

Evaluation of the Implementation of Diversion and Restorative Justice in the Child Criminal Justice System in Jayapura City

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Abstract

This research aims to analyze the implementation of diversion and restorative justice in the Juvenile Criminal Justice System (SPPA) in Jayapura City. This research uses a sociological juridical approach with qualitative research methods. Data was collected through literature study and field research, including interviews with law enforcement officials and the community. The research results show that the public's understanding of diversion and restorative justice still needs to improve, while law enforcement officials' understanding is quite good. However, community satisfaction with implementing diversion and restorative justice is still low due to several factors, such as a lack of attention to victims, judge decisions that are considered unfair, and criminal sanctions that are considered too light. Apart from that, there are several obstacles in implementing diversion and restorative justice, such as difficulty presenting child witnesses, complicated statements from perpetrators, and limited space for child detention. This research concludes that implementing diversion and restorative justice in Jayapura City is yet to be optimal and needs to be improved through more intensive outreach, increasing the capacity of law enforcement officers, and improving supporting facilities.

Keywords: Diversion, Justice Restorative, Child.

Introduction

The criminal justice system in Indonesia has faced various challenges, particularly in handling cases involving children. The traditional criminal justice approach, which focuses on punishment and retribution, has often failed to address the unique needs and circumstances of child offenders (Susilowati et al., 2022). In recent years, there has been a growing recognition of the importance of implementing alternative approaches, such as diversion and restorative justice, to address juvenile delinquency.

Violence against children is a worrying global issue, and Indonesia is no exception to this problem. Children, as a vulnerable group, often become victims of various forms of violence, whether physical, psychological, sexual, or neglect (Law Number 35 of 2014 concerning Child Protection). This violence can occur in multiple environments, including homes, schools, places of worship, and the wider community. Ironically, homes that are supposed to be safe havens for children

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often become locations where violence occurs. Data shows that perpetrators of violence against children are usually people closest to them, such as parents, siblings, or even caregivers.

The impact of violence on children is very destructive, both in the short and long term. Children who are victims of violence can experience physical, psychological, and social disorders. They may experience learning difficulties, behavioral disorders, depression, anxiety, and even post-traumatic stress disorder (American Psychological Association, 2014). In the long term, the impact of violence can affect a child's overall development, including mental health, social skills, and productivity in adulthood (Anda, 2012).

To overcome the problem of violence against children, the Indonesian government has passed Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). This law mandates the application of diversion and restorative justice in handling cases of children in conflict with the law. Diversion is the transfer of resolution of children's cases from the criminal justice process to a process outside criminal justice. Meanwhile, restorative justice emphasizes restoration to its original state, not retaliation (SPPA Law).

restorative justice is expected to provide better protection for children in conflict with the law by prioritizing the best interests of the child (*the best interest of the child*) (OHCR, 1989). This approach aims to avoid stigmatization of children, restore the relationship between the perpetrator and the victim, and help children return to a normal social environment (Aditama & Yolanda, 2020). In addition, research shows that rehabilitation programs for children in conflict with the law have positive long-term impacts (Manuel, 2019).

Restorative justice in SPPA in Indonesia, especially in Jayapura City, still faces various challenges. Research shows that public understanding of diversion and restorative justice still needs to improve. This can hinder community participation in diversion and restorative justice processes and reduce the effectiveness of these approaches.

Apart from that, community satisfaction with implementing diversion and restorative justice still needs to be higher. The public often feels that victims do not receive enough attention and rights, that the judge's decision is unfair, and that criminal sanctions are too light. This can give rise to people's distrust of the criminal justice system and encourage them to seek justice through means outside the law.

Law enforcement officers also face various obstacles in implementing diversion and restorative justice. Difficulty presenting child witnesses, complicated statements from perpetrators, and limited space for child detention are some examples of barriers that are often faced. These obstacles can hinder the

diversion and restorative justice process and reduce its effectiveness in protecting children in conflict with the law.

Implementing diversion and restorative justice in the juvenile criminal justice system in Jayapura City is crucial to ensuring the protection and rehabilitation of children in conflict with the law. Restorative justice, which emphasizes the restoration of victims, offenders, and the community, has the potential to provide more holistic and effective approaches to addressing juvenile crime. The long-term effects of rehabilitation programs for children in conflict with the law are positive, with rehabilitated youth reporting better perspectives on life and improved coping skills.

However, the implementation of these alternative approaches has its challenges. Harmonizing restorative justice principles in various child-related laws in Indonesia is crucial, as the efficient implementation of restorative justice can only be improved if applied correctly (Clifford & Arief, 2017). Additionally, the position of victims in the restorative justice process is an important consideration, as the unique practical considerations faced when implementing restorative justice in novel jurisdictions, such as outside of the West, must be addressed.

Despite these challenges, the implementation of diversion and restorative justice in the juvenile criminal justice system in Jayapura City holds promises for addressing the complex issues faced by child offenders and providing them with the support and rehabilitation they need to reintegrate into their communities and leads to fulfilling lives.

This research is important for evaluating the implementation of diversion and restorative justice in SPPA in Jayapura City. By identifying the challenges and obstacles faced, this research can provide recommendations for improving policies and practices in the field.

The main objective of this research is to analyze the implementation of diversion and restorative justice in SPPA in Jayapura City and identify factors that influence its effectiveness. Hopefully, this research can contribute to efforts to protect children in conflict with the law in Indonesia, especially in Jayapura City. By understanding the existing challenges and obstacles, policies and practices can be improved to ensure that every child in conflict with the law gets the protection and justice they deserve.

Research Methods

This research method is normative legal research, and the approach used is conceptual and statutory. Data collection techniques consist of observation, interviews, and document analysis or resolution of child abuse cases. The legal materials used are primary legal materials in the form of laws. Meanwhile,

secondary legal materials are in the form of reference books, expert opinions, scientific publications, websites /internet, and others according to the topics discussed (Soekanto & Mamudji, 2003)

Results and Discussion

The following table shows the level of understanding of the community, law enforcement officials, and the level of satisfaction of Jayapura City residents regarding diversion and restorative justice efforts in the SPPA, namely:

Table 1 Level of Community Understanding of Diversion and Violence Restorative

No	Category	Number of Respondents	Percentage
1.	Very Understand	12	5.71
2.	Understand	17	8.10
3.	Not understand	35	16.67
4.	Do not understand	146	69.52
	Amount	210	100

Source: Processed Data, August 2024.

Based on Table 3, it is revealed that as many as 210 respondents answered the proposed questionnaire, namely 146 respondents answered that they did not understand, and 35 respondents answered that they did not understand. The total number of categories that do not understand is $146+35=181$ respondents. Meanwhile, 17 respondents answered that they understood, and 12 responded that they understood. The total number of categories that have been understood is $17+12=29$ respondents. Thus, the majority of people in Jayapura City still do not properly understand diversion and restorative justice efforts. The difference between the number of respondents who do not understand and those who understand seems very large. This indicates that the implementation of diversion and restorative justice efforts in Jayapura City has not gone well and needs to meet the targets desired by the SPPA Law. One of the failures was caused by a lack of socialization by law enforcement officials, central/regional governments, and other related parties (*stakeholders*).

The level of understanding of law enforcement officials regarding diversion and restorative justice can be depicted in the following table:

Table 2 Level of Understanding of Law Enforcement Officials Regarding Diversion and Violence Restorative

No	Category	Number of Respondents	Percentage
1.	Very Understand	27	57.45
2.	Understand	12	25.53
3.	Not understand	5	10.64
4.	Do not understand	3	6.38
Amount		47	100

Source: Processed Data, August 2024.

Based on the number of respondents, namely 47 respondents, table 4 shows that law enforcement officers who answered the questionnaire submitted, namely three respondents answered that they did not understand, and five responded that they did not understand. The total number of categories that do not understand is $3+5=8$ respondents. Meanwhile, 12 respondents answered that they understood, and 27 responded that they understood. The total number of categories that have been understood is $27+12=39$ respondents. Thus, the level of understanding of law enforcement officers, when compared with the knowledge of the public, looks very different, namely, that many law enforcement officers seem to understand. Law enforcement officers' level of knowledge and understanding regarding diversion and restorative justice is considered very good. This is because it is their duty and responsibility as law enforcement officials to know and, at the same time, apply it in dealing with cases that have occurred so far. However, respondents who answered did not understand because they did not work in the criminal field.

The level of community satisfaction regarding diversion and restorative justice can be described in the following table:

Table 3 Level of Community Satisfaction with Diversion and Justice Restorative

No	Category	Number of Respondents	Percentage
1.	Very satisfied	2	0.95
2.	Satisfied	5	2.38
3.	Less satisfied	43	20.48
4.	Not satisfied	160	76.19
Amount		210	100

Source: Processed Data, August 2024.

Based on the number of respondents, namely 210 respondents, table 5 shows that 160 respondents answered the questionnaire and were dissatisfied, and 43 answered dissatisfied. The total number of unsatisfied categories was $160+43=203$ respondents. Meanwhile, 5 respondents answered satisfied, and two respondents answered very satisfied. The total number of satisfied categories was only $2+5=7$ respondents. This means that community satisfaction with diversion and restorative justice efforts is still unhappy. This is due to several factors, namely: the victim does not receive enough attention and rights, the results of the judge's decision are not satisfactory to the victim, the victim does not receive adequate compensation, criminal sanctions are unable to provide a sense of justice and are unable to treat the suffering and losses experienced by the victim, Criminal sanctions are considered to be too light and not commensurate with the suffering experienced by the victim, the victim has a little place if the case is handled in court, law enforcement officials are still inclined to defend the interests and rights of the perpetrator rather than the interests of the victim, the victim cannot ask for compensation directly from the perpetrator and his family because the victim's position is only as a witness and the right to sue has been represented by law enforcement officials in court proceedings. It is believed that the partiality of law enforcement towards the perpetrators has caused deep disappointment. Perpetrators are generally not subject to maximum criminal sanctions and are sometimes considered very light. This condition causes people to try to seek justice themselves through local wisdom (customary justice).

As is known from literature searches, child violence is an act in the form of physical harm (Asy'ari, 2019), emotional violence, sexual violence, child neglect, and child exploitation (Gani, 2016). Cases of child violence seem to never end; from day to day, they always occur, both in the home environment and outside the home. It does not know the time and place because cases of child abuse can happen anywhere and at any time. Violence in the house (family), at school, places of worship, and also in public places when children socialize in society (Silaban, 2023). Ironically, children are very vulnerable to becoming victims of violence in their own home (family) environment. The perpetrators are generally mothers, fathers, older siblings, grandfathers, grandmothers, household assistants, or others living in the house. Meanwhile, children are also vulnerable to becoming victims outside the home, such as in the school environment. Violence against children in the school environment is carried out by seniors, classmates, and even teachers or school officials. Types of child violence include physical violence, psychological violence, sexual violence, social violence, and traditional/customary violence (Utami, 2018) .

Regulations governing the protection of children as perpetrators refer to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (abbreviated as UU SPPA), to ensure that children remain dignified by their human rights. (Utami, 2018) . Handling children's cases must prioritize a restorative justice approach and strive for diversion at every stage. From the investigation stage, prosecution and examination of children's cases in district court. This is to avoid and distance children from the justice process so that they can avoid stigmatization of children who are in conflict with the law, and it is hoped that children can return to their normal social environment (Ansari et al., 2021). Thus, the diversion system is a pathway for resolving criminal cases outside the formal legal process based on a restorative justice approach (*restorative justice*) . Diversion and restorative justice prioritize deliberation and consensus involving victims, perpetrators, law enforcement officials, and the community (Utami, 2018) .

The juvenile criminal justice system (abbreviated as SPPA) can be seen in Article 1 number 1 U. SPPA is "the entire process of resolving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving a sentence." Understanding restorative justice (*restorative justice*) according to Article 1 number 6 of the SPPA Law is "the resolution of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration back to the original condition, and not retaliation ." Article 1 number 7 of the SPPA Law defines diversion as "the transfer of the resolution of children's cases from the criminal justice process to a process outside criminal justice." (Bahreisy et al., 2022).

Protection of children through the concept of international diversion refers to the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)* General Assembly A/RES/40/33, November 29 1985 , that to handle children's cases requires consideration by law enforcement officials without resorting to criminal justice. Therefore, the police, prosecutor's office, or other institutions that handle children's cases have the authority to exercise discretion to resolve cases without going through a formal trial (Al-Ghony et al., 2024). According to the Convention on the Rights of the Child (*Convention on The Rights of The Child* 1989), although it is possible to apply (criminal) law to children who are deemed to have committed crimes, the most important thing is that they must still pay attention to the best interests of the child (*the best interest of the child*) (Saptaningrum, 2022) . International conventions became the basis for the formation of Law Number 23 of 2002, amended by Law Number 35 of 2014 concerning Child Protection and updated by Law Number 17 of 2016.

In theory, experts have formulated the meaning of *restorative justice* namely: Tony Marshall stated that: "*a generally accepted definition of restorative justice is that of a process whereby the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future* " (Hidayat et al., 2021) . Sarre, stated that : "*... restorative justice is concerned with rebuilding relationships after an offense , Rather driving a wedge between offenders and , their communities, which is the hallmark of modern crime justice systems* " (Budiyanto, 2016) . John Braithwhite, said *restorative Justice* is a process where all parties involved in a particular violation work together to collectively solve how to deal with the consequences of the violation and its implications in the future (Yuspar, 2023). Furthermore, Muladi argued *that restorative justice justice*) is a theory that emphasizes recovering losses caused or incurred by criminal acts. Recovering these losses will be achieved through cooperative processes that include all interested parties (Shodikin, 2018). Albert Eglash said that *restorative justice* is an alternative restitutive approach to the retributive justice and rehabilitative justice approaches (Edyanto, 2017).

Restorative justice approach, as regulated in the SPPA Law, transfers the resolution of children's cases from the criminal justice process to a process outside criminal justice (Annas, 2018). The resolution process involves all parties to jointly find the best solution to the problem faced by the child. In this way, protecting children who conflict with the law prioritizes the child's best interests (Utami, 2018). The restorative justice approach is a paradigm that can be used as a frame for strategies for handling criminal cases, and it aims to address dissatisfaction with the current criminal justice system (Hidayat et al., 2021). In police institutions, the implementation of restorative justice refers to the National Police Chief's Circular Letter Number 8 of 2018 concerning the Implementation of Restorative Justice (*Restorative Justice*) in resolving cases. In the circular letter, the stages of implementing restorative justice are carried out after an agreement between both parties is followed up with a special case title mechanism by inviting both parties. The results of the special case title become the basis for the investigator to issue an Order to Stop the Investigation or Inquiry and a Termination Decree Investigation or Investigation (Setiawan et al., 2021) .

Previously, police institutions had regulations regarding the resolution of criminal cases using a penal mediation mechanism: Regulation of the Chief of Police of the Republic of Indonesia (Perkap) Number 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of Community Policing in Carrying Out Police Duties. It was confirmed by the Letter of the Chief of Police of the Republic of Indonesia (Surat Kapolri) Number B/3022/XII/2009/ Sdeops Dated 14

December 2009 Regarding Handling Cases Through *Alternatives Dispute Resolution* (Suhariyanto, 2017) . Then it was followed up with 4 (four) telegram letters (ST), namely: ST Kabareskrim Polri Number: ST/110/V/2011 regarding Settlement of Cases Through Alternatives Outside the Judicial Process, ST Kabareskrim Polri Number: ST/209/IX/2011 regarding the Suspension of the Implementation of ADR in the Police Criminal Investigation Department, ST Kabareskrim Polri Number: ST/255/XI/2011 regarding the Temporary Postponement of the Implementation of Case Settlement Outside the Court Session or ADR in the Criminal Investigation Department, ST Kabareskrim Polri Number: STR/583/VIII/2012 regarding Restrictions Application of ADR in Handling Criminal Cases. However, in the end, the settlement through ADR was stopped because it was not by the proper legal objectives (Simanjuntak, 2023) .

Furthermore, the Republic of Indonesia Police Chief Regulation (Perkap) Number 15 of 2013 concerning Procedures for Handling Traffic Accidents was issued, stating that the handling of cases can be resolved outside of court based on a peace agreement made between the perpetrator and the victim by providing an obligation to compensate for the losses incurred. In 2015, the National Police Chief issued Circular Number Se/6/X/2015 concerning Handling *Hate Speech Speech*), that case handling is carried out by bringing together the perpetrator and the victim to seek and find a peaceful solution. In 2018, the National Police Chief again issued Circular Letter Number SE/8/VII/2018 concerning the Implementation of Restorative Justice (*Restorative Justice*) in Resolving Criminal Cases (Rahim, 2022). It is further confirmed by Perkap Number 6 of 2019 concerning Non-Criminal Investigations that the investigation process can be carried out with restorative justice (Simanjuntak, 2023). Then, it was updated with the Republic of Indonesia State Police Regulation (Perpol) Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice (Saputra et al., 2023).

At the prosecutor's office, restorative justice refers to Prosecutor's Regulation (Perja) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice . This regulation has given the authority to the public prosecutor to close cases in the public interest if there has been a resolution of the case outside of court and there has been a restoration of the original situation using restorative justice . Therefore, the public prosecutor carries out the termination of prosecution based on restorative justice responsibly and is submitted in stages to the Head of the High Prosecutor's Office. Apart from that, terminating a prosecution must also consider, among other things, the background to which the criminal act was committed, the level of reprehensibility of the act, the amount of loss, the existence of recovery efforts, and whether peace has been achieved

between both parties. We must also pay attention to the response and harmony of society, propriety, decency, and public order. There are at least 5 principles of restorative justice: justice, public interest, proportionality, punishment as a last resort, and fast, simple and low cost. Therefore, cases that can be carried out with a restorative justice approach are cases that are not difficult to restore to their original condition and are not cases of sexual crimes (Thea, 2023) .

Restorative justice settlements must meet formal requirements formal and material requirements. Formal requirements include: a request for peace, a statement of peace, making a report on additional examinations, a recommendation for a case, the perpetrator does not mind paying compensation, and does not cause human casualties. Meanwhile, the material requirements, namely: do not cause public unrest and rejection, do not result in social conflict, there are no objections from all parties to waive the right to sue, the level of offense is minor, the case has not yet begun to be investigated, and it is not repeated (recidivist) (Simanjuntak, 2023). In principle, restorative justice resolution is limited to handling criminal cases that are light, have small material losses, are agreed upon by the parties, are carried out through the principles of deliberation and consensus, respect social/customary norms, and fulfill the principles of justice and if achieved through ADR, the perpetrator will no longer be touched by other legal actions (Manihuruk, 2022) .

In carrying out their duties, police officers are given discretionary authority to stop the investigation process and divert the case they are handling into a peace process. (Setyawan, 2014) . Based on their discretionary authority, police officers can divert (*diversion*) cases handled by children without going through the court process (Edyanto, 2017) . The SPPA Law has set a limitation that diversion can only be carried out for criminal acts that carry a prison sentence of less than 7 (seven) years and the act committed does not constitute a repetition of a criminal act. Apart from the SPPA Law, there is also Government Regulation Number 65 of 2015 concerning Guidelines for Implementing Diversion and Handling Children Who Are Not Yet 12 (Twelve) Years Old. Article 3 of Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System states that diversion can be carried out for children who are charged with subsidiary, alternative, cumulative, or combined, provided that the threat of punishment for one of the charges is still met. Under seven years in prison (Meliala, 2024) . Thus, diversion can only be applied to children who are 12 (twelve) years old but not yet 18 (eighteen) years old or 12 (twelve) years old even though they have been married but are not yet 18 (eighteen) years old, which is suspected committing a criminal act (Article 2) (Satriani, 2017) .

The results of this research reveal a significant disparity between the level of understanding of the community and law enforcement officials regarding the concepts of diversion and restorative justice. While law enforcement officials demonstrate relatively adequate understanding, much of the public still needs to understand these concepts comprehensively. These findings indicate public outreach and education deficiencies regarding the Juvenile Criminal Justice System (SPPA) and alternative approaches. The community's lack of understanding can hinder their active participation in the diversion and restorative justice process, and can potentially reduce the legitimacy of the juvenile criminal justice system in the eyes of the public.

Apart from that, the low level of community satisfaction with implementing diversion and restorative justice is a crucial point that needs further evaluation. This dissatisfaction, which is mainly based on a perception of a lack of attention to victims, judges' decisions that are considered unfair, and criminal sanctions that are considered too light indicates that the restorative justice approach, which should prioritize victims' recovery, has not been fully realized in practice. This could have implications for the emergence of public distrust of the justice system and the potential to encourage people to seek justice through mechanisms outside the formal legal framework.

The obstacles faced in implementing diversion and restorative justice, such as difficulties in presenting child witnesses and limited supporting infrastructure, are also significant obstacles that must be overcome. These obstacles can hinder resolving children's cases effectively and fairly, so serious efforts are needed to overcome them. Increasing the capacity of law enforcement officials to handle child cases, providing adequate facilities, and developing alternative mechanisms for presenting child witnesses are several strategic steps that can be taken to overcome these obstacles.

Comprehensively, the findings of this research underline that the implementation of diversion and restorative justice in Jayapura City still requires substantial improvement. More systematic, structured, and comprehensive efforts are needed to increase public understanding, strengthen the capacity of law enforcement officers, and improve supporting facilities and infrastructure. In addition, it is important to ensure that the principles of restorative justice, especially those related to victim recovery, are truly implemented at every stage of handling children's cases.

Through these efforts, SPPA can function optimally in protecting children in conflict with the law and helping them return to society as productive and responsible individuals. It is important to remember that children in conflict with

the law still have the right to protection and a second chance. Effective diversion and restorative justice implementation is an important step to make this happen.

Conclusion

Study this shows that the implementation of diversion and restorative justice in the System of Justice for Child Crime in Jayapura City has yet to be optimal. Understanding the public about diversion and restorative justice is still low, and the temporary level of satisfaction with public implementation could be higher. Several obstacles are faced in the implementation of diversion and justice restorative, including difficulties presenting witness child, description of convoluted actors, and limitations room prisoner child. To increase the effectiveness in the implementation of diversion and justice, it is necessary to be a more socialization-intensive society, improve capacity apparatus enforcer law, and improve facility supporters. Besides, it is necessary to make an effort To increase the public's participation in the process of diversion and restorative justice, as well as ensure that the child's best interest is always considered in every handling case that conflicts child with the law.

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