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# Reconstruction Of Diversion Policy In Handling Children Of Criminal Offenders A Comparative Study Of Law

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***Abstrackt***

***This study analyzes the limitations of diversion in the Indonesian Juvenile Criminal Justice System, specifically the requirements for implementing diversion, namely a sentence of less than 7 years and not repeat offenses. This study applies normative juridical research methods through a statutory and comparative legal approach. The study compares the application of restorative justice approaches in the Philippines through the Republic Act No. 10630 of 2013 and in New Zealand through the Oranga Tamariki Act 1989. The findings reveal that Indonesia's diversion policy remains limited by sentencing threats and repeat offenses, forcing children to undergo formal judicial proceedings. This condition contradicts the principle of child protection, which prioritizes rehabilitation and social reintegration. As a recommendation, this study proposes reconstructing Indonesia's diversion policy by referring to the experiences of the Philippines and New Zealand to establish a more inclusive, humane, and restorative-based juvenile justice system.***

***Keywords: Diversion, Restorative Justice, Reconstruction.***

## A. Introduction

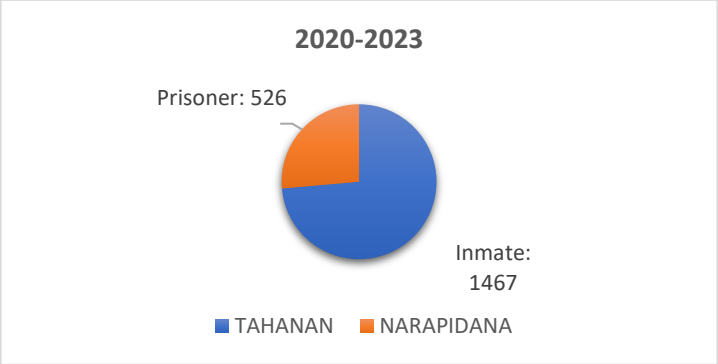
The phenomenon of increasing the number of Children Facing the Law (ABH) in recent years shows that the child protection system in Indonesia still faces serious challenges. The increase in the number of children involved in legal proceedings reflects that protection efforts through criminal law policies, especially diversion mechanisms and restorative justice, have not been running optimally. This condition is an important concern because children as the future successor of the nation require special attention in legal, social, and educational aspects.[1] Children must be guided and educated well as an asset of the country's future.[2] To illustrate this condition more concretely, the following data is presented on the trend of increasing the number of ABH in Indonesia during the period 2020 to 2023.

[1] Herlinda Ragil Feby Carmela and Suryaningsi Suryaningsi, "Law Enforcement in Education and Child Protection in Indonesia," *Nomos: Journal of Legal Research* 1, no. 2 (March 28, 2021): 58–65, https://doi.org/10.56393/NOMOS.V1I2.570.

[2] Suryadinata Lbn Gaol, Elwi Danil, and Aria Zurnetti, "Criminal Case Settlement of Children Under the Age of 12 (Twelve) at the Investigation Level at the Padang Police," *Unes Law Review* 5, no. 4 (June 2023): 4649–71, https://doi.org/10.31933/unesrev.v6i1.

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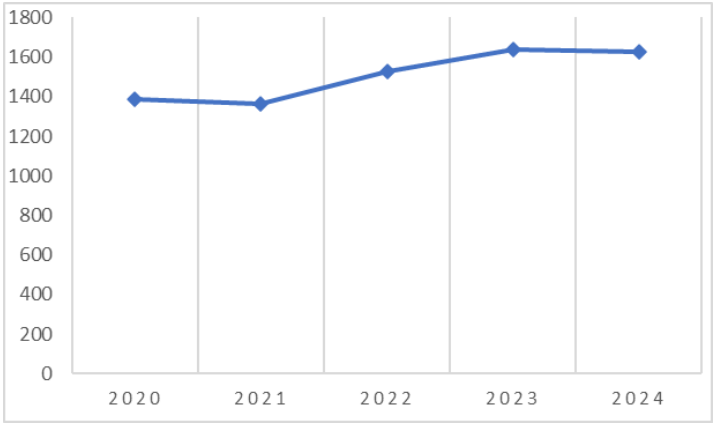
**Diagram 1.0 Trend of Increasing the Number of ABH 2020-2023**




Source: Kompas.id, processed from the Directorate General of Corrections of the Ministry of Law and Human Rights

The data indicates an increase in the number of ABH during the 2020–2023 period. As of August 26, 2023, there are around 2,000 children with ABH status. Of these, 1,467 children are in custody and undergoing legal proceedings, while 526 others have been sentenced.[3]

Diagram 1.1 Number of Correctional Students in Indonesia 2020-2024




**Source: *GoodStats*, data from the Directorate General of Corrections of the Ministry of Law and Human Rights**

Furthermore, referring to data from *GoodStats* which processes information from the Directorate General of Corrections of the Ministry of Law and Human Rights, the number of Correctional Students (Andikpas) or children detained in Special Children's Development Institutions (LPKA) in the period 2020 to 2024 shows a fluctuating trend. In 2020, there were 1,389 children detained. This figure decreased in 2021 to 1,365 children, which is the lowest number in the last five years. However, this trend increased again in 2022 with a total of 1,530

[3] Yohanes Advent Krisdamarjati, "Increasing Cases of Children in Legal Conflict, Alarm for Society and State - Kompas.id," *Kompas.id*, August 29, 2023, https://www.kompas.id/baca/riset/2023/08/28/meningkatnya-kasus-anak-berkonflik-hukum-alarm-bagi-masyarakat-dan-negara?status=sukses_login&status_login=login&loc=hard_paywall.

Volume 11, Number 04, October-December 2025, Pages 202-219
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children and reached its peak in 2023 with a total of 1,639 children until October 23, 2024, the number of Andikpas was recorded at 1,625 children.[4]

Normatively, Indonesia's commitment to protecting children's rights is reflected in Article 28B paragraph (2) of the 1945 Constitution which states that "Every child has the right to survival, growth, and development and has the right to self-protection from violence and discrimination".[5] This commitment was strengthened by the ratification of the United Nations Convention *on the Rights of the Child* through Presidential Decree No. 36 of 1990 stating that every child has the right to be treated with full respect and protection, including in the context of the criminal justice system.[6] The ratification affirms the state's obligation to ensure humane treatment of children, both as perpetrators, victims, or witnesses to criminal acts. However, child protection is not only a moral obligation, but also a legal responsibility inherent in the Indonesian state.

In the national context, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) and Law Number 35 of 2014 which amends Law Number 23 of 2002 concerning Child Protection have provided a legal basis for safeguarding children's rights, especially when they are involved in legal proceedings.The [7] SPPA Law prioritizes a diversion and restorative justice approach that focuses on the rehabilitation and social reintegration of children into society.[8] Article 1 number 6 of the SPPA Law explains that "Restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retribution". In line with these provisions, article 5 paragraph (1) states that "The juvenile justice system is obliged to prioritize a restorative justice approach". Diversion is essentially a form of legal protection for ABH, children as victims, and the wider community. This effort is carried out by shifting the settlement of children's cases from the formal criminal justice process to settlement through alternative mechanisms outside the court, so that the goal of restorative justice can be achieved more effectively.[9]

However, the implementation of diversion is still constrained by the conditions for the implementation of diversion regulated in Article 7 paragraph (2) of the SPPA Law which limits diversion only to criminal acts with a threat of less than seven years and not the repetition of the criminal act.[10] This provision is considered unfair because it restricts ABH's access to the

[4] Ramadhano D Twento, "Tracing the Trend of the Number of Child Prisoners in Indonesia in 2020-2024 - GoodStats Data," *GoodStats*, October 23, 2024, https://data.goodstats.id/statistic/menelusuri-tren-jumlah-tahanan-anak-di-indonesia-tahun-2020-2024-ldbDb.

[5] Dhenisa Oktavia Irawan, Tantimin Tantimin, and Ampuan Situmeang, "Human Rights Violations and Corporate Criminal Liability in Cases of Acute Kidney Failure in Children in Indonesia," *USM Law Review* 8, no. 1 (March 22, 2025): 215–34, https://doi.org/10.26623/JULR.V8I1.11297.

[6] Didi Nazmi and Syofirman Syofyan, "Arrangements for the Protection of Children's Rights in Indonesia in the Context of Eliminating Violations of Children's Rights," *Unes Journal of Swara Justisia* 7, no. 2 (July 13, 2023): 774–84, https://doi.org/10.31933/UJSJ.V7I2.380.

[7] Rikson Rikson and Yasmirah Mandasari Saragih, "Legal Protection of Children as Perpetrators of Criminal Acts," *Innovative: Journal Of Social Science Research* 3, no. 4 (September 17, 2023): 6437–49, https://doi.org/10.31004/INNOVATIVE.V3I4.4292.

[8] Imam Subiyanto, "Child Protection Law Faced in Murder Cases," Journal *of Syntax Fusion* 3, no. 04 (April 20, 2023): 444–54, https://doi.org/10.54543/FUSION.V3I04.430.

[9] Gomgom TP Siregar, "Ideal Formulation of Diversion in Law Enforcement of Children in The Future," *Jurnal Pembaharuan Hukum* 9, no. 3 (December 31, 2022): 503–16, https://doi.org/10.26532/jph.v9i3.29041.

[10] Nyadina Eka Santi, "Arrangement of Diversion for Children Who Commit Criminal Acts Based on Law Number 11 of 2012 concerning the Juvenile Justice Criminal System," *Journal of Legal Transparency* 6, no. 2 (July 2023): 112–37, https://doi.org/10.30737/TRANSPARANSI.V6I2.4879.


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Sinta 3; decree No. 0173/C3/DT.0500/2025

diversion mechanism which should be the main solution for resolving cases. If this requirement remains in place, not all children can avoid prison sentences, which can negatively impact their future.[11] On the other hand, these restrictions are also considered inconsistent with the principles of restorative justice and the protection of children's rights as stated in the Convention on the Rights of the Child.[12] This provision creates a *legal gap* because ideally the law requires protection and recovery for children, but the reality is that many children are still entangled in the formal criminal process, which risks causing social stigma, psychological disorders, and obstacles in the process of social reintegration.[13] Therefore, concrete steps are needed in reconstructing the diversion policy to be more adaptive, inclusive, and in favor of the best interests of children, in order to strengthen the child protection system in Indonesia as a whole.

On the other hand, the Philippines has successfully implemented a more inclusive diversion system through *the Juvenile Justice and Welfare Act of 2006 (Republic Act No. 9344)* as amended by *Republic Act No. 10630 of 2013*. This law allows the application of diversion without the limitation of criminal threats for all types of offenses committed by minors.[14] As well as New Zealand, which is known as one of the countries with the highest success in the implementation of restorative justice, especially through an approach known as *Family Group Conferences* (FGC).[15] New Zealand offers an effective model through the *Oranga Tamariki Act 1989*. This approach not only reduces the number of cases that enter the formal justice system but also emphasizes rehabilitation through the FGC, where all relevant parties are involved in the settlement process.[16]

Based on this comparison, this study offers a novelty in the form of reconstructing diversion policies in Indonesia through comparative studies with the Philippines and New Zealand. The goal is to explore a more comprehensive diversion policy by adapting the experience of other countries to optimize the juvenile criminal justice system in Indonesia. Previously, studies such as those conducted by Abdurrakhman Alhakim, Emiliya Febriani, and Atila Jeny Febria compared *restorative justice* policies in Indonesia and the United States, and found that implementation in Indonesia is still limited and dependent on state institutions, while the United States is more flexible by involving non-state actors and alternative programs.[17] The second study conducted by Yukhanid Abadiyah and Iskandar Wibawa examined the challenges of diversion for juvenile

[11] Alfian Mela Maran et al., "The Process of Diversion of Children in Conflict with the Law: Learning from the Diversion System in the United States," *Binamulia Law* 13, no. 2 (December 30, 2024): 555–71, https://doi.org/10.37893/JBH.V13I2.957.

[12] Abadiyah Yukhanid and Iskandar Wibawa, "Diversion for Children of Criminal Offenders Whose Criminal Record Is More Than 7 Years," *As-Syar'i: Journal of Family Guidance & Counseling* 6, no. 3 (2024): 1–10, https://doi.org/10.47476/assyari.v6i3.7235.

[13] Gabi Kariza Ilhami et al., "Restorative Justice for Perpetrators in Handling Child Crimes in Indonesia," *Journal of Academic Media (JMA)* 2, no. 11 (October 13, 2024): 3031–5220, https://doi.org/https://doi.org/10.62281/v2i11.789.

[14] Lin Che, "Reformulation of Diversion Policy for All Crimes Committed by Children," Journal *of Adigama* Law 4, no. 2 (2021): 3403–23, https://doi.org/https://doi.org/10.24912/adigama.v4i2.17916.

[15] Arpandi Karjono, Parningotan Malau, and Ciptono Ciptono, "The Application of Restorative Justice in Criminal Law Based on Local Wisdom," *USM Law Review* Journal 7, no. 2 (July 23, 2024): 1035–50, https://doi.org/http://dx.doi.org/10.26623/julr.v7i2.9571.

[16] Kiki Mahendra Febriansari and Irma Cahyaningtyas, "Family Group Conference Ideas in the Juvenile Criminal Justice System in Indonesia," *Journal of Indonesian Legal Development Master of Law* Study Program 3, no. 3 (2021): 370–83, https://doi.org/https://doi.org/10.14710/jplp.%25v.%25i.126-131.

[17] Abdurrakhman Alhakim, Emiliya Febriani, and Atila Jeny Febrian, "Restorative Justice Policies in Efforts to Resolve Child Crimes in Various Countries," *Responsive Law* 15, no. 1 (February 24, 2024): 17–31, https://doi.org/10.33603/RESPONSIF.V15I1.8903.

Volume 11, Number 04, October-December 2025, Pages 202-219
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p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v11i4
Sinta 3; decree No. 0173/C3/DT.0500/2025

offenders with sentences above 7 years, recommended revision of the law and improved coordination of legal institutions.[18]

Then, the third research conducted by Kiki Mahendra Febriansari and Irma Cahyaningtyas highlighted the application of FGC as a restorative justice-based case resolution model. This study shows that the implementation of FGC can optimize a better, flexible, and in accordance with the values of Pancasila.[19] The fourth research conducted by Lin Yan Che explores how to formulate the policy of applying diversion to all criminal acts committed by children. The findings of the study show that the diversion applied in the SPPA Law has not been fully applied to all types of criminal acts committed by children.Furthermore, the [20] fifth research was carried out by Muliani, et al which discussed efforts to formulate an ideal concept for the implementation of diversion by emphasizing the application of diversion for children who are faced with the law without setting certain requirements. The results of the study highlight the obstacles in the implementation of diversion due to certain requirements, which cause judges to tend to choose prison sentences for children.[21]

Theoretically, this research is expected to enrich the literature on juvenile criminal justice law in Indonesia and provide a new perspective on diversion policies for children, especially related to the requirements for the implementation of diversion. In practical terms, this research can help policymakers and law enforcement make fairer policies and protect children's rights. Thus, this research is expected to be able to encourage a more humane and effective criminal justice system, through two main objectives, namely to analyze the regulation of diversion policies in Indonesia with the Philippines and New Zealand in the context of the application of restorative justice, and to identify the advantages and relevance of the restorative justice approach in the diversion system in the Philippines and New Zealand as a reference to design a better reconstruction of diversion policies in Indonesia adaptive and responsive to the needs of child protection, justice for victims, and the interests of society as a whole.

The limitations of this study are focused on normative-comparative analysis of diversion policies as regulated in the SPPA Law and its application in the Philippines and New Zealand. This study does not discuss empirical aspects or evaluation of implementation in the field, but focuses on normative and conceptual reconstruction to strengthen the restorative justice system in the handling of child perpetrators of crimes in Indonesia.

In line with these limitations, in order to obtain a comprehensive picture of the urgency of diversion policy reconstruction, this study is directed to answer two main questions, namely how to compare diversion policies in Indonesia with the Philippines and New Zealand in the context of the application of restorative justice; and how to reconstruct the diversion policy in handling child perpetrators of criminal acts in Indonesia through legal comparisons in the future.

## B. Research Methods

In this study, the author applies a normative juridical research method, namely legal research that examines secondary data or relevant literature materials. This method was chosen

[18] Abadiyah Yukhanid and Wibawa, "Diversion for Children of Criminal Offenders Whose Criminal Record Is More Than 7 Years."

[19] Mahendra Febriansari and Cahyaningtyas, "The Idea of a Family Group Conference in the Juvenile Criminal Justice System in Indonesia."

[20] Che, "Reformulation of the Diversion Policy for All Criminal Acts Committed by Children."

[21] Muliani S et al., "Reformulation of Diversion Implementation Requirements in the Juvenile Criminal Justice System in Indonesia," *Indonesian Journal of Legal Development* 5, no. 2 (July 24, 2023): 358–73, https://doi.org/10.14710/JPHI.V5I2.358-373.

Volume 11, Number 04, October-December 2025, Pages 202-219
e-ISSN:2614-1485
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Sinta 3; decree No. 0173/C3/DT.0500/2025

to conduct a legal comparison in analyzing, evaluating, and reconstructing diversion policies for children, especially in the context of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The approaches used include the statute *approach* and the *comparative approach.* Through these two approaches, the research collected and analyzed regulations related to diversion policies in Indonesia, the Philippines, and New Zealand. The data of this research is sourced from secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations, such as the 1945 Constitution, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, *Convention on the Rights of the Child*, *Juvenile Justice and Welfare Act of 2006 (Republic Act No. 9344)* as amended by *Republic Act No. 10630 of 2013*, and *Child Welfare Act 1989*. Secondary legal materials are in the form of journal articles, books, and research reports related to juvenile criminal justice and restorative justice as well as supporting laws and regulations. Tertiary legal materials are used as support, such as legal dictionaries and encyclopedias. Data collection techniques were carried out using literature studies, while data analysis was applied through a qualitative approach to elaborate on the content and relevance of diversion regulations and practices, in order to understand policy weaknesses in Indonesia and draw lessons from the experiences of the Philippines and New Zealand.

## C. Results and Discussion

### 1. Diversion Policy in Handling Children of Criminal Offenders in Indonesia, the Philippines, and New Zealand

Child protection is a crucial issue in the modern legal system, especially in developing countries such as Indonesia. As a democratic country based on Pancasila and the 1945 Constitution, Indonesia has also recognized the importance of child protection. In the context of the Indonesian legal system, the protection of ABH is regulated through the SPPA Law which defines ABH as a child between the ages of 12 and 18 years old who is suspected of having committed a criminal act as stipulated in Article 1 number 3 of the SPPA Law.[22] In the context of implementation, Article 2 of Law Number 11 of 2012 states that:

"The Child Criminal Justice System is implemented based on the following principles:

a. Protection
b. justice;
c. non-discrimination;
d. in the best interests of the child;
e. respect for children's opinions;
f. child survival and development;
g. child development and guidance;
h. proportional;
i. deprivation of independence and criminalization as a last resort; and
j. avoidance of retaliation."

Furthermore, Article 6 of the SPPA Law emphasizes that:

"Diversion aims to:

[22] Angki Sukma, "The Application of Restorative Justice to Crimes That Do Not Meet Diversion Requirements in Indonesia," *Socius: Journal of Social Sciences Research* 1, no. 8 (March 20, 2024): 61–67, https://doi.org/10.5281/ZENODO.10845080.

Volume 11, Number 04, October-December 2025, Pages 202-219
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v11i4
Sinta 3; decree No. 0173/C3/DT.0500/2025

a. achieving peace between the victim and the child;
b. resolving the child's case outside the judicial process;
c. to prevent children from being deprived of their freedom;
d. encouraging the community to participate; and
e. instilling a sense of responsibility in children."

Article 7 paragraph (1) states, "At the level of investigation, prosecution, and examination of children's cases in the District Court, Diversion must be sought". *The Beijing Rules* are one of the basis of international legal conventions regarding the purpose of the SPPA Law, which in *Rule 5.1* states *"The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence".*[23] That juvenile justice must prioritize child safety and ensure that every action against children who violate the law remains proportionate, regardless of the condition of the perpetrator or the type of offense committed.

In the juvenile criminal justice system, every policy taken should be oriented to the best interests of the child (*Best Interests of The Child).* This principle is affirmed in Article 3 paragraph (1) of the Convention on the Rights of the Child which states that in every action concerning children, whether by social welfare institutions, judicial institutions, government agencies, or legislative bodies, the interests of children must be the main consideration.[24] However, the implementation of diversion in Indonesia is still constrained by the requirements of Article 7 paragraph (2) of the SPPA Law, which limits its implementation only to criminal acts with a threat of under seven years and not the repetition of the criminal act. This provision is cumulative so that if one of the requirements is not met, diversion cannot be carried out. This condition causes discrimination against children, because only children of minor criminal offenders can get the opportunity to diversion.[25] As a result, children who are entangled in cases with more severe criminal threats still have to go through formal judicial processes, which have the potential to ignore the principle of the best interests of the child and go against the spirit of protection mandated in the Convention on the Rights of the Child.

The provisions of diversion requirements in Article 7 paragraph (2) of the SPPA Law contradict the basic principle of Article 2 which emphasizes child protection. The limitation of diversion only for certain criminal acts does not guarantee the welfare of all ABH, so that the principles of the best interests, growth and development, and continuity of children's lives in the SPPA Law are hampered due to the existence of diversion qualification requirements. Thus, although the SPPA Law has adopted the concept of diversion, its substance is still limited, emphasizes formal and selective aspects, and does not fully reflect the principle of restorative justice as embraced in international law and the practices of other countries.

In contrast to Indonesia's approach which tends to limit diversion, the Philippines actually offers a more open legal framework and emphasizes on the social rehabilitation of children. This can be seen from *Republic Act No. 9344* as amended by *Republic Act No. 10630 of 2013* or

[23] Rico Nur Cahyo and Irma Cahyaningtyas, "Criminal Law Policy on Diversion of Children of Recidivism Perpetrators in order to Achieve Restorative Justice," *Journal of Indonesian Legal Development* 3, no. 2 (May 28, 2021): 203–16, https://doi.org/10.14710/JPHI.V3I2.203-216.

[24] Sukmandari Putri, Ahmad Syaufi, and Achmad Faishal, "Legal Protection of Children in Conflict with the Law through Diversion," *JIM: Scientific Journal of History Education* Students 8, no. 4 (August 9, 2023): 3931–49, https://doi.org/10.24815/JIMPS.V8I4.26664.

[25] Ni Putu Sri Utari, I Made Sarjana, and I Ketut Rai Setiabudhi, "Discrimination in the Application of Diversion to Children Who Commit Criminal Offenses," *Kertha Wicara : Journal of Law* 7, no. 2 (March 13, 2018): 1–15, https://ojs.unud.ac.id/index.php/kerthawicara/article/view/39128.

Volume 11, Number 04, October-December 2025, Pages 202-219
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v11i4
Sinta 3; decree No. 0173/C3/DT.0500/2025

better known as the Youth Justice and Welfare Law of 2006.[26] The country is also a member of the Convention on the Rights of the Child, so its legal policy follows the principles set out in the convention for the protection of children. [27]

The principle of restorative justice is affirmed in *Section 2 of RA No. 9344*, which is in line with Article 40 of the UN Convention on the Rights of the Child, states must ensure that children who violate the law are treated with dignity, consideration of their age, and support social reintegration. If possible, settlement outside the court must be prioritized while upholding human rights and legal guarantees. The state must also provide various alternatives, such as guidance, parenting, education, and rehabilitation, to ensure the welfare of children.[28]

To support this principle, *Section 6 RA No. 9344 jo. Section 6 RA No. 10630* sets the age of criminal liability for children aged 15 to less than 18 years. Meanwhile, children under the age of 15 cannot be subject to criminal responsibility, but must participate in an intervention program aimed at preventing the recurrence of violations and ensuring that children's growth and development are maintained.[29]

Furthermore, *Section 4 (i) RA No. 9344* diversion is interpreted as an alternative process that adjusts the condition of children to determine responsibility and handling of children who conflict with the law. This process takes into account the child's cultural, social, economic, psychological, and educational background, so that case resolution can be carried out without having to go through a formal judicial process. In line with that, *Section 4 (l) of Republic Act No. 9344* explains that intervention is a series of efforts that are systematically designed to deal with various factors that cause offending behavior in children. This form of intervention can include individualized mentoring programs such as counseling, skills training, educational activities, and various other activities that aim to improve the overall psychological, emotional, and social condition of children.

*Section 23 of Republic Act No. 9344* stipulates that ABH must undergo a diversion program. If the threat of punishment is not more than 6 years in prison, law enforcement officials and social welfare officers will conduct mediation, family conferences, and reconciliation for the best interests of the child and restorative justice. However, if the threat of punishment is more than 6 years in prison, the implementation of diversion can only be carried out by the court.[30] This provision shows that the juvenile criminal justice system in the Philippines provides ample space for the resolution of child cases outside the judicial channels, while still taking into account the seriousness of the offense committed.

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[26] Yohana Felicia Marisi Hutapea and Revi Nabil Zaidan, "A Comparative Study of Indonesian and Philippine Laws on the Arrangement of Child Criminal Responsibility," *Doctrine: World Journal of Law and Political Science* 2, no. 4 (June 22, 2024): 23–35, https://doi.org/10.59581/DOKTRIN.V2I4.3666.

[27] M Asadur Rifqi, "Settlement of Children's Cases in the Form of Recidivism (A Comparative Study Between Indonesia and the Philippines)," *Recidive: Journal of Criminal Law and Crime Management* 10, no. 3 (January 27, 2022): 174–82, https://doi.org/10.20961/RECIDIVE.V10I3.58955.

[28] Haezah Lintang Dahayu and Abdul Kholiq, "Critical Analysis of the Application of Restorative Justice: A Comparison of Concepts in the Criminal Justice System in Indonesia and Australia and the Philippines," *Kertha Semaya: Journal of Legal Science* 12, no. 10 (October 11, 2024): 2671–86, https://doi.org/10.24843/KS.2024.V12.I10.P24.

[29] Shenai F Juance and Atty. Dodelon F. Sabijon, "Beyond Troubled Childhood: Lived Experiences of Former Children in Conflict with the Law," *International Journal of Law and Politics Studies* 7, no. 4 (July 15, 2025): 34–47, https://doi.org/10.32996/IJLPS.2025.7.4.2.

[30] Olvy Nurendra Ardhianto, Irma Cahyaningtyas, and Sukinta Sukinta, "The Application of the Diversion Process in Indonesia in a Comparative Study," *Diponegoro Law Journal* 11, no. 2 (April 11, 2022): 1–14, https://doi.org/10.14710/DLJ.2022.33279.

Volume 11, Number 04, October-December 2025, Pages 202-219
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v11i4
Sinta 3; decree No. 0173/C3/DT.0500/2025

Interestingly, unlike the system in Indonesia, the law in the Philippines does not automatically close the opportunity for diversification for recidivists. In contrast, the Philippines has its own approach to dealing with recidivism. Through *Section 20-B Republic Act No. 10630*, a special approach is regulated in dealing with recidivist children, while still prioritizing rehabilitation and social intervention. This approach emphasizes that even if a child has committed a criminal act several times, diversion efforts and rehabilitation programs can still be carried out, as long as they are still in accordance with the principles of the best interests of the child.[31] On the other hand, in Indonesia, children who become recidivists explicitly cannot obtain diversion, so they must undergo a formal criminal justice process.[32] This difference shows that the juvenile criminal justice system in the Philippines tends to be more inclusive and oriented towards comprehensive child rehabilitation, compared to the system in Indonesia that still restricts access to diversion for recidivist children.

Furthermore, New Zealand provides an example of the application of restorative justice that is not just comprehensive, but innovative in involving communities and families in the resolution of children's cases.[33] In New Zealand, ABH case resolution emphasizes the mediation process involving victims, perpetrators, and communities as the first step before cases are brought to court.[34] The legal framework in support of this approach is the *Oranga Tamariki Act 1989* also known as *the Children's and Young People's Well-being Act 1989*, which replaced the *Children, Young Persons and Their Families Act 1989* after amendments, and is still the basis of the juvenile justice system in New Zealand today. One of the main methods in this system is the FGC which was introduced as part of the juvenile justice reform in 1989.[35]

In the FGC, victims' families, perpetrators, and community members gather in a forum to formulate a fair solution for all parties involved.[36] The main focus is to avoid the involvement of children in formal criminal justice.[37] Under the *Oranga Tamariki Act* 1989, a child refers to an individual who is 14 years of age or older but not yet 18 years of age (S. 2). Thus, only this age group can in principle be held criminally liable through juvenile justice mechanisms, while children under 14 generally cannot be prosecuted except for very serious crimes. FGC then becomes the main mechanism that must be taken before the child's case is brought to court. *Section 208* affirms the basic principle of the juvenile justice system, namely that the settlement of children's cases out of court should be prioritized, while detention is placed as

[31] Rifqi, "Settlement of Children's Cases in the Form of Recidive (A Comparative Study Between Indonesia and the Philippines)."

[32] Wan Mutiara Aisyah, Abdurrakhman Alhakim, and Emiliya Febriyani, "Criminal Law Policy in the Juvenile Criminal Justice System for Recidivist Offenders in Indonesia," *Bengkoelen Justice : Jurnal Ilmu Hukum* 14, no. 2 (December 8, 2024): 212–25, https://doi.org/10.33369/JBENGKOELENJUST.V14I2.37793.

[33] Aniek Periani, Elly Kristiani Purwendah, and Iskatrinah Iskatrinah, "Analysis of Learning Theory in Diversion Policy in the Case of Children in Conflict with the Law," in *Proceedings of the International Conference On Law, Economics, and Health (ICLEH 2022)* (Atlantis Press, 2023), 210–22, https://doi.org/10.2991/978-2-38476-024-4_24.

[34] Salsabila Ayu Pramita, "The Application of Restorative Justice in Modern Penology: An Alternative to Criminality in the Era of Legal Reform," *Journal of Legal and Public Policy Studies* 2, no. 2 (February 21, 2025): 899–912, https://doi.org/10.62379/DJ83V892.

[35] William R. Wood and Juan Tauri, "Revisiting New Zealand's 'Gift to the World': Demythologising Youth Justice Family Group Conferencing in Aotearoa New Zealand," *Contemporary Justice Review* 28, no. 2 (April 3, 2025): 220–44, https://doi.org/10.1080/10282580.2025.2519736.

[36] Karjono, Malau, and Ciptono, "The Application of Restorative Justice in Criminal Law Based on Local Wisdom."

[37] Norshamimi Mohd Mazlan and Aminuddin Mustaffa, "The Malaysian Juvenile Justice System: The Compelling Need to Implement Diversion in Handling The Issue of Juvenile Delinquency," *International Journal of Law, Policy and Social Review* 4, no. 1 (2022): 16–23, https://www.lawjournals.net/archives/2022/vol4/issue1.


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Volume 11, Number 04, October-December 2025, Pages 202-219
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v11i4
Sinta 3; decree No. 0173/C3/DT.0500/2025

a last resort that can only be taken when necessary for public safety and emphasizes that sanctions against children should be as light as possible and still take into account the interests of the victim. Furthermore, *Section 247* requires the juvenile justice coordinator to conduct FGC under various conditions, such as when the prosecutor is about to file charges, when the child rejects the charges, when the court orders it, or when a child has been proven guilty but has never gone through the FGC process.

Before FGC is implemented, *Section 250* requires the coordinator to consult with the child's family, victims, and prosecutors regarding the time, place, participants, and procedures of the conference. Furthermore, *Section 251 explicitly* mentions anyone who is entitled to attend, including children, families, victims, prosecutors, social workers, lawyers, and representatives of relevant communities or social institutions. The FGC has substantive functions as stipulated in *Section 258*, including to determine whether a case needs to be brought to court, provide recommendations for resolution, and consider *restorative justice measures*. All decisions must be documented and submitted to the court in accordance with *Section 265*. It is important to note that the court cannot render any judgment without first considering the outcome of the FGC. This is confirmed in *Section 281*, which places the FGC as the *primary mechanism* of diversion, while the courts are only placed as a *last resort.*

The advantages of FGC include increasing satisfaction for the parties involved, strengthening relationships and solidarity in the family, and accelerating the rehabilitation process of ABH by remaining in the family environment, not in government institutions.[38] In addition, the decisions produced in the FGC are not only recommendations, but also have a clear implementation mechanism, as stipulated in *Section 30*, which requires the coordinator to obtain the approval of all relevant parties and ensure that the agreed plan is properly implemented.

The success of this approach is reflected in an evaluation of restorative justice programs in New Zealand, which showed that 90% of victims felt well treated and respected, while 81% of conference participants felt satisfied and improved after participating in the program.[39] New Zealand's success in implementing restorative justice can serve as a reference for other countries, including Indonesia, in improving the diversion system to make it more effective. By expanding the scope of settlement beyond formal justice and strengthening community and family involvement, the juvenile justice system can be more rehabilitation-oriented and in the best interests of the child.

Looking at the comparison of diversion policies between Indonesia, the Philippines, and New Zealand, it appears that each country has a different approach in dealing with ABH. Indonesia still limits diversion with cumulative conditions as stated in Article 7 paragraph (2) of the SPPA Law, while the Philippines through RA No. 9344 jo. RA No. 10630 provides a more inclusive space, including for recidivists, while still prioritizing the principle of social rehabilitation. Meanwhile, New Zealand places the FGC as the main mechanism that must be pursued before the court, asserting that the resolution of children's cases should be more oriented towards mediation, community participation, and the best interests of the child. Although different, the three countries share the same spirit, which is to ensure the protection

[38] Mahendra Febriansari and Cahyaningtyas, "The Idea of a Family Group Conference in the Juvenile Criminal Justice System in Indonesia."

[39] Maidina Rahmawati et al., *Opportunities and Challenges of the Implementation of Restorative Justice in the Criminal Justice System in Indonesia*, ed. Miko Susanto Ginting (South Jakarta: Institute for Criminal Justice Reform (ICJR), 2022), https://icjr.or.id/peluang-dan-tantangan-penerapan-restorative-justice-dalam-sistem-peradilan-pidana-di-indonesia/.

Volume 11, Number 04, October-December 2025, Pages 202-219
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v11i4
Sinta 3; decree No. 0173/C3/DT.0500/2025

of children and emphasize the rehabilitative process rather than punishment alone. To assess the extent to which the diversion policy is biased against the interests of children, a strong theoretical foundation is needed.

In this context, the theory of Restorative Justice developed by Howard Zehr is used as a framework for normative analysis. In his book entitled Changing Lenses, Howard Zehr states that restorative justice is an approach that centers on restoring relationships between perpetrators and victims as well as society.[40] Howard Zehr asserts that restorative justice is not meant to force forgiveness or reconciliation. Pardons are entirely voluntary, while the role of law enforcement only facilitates dialogue if the parties want the process. [41]

Zehr criticized the conventional criminal justice system based on the "Retributive Approach," where crime is seen as a violation of the law and justice is interpreted as a process of determining fault and imposing punishment. In this view, the main focus is on who is guilty and how to punish the perpetrators according to the rule of law. Alternatively, Zehr offers a restorative justice approach that views crime as a form of wound in social relations between individuals, thereby creating a shared responsibility for recovery and reparation to the impact caused.[42]

In the context of diversion policies in the juvenile criminal justice system, three countries, namely Indonesia, the Philippines, and New Zealand, have different approaches to adopting restorative justice principles. Indonesia still applies fairly strict requirements for the implementation of diversion, while the Philippines and New Zealand have more flexible policies in implementing restorative justice.

**Table 1.0 Comparison of Diversion Policies in Indonesia, the Philippines, and New Zealand**

| Aspek | Indonesia | Filipina | New Zealand |
|---|---|---|---|
| **Main legal basis** | Law No. 11 of 2012 concerning SPPA | *RA No. 9344 & RA No. 10630* | *Child Welfare Act 1989.* |
| **Child Age Limit** | 12 <18 years old (Article 1 number 3) | <15 years cannot be punished, mandatory to intervene; 15<18 years can be held criminally liable *(Section 6 RA 9344 jo. 10630)* | Be 14 years of age or older but not yet 18 years old, |
| **Basic Principles** | Protection, justice, non-discrimination, the best interests of the child, | Restorative justice, dignity, social reintegration, child | Diversion takes precedence, detention is the last resort, the lightest |

[40] Iwan Rasiwan, Miljam Khoirul Harisin, and Muhammad Yaqzhan Kalamul Haq, "The Implementation of Restorative Justice Principles in Handling Cases of Children in Conflict with the Law," *Jurnal Ilmu Hukum* 15, no. 2 (2025): 327–37, https://doi.org/10.58471/justi.v15i02.

[41] Andi Alif Kumullah DG, Syamsuddin Muchtar, and Muhammad Basri, "Construction Analysis of Penal Mediation and Restorative Justice on Crime Settlement in the Indonesian Criminal Justice System," *Legal Brief* 12, no. 1 (April 28, 2023): 77–86, https://doi.org/10.35335/LEGAL.V12I1.742.

[42] Rasiwan, Harisin, and Kalamul Haq, "The Implementation of Restorative Justice Principles in Handling Cases of Children in Conflict with the Law."


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Volume 11, Number 04, October-December 2025, Pages 202-219
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v11i4
Sinta 3; decree No. 0173/C3/DT.0500/2025

| | | | |
|---|---|---|---|
| | proportionality, *ultimum remedium* (Article 2) | welfare *(section 2 RA 9344)* | sanction, considering the interests of the victim *(Section 208)* |
| **Diverse Goals** | a) peace of perpetrators-victims, b) settlement outside the courts, c) preventing children from deprivation of independence, d) encouraging community participation, e) instilling responsibility to the child. (Article 6) | Social rehabilitation, reintegration, prevention of relapse, child welfare *(Section 4(l), Section 23 RA 9344)* | Resolving cases outside of court, keeping children in the community/family, strengthening social solidarity |
| **Different Terms** | Limited. Only for a criminal offense of < 7 years dan bukan *recidive* (Pasal 7 ayat 2 UU SPPA). | Diversion is mandatory if the criminal threat is ≤6 years; diversion can be by the court for >6 years; it does not automatically close for recidivists. *(Section 23 RA No. 9344)* | FGC is mandatory for almost all cases; The court may not render a verdict without considering the outcome of the FGC *(Section 247, 258, 281).* |

**Source: Author's Analysis**

Based on this comparison, it can be concluded that the diversion approach in Indonesia still does not fully reflect the principles of restorative justice. Although normatively Article 5 paragraph (1) of the SPPA Law normatively requires the application of restorative justice, its implementation is still limited by the cumulative conditions in Article 7 paragraph (2) of the SPPA Law which limits the implementation of diversion only to criminal acts with a threat of less than seven years and not a repetition of the criminal act. This restriction has implications for the lack of space for children to get a more humane case resolution, so that the main goal of diversion, namely the restoration of social relations, victim involvement, and the reintegration of children into society is not optimally achieved.

In contrast, the Philippines through *Republic Act No. 9344* and its amendment *RA No. 10630* emphasized that diversion can be applied to all types of criminal acts committed by children, including children with recidivism status. This approach is in line with Howard Zehr's idea that crime is not just a violation of the law, but a damage to social relations. Therefore, the settlement of the case must focus on restoring relationships, meeting the needs of the victim and the responsibility of the perpetrator to repair the impact caused.

Meanwhile, New Zealand through *the Oranga Tamariki Act 1989* places FGC as the main mechanism that must be taken before a child's case is brought to court. This model reflects Zehr's view that case settlement should involve the perpetrator, the victim, and the community in the deliberative forum. The resulting decision not only attaches importance to the best interests of the child, but also ensures that the needs of the victim are taken care of and social relations are improved. By making the FGC the main mechanism, New Zealand

Volume 11, Number 04, October-December 2025, Pages 202-219
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v11i4
Sinta 3; decree No. 0173/C3/DT.0500/2025

insists that a formal justice process is only a last resort, so that the best interests of the child and the needs of victims remain a priority.

The comparison shows that Indonesia is still trapped in the retributive-legalistic paradigm, while the Philippines and New Zealand are more consistent in implementing the principle of restorative justice as developed by Howard Zehr. Therefore, the diversion policy in Indonesia requires reconstruction, especially by revising Article 7 paragraph (2) so that access to diversion is no longer limited by criminal threats or recidivism status, but is directed entirely to the best interests of children and the restoration of social relations in society. Indonesia as a country of law has guaranteed child protection in various normative frameworks.

**2. Reconstruction of Diversion Policy in Handling Children of Criminal Offenders in Indonesia**

According to Prof. Romli Atmasasmita, law in Integrative Legal Theory is seen as a unit consisting of three main elements, namely the norm system, the behavior system, and the value system. The law cannot be separated from some of the values that develop in society, because Indonesian society still highly upholds moral and social values in every aspect of their lives. These values, in the context of the Indonesian state, are sourced from Pancasila as the ideological foundation of the nation.[43] These three systems must be understood as a whole and interrelated unit.[44]

Integrative Law Theory is essentially the result of development and a combination of progressive legal theory and development law theory.[45] However, Integrative Theory has its own characteristics. First, the law must be based on *living law*, which is the values that live and develop in society, which can change dynamically to reflect legal certainty, utility, and justice. Second, the resolution of legal conflicts should be prioritized through *out-of-court settlements* in accordance with these values.[46] In this context, the results of comparative studies with the Philippines and New Zealand show that the two countries implement more progressive and humanist legal policies. The Philippines, through *Republic Act No. 9344* and its amendment *RA No. 10630*, opens up diversion opportunities without the limitation of criminal threats and still provides opportunities for recidivist children to obtain rehabilitative interventions. Meanwhile, New Zealand, with the FGC model, places the process of resolving children's cases in a restorative framework, involving families, victims, and communities, and prioritizing the recovery and social reintegration of children.

Through the analysis of integrative legal theory, the reconstruction of diversion policies for the handling of children of criminal offenders in Indonesia requires a comprehensive and comprehensive approach, not only emphasizing the normative aspect, but also considering that the law is a unified system consisting of three main elements, namely the norm system,

[43] Made Oka Cahyadi Wiguna, "The Importance of the Principle of Wisdom Based on Pancasila in the Life of Indonesian Law and Democracy," *Scientific Journal of Legal Policy* 15, no. 1 (March 26, 2021): 729–44, https://doi.org/10.30641/KEBIJAKAN.2021.V15.729-744.

[44] Dudang Gojali and Reza Fauzi Nazar, "The Influence of Sociological Jurisprudence Flows on the Development of the Legal System in Indonesia," *Al-Mashlahah Journal of Islamic Law and Social Institutions* 10, no. 02 (November 28, 2022): 1–13, https://doi.org/10.30868/AM.V10I02.5190.

[45] Muhammad Fatahillah Akbar, "Restorative Justice in the Criminal Justice System as a Manifestation of Pancasila Values," *Justitia et Pax* 37, no. 1 (June 8, 2021): 85–101, https://doi.org/10.24002/JEP.V37I1.3821.

[46] Reza Philafi Raziansyah, F. Yudhi Priyo Amboro, and Lu Sudirman, "Optimizing the Policy Model of Kampung Tua Batam," *Yustisia Tirtayasa: Journal of Final Project* 5, no. 2 (July 1, 2025): 202–20, https://doi.org/10.51825/YTA.V5I2.31220.

Volume 11, Number 04, October-December 2025, Pages 202-219
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v11i4
Sinta 3; decree No. 0173/C3/DT.0500/2025

the behavioral system, and the value system. These three elements must be harmoniously integrated so that the law can function effectively and fairly in the socio-cultural context of Indonesia.

In terms of the norm system, the diversion policy regulated in the SPPA Law still has a number of limitations that hinder the optimization of its implementation. One of the main obstacles is the restriction of diversion only for criminal acts with a sentence of less than seven years and not a repetition of the crime, so many cases still have to go through a formal judicial process. This condition is not fully in line with the principles of restorative justice and child protection which are the main spirit of diversion. Therefore, the reconstruction of legal norms needs to be carried out by revising these provisions so that the scope of diversion can be expanded, as is the practice in some countries such as the Philippines and New Zealand, which provide greater flexibility in the application of diversion without rigid restrictions on criminal threats.

Furthermore, in the aspect of the behavioral system, the implementation of diversion in the field still faces obstacles in the form of a lack of understanding and commitment of law enforcement officials to the principles of restorative justice and child protection.[47] Most law enforcers tend to have a legalistic view because this mindset has been formed through the education and training process that they undergo so that diversion does not run optimally.[48] For this reason, it is necessary to strengthen capacity through intensive training and socialization that focuses on the importance of diversion as an alternative to humane and effective resolution of children's cases. In addition, coordination between related institutions must be strengthened by building a structured and sustainable cooperation mechanism, so that the diversion process can run smoothly and not be hampered by bureaucracy. The active involvement of communities and families in the diversion process is also key to success, as implemented in the FGC model in New Zealand, which places families and communities as part of the child recovery solution.

In the aspect of the value system, the diversion policy must reflect the noble values of the Indonesian nation which are rooted in Pancasila, especially the values of Fair and Civilized Humanity and Social Justice. This value demands a shift The legal paradigm that still tends to be retributive needs to be shifted towards a restorative paradigm that prioritizes the restoration of children's rights, reconciliation with victims, and the social reintegration of children into society. To realize this, the socialization of these values must be carried out comprehensively, not only to law enforcement officials, but also to the wider community, so that a humane and responsive legal culture is formed to the needs of children.

Legal policy must be based on a thorough assessment of the social and psychological condition of children by directly understanding the child's experiences and needs, so that diversion can be applied as long as it still allows for the realization of recovery and the best interests of the child. Such a child criminal law policy will better reflect the values of social justice, humanity, and national goals as mandated in Pancasila and the 1945 Constitution. The implication is that the juvenile criminal justice system in Indonesia will be able to reduce excessive imprisonment practices, negative stigma that can hinder the recovery process and

[47] Uut Rahayuningsih, Anna Nur Hikmah, and Siti Nurcahyati, "Restorative Justice Approach in the Legal Protection of Children as Perpetrators of Criminal Acts : Balancing Justice and Coaching," *Amendment: Journal of Indonesian Defense, Political and Legal Sciences* 2, no. 2 (April 29, 2025): 79–89, https://doi.org/10.62383/AMANDEMEN.V2I2.883.

[48] Abdurrakhman Alhakim, "Diversion as a Legal Concept That Is Equitable for Children in Indonesia," *Mizan: Jurnal Ilmu Hukum* 11, no. 2 (December 14, 2022): 147–57, https://doi.org/10.32503/MIZAN.V11I2.3102.

Volume 11, Number 04, October-December 2025, Pages 202-219
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v11i4
Sinta 3; decree No. 0173/C3/DT.0500/2025

encourage the rehabilitation and social reintegration of children into society optimally. Thus, diversion really functions as an instrument of restorative justice that emphasizes the restoration of social relations as a top priority.

Based on the above analysis, the reconstruction of the diversion policy requires fundamental changes to the conditions for the implementation of diversion, as follows:

**Table 2.0 Recommendations for the reconstruction of the provisions of the diversion requirements**

| Old article | Reconstruction Recommendations | Explanation |
|---|---|---|
| Article 7 paragraph (2):<br>"Diversion as intended in paragraph (1) is carried out in the event of a criminal act committed:<br>a. Threatened with imprisonment of less than 7 (seven) years; and<br>b. It is not a repetition of a criminal act." | Article 7 paragraph (2):<br>"Diversion as referred to in paragraph (1) applies to all children's cases by taking into account the provisions of Article 8 paragraph (3)." | a. Remove previous diversion restrictions.<br>b. In accordance with Article 28B of the 1945 Constitution and the Convention on the Rights of the Child which guarantees the protection of children without discrimination.<br>c. Practices in the Philippines and New Zealand show inclusive diversion is more effective in preventing child incarceration. |
| | **Additional sentences Paragraph (3):**<br>"In the event that the child commits a repeat criminal act or a criminal act that threatens the wider community and state security, diversion is still sought as provided in paragraph (1), but its implementation can only be carried out if it obtains: | a. Affirming formal justice is a last resort or effort.<br>b. Ensure that each child is seen as a whole through social and psychological assessments.<br>c. What is meant by criminal acts that threaten the wider community |

Volume 11, Number 04, October-December 2025, Pages 202-219
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v11i4
Sinta 3; decree No. 0173/C3/DT.0500/2025

| | | |
|---|---|---|
| | a. the victim and/or the victim's family agrees; or<br>b. the court determines diversion based on the recommendation of the Community Supervisor taking into account the best interests of the child, the victim, and the community." | and state security include criminal acts that cause casualties, terror to the public, or disrupt security stability, such as premeditated murder, terrorism, or similar crimes. |

**Source: Author's Analysis**

## D. Conclusions and Recommendations

Based on a comparative analysis of diversion policies in Indonesia, the Philippines, and New Zealand, it can be concluded that the diversion approach in the juvenile criminal justice system in Indonesia is still limited and has not fully prioritized the principles of child protection and restorative justice. The provisions in Article 7 paragraph (2) of the SPPA Law that limit diversion hinder the fulfillment of children's rights to get a fair and humane settlement of cases. Children's criminal law policy is ideally a reflection of the values and aspirations of a developing society, and is directed to achieve national goals in the form of child protection and welfare. However, the current diversion policy in Indonesia still tends to be repressive and not responsive to the needs of children's social recovery.

In contrast to Indonesia, the Philippines and New Zealand have adopted a more inclusive and flexible approach, where access to diversion is not strictly limited by the type of crime or recidivism status. The two countries emphasized the importance of rehabilitation, social intervention, and the involvement of families and communities in the process of resolving children's cases, so that they are more in line with the principles of restorative justice that focus on the restoration of social relationships, shared responsibility, and the best interests of the child. Therefore, the reconstruction of diversion policies in Indonesia needs to be carried out by revising the provisions that limit access to diversion, as well as adopting a comprehensive assessment approach to the social and psychological conditions of children.

Volume 11, Number 04, October-December 2025, Pages 202-219
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v11i4
Sinta 3; decree No. 0173/C3/DT.0500/2025

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Volume 11, Number 04, October-December 2025, Pages 202-219
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v11i4
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