷"Putusan_14_pid.Sus-Anak_2022_pn_kwg_20250219002955," n.d.

Article 7 paragraph (2) letter a of the Child Justice System Law (UU SPPA), which stipulates that if the threat of imprisonment is more than seven years, diversion cannot be applied. To hold the child accountable, the court sentenced him to three years and six months' imprisonment and two months of work training.

Unlike Decision Number 9, Decision Number 14/Pid.Sus-Anak/2022/PN Kwg deals with a case of aggravated theft committed by a child (K). In this case, the Panel of Judges prioritized restorative justice and social rehabilitation. Although the child was proven to have committed the crime under Article 363 paragraph (1) points 4 and 5 of the Criminal Code (KUHP), the judge assessed that the child was not the main perpetrator but only an accomplice. The judge considered the diversion recommendation from the Probation Officer and the child's remorse and desire to continue education. As a result, the judge imposed an alternative criminal sanction in the form of community service for 120 hours, demonstrating that the juvenile justice system focuses on recovery and social reintegration.

The fundamental difference between the two decisions lies in the type of criminal act and its impact on the victim. In the case of (DA), the sexual crime against a 12-year-old girl is considered a serious offense with significant psychological impact on the victim; thus, diversion cannot be applied as it does not meet the legal requirements. Meanwhile, in the case of (K), although there was material loss to the victim (PT. Alfaria Trijaya), there were no fatalities or severe physical and psychological damage. This affirms that diversion can be applied if both substantive and formal conditions are met, and the child's actions can still be resolved through a restorative justice approach.

These two decisions demonstrate that the application of diversion in the juvenile criminal justice system is strongly influenced by judicial policies in assessing the elements of the offense, the condition of the child, and the potential for rehabilitation for both the victim and the offender. Judges consider not only the written legal norms but also the social impact and substantive justice. A comparison between the two rulings shows that the implementation of diversion depends on the type of criminal act, the child's role, and the assessment results from the relevant parties. In Decision No. 9, diversion was not applied because the offense was a serious crime (sexual violence against a child) that cannot be resolved outside the court. In contrast, in Decision No. 14, diversion was applied because the juvenile offense was classified as minor to moderate, and the child showed a cooperative attitude and had a strong potential for rehabilitation.

The judges' considerations in both rulings show that in the juvenile criminal justice system, judges apply restorative justice alongside imposing sanctions. They take into account various multidisciplinary aspects, including legal, social, psychological, and moral factors. In serious cases such as sexual crimes, the focus is on protecting the victim and public justice, whereas in minor cases, the emphasis is on the child's recovery and guidance. Both decisions demonstrate the selective and proportional application of the best interests of the child principle. Diversion is not an absolute right

but an option that must be carefully evaluated in accordance with the values of justice and community protection.

From the analysis, it can be concluded that the judges' considerations in applying diversion are situational and take into account many aspects comprehensively. In the case of sexual violence against a child (Decision No. 9), the judge did not apply diversion because the child's act was considered a serious crime with severe physical and psychological impacts on the victim. This is also in line with the stipulation of Article 7, paragraph (2) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which explicitly states that diversion does not apply to crimes that are not first offenses and carry a sentence of more than seven years. Meanwhile, in the case of aggravated theft (Decision No. 14), the judge applied diversion because the child's act was still considered within the scope of rehabilitation and did not involve direct physical violence against the victim. The child also showed good intentions to change and was still of a productive age to continue education. The application of diversion in the form of community service sanctions becomes a middle ground that combines law enforcement aspects with a restorative approach.

The differences in the verdicts of Case Number 9/Pid.Sus-Anak/2022/PN Kwg and Case Number 14/Pid.Sus-Anak/2022/PN Kwg demonstrates how judicial considerations in rendering decisions are significantly influenced by the severity of the offense and the resulting impact. In Verdict Number 9, the child was sentenced to 3 years and 6 months of imprisonment and 2 months of vocational training for committing sexual intercourse with a minor, which involved violence and caused severe trauma to the victim. The judge assessed that the offender's actions had serious physical and psychological effects on the victim, taking into account the medical report and psychological evaluation as supporting evidence for the charges. Meanwhile, in Verdict Number 14, although the child was found guilty of committing aggravated theft in concert with others, the judge imposed a sentence of 120 hours of community service. This reflects the view that, despite theft being a serious offense, the child offender could still be rehabilitated outside of a correctional facility, considering factors such as the child's age, intent to continue schooling, and the need for social guidance. Both verdicts illustrate the application of the principle of restorative justice within Indonesia's Juvenile Criminal Justice System, albeit with different degrees of punishment in accordance with the level of culpability, the impact of the offense, and the need for protection of both the child and the community.

Both decisions demonstrate that the juvenile criminal justice system implemented in Indonesia provides judges with the room to balance law enforcement and the protection of the child's future. This shows that the application of diversion is not merely a formal procedure but also a tangible manifestation of the principles of child protection and restorative justice in judicial practice.

D. Conclusion

The implementation of diversion in the juvenile criminal justice system, according to Law No. 11 of 2012, aims to protect the rights of the child and realize restorative justice through out-of-court settlement. Diversion must be pursued as long as the child has not committed a serious or repeated crime. The process emphasizes deliberations involving the victim and related parties, while prioritizing the best interests of the child. If diversion fails, the legal process must still focus on rehabilitation and social reintegration rather than mere punishment.

In the analysis of the differences between Verdict No. 9/Pid.Sus-Anak/2022/PN Kwg and Verdict No. 14/Pid.Sus-Anak/2022/PN Kwg, it is evident that the judges' considerations in applying diversion were significantly influenced by the nature and impact of the offense committed by the child, as well as the child's condition and potential for rehabilitation. In Verdict No. 9, the judge rejected the application of diversion on the grounds that the sexual offense against a child was considered serious and had severe consequences for the victim, in accordance with prevailing legal provisions. Conversely, in Verdict No. 14, the judge applied diversion in the form of community service, considering that the child's act was relatively minor and the child demonstrated a genuine intention to reform. These two verdicts reflect the juvenile justice system's effort in Indonesia to balance law enforcement with the protection and rehabilitation of children, and underscore the importance of a restorative justice approach in handling cases involving minors.

Further research is recommended to conduct a comparative analysis of the implementation of diversion in the Juvenile Criminal Justice System across various jurisdictions in Indonesia. The aim is to identify the extent of consistency in applying the principle of restorative justice as well as the factors influencing the success or failure of the diversion process. Additionally, it is important to explore the perspectives of stakeholders, including law enforcement officers, children in conflict with the law, victims, child advocates, and officials from the Juvenile Correctional Institution (BAPAS), to gain a more holistic understanding of diversion practices in the field. Research can also focus on evaluating training policies for law enforcement personnel to strengthen their capacity in effectively and fairly implementing diversion, in accordance with the principle of the best interests of the child.

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