

# Model Countermeasures Children Who Commit Crimes in Review Restorative Justice

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**Abstract:** This study describes the model settlement of cases through non-penal channels for crimes committed by children according to Act 11 of 2012 concerning the Juvenile Criminal Justice System with prioritizing restorative justice so that children who commit crimes are not stigmatized negatively. The Juvenile Criminal Justice System concept has included solving problems in a family manner or for children in conflict with the law, formally known as diversion. Diversion exists to divert the settlement of child cases from the criminal justice process to processes outside criminal justice. Diversion exists to prevent children who conflict with the law from the negative impacts of the criminal justice process on children. United Nations Standard Minimum Rules for the Administration of Juvenile (The Beijing Rules) have provided guidelines to prevent children in conflict with the law from negative impacts, namely by giving law enforcers the authority to take action in handling or resolving the problems the child offenders by not taking courts, among others stopping or not continuing or releasing or returning or handing over to society and other forms of social service activities.

## 1. Introduction

Developmental science improves our understanding of children's behavior—including law-breaking behavior—and the most effective ways to adjust that behavior. Accordingly, developmental research can be applied to create a more effective and supportive juvenile justice system.<sup>1</sup> Risk-taking itself is intrinsically rewarding to adolescents.<sup>2</sup> The general principles of child protection are non-discrimination, the best interests of the child, survival and development, and respect for children's participation. Children who commit criminal acts must continue to obtain legal protection in the court proceedings in the best interest of the child, both legal protection for the child perpetrator of a criminal act, the implementation of examination of the child who is the perpetrator of a criminal act, and the punishment of the child who is the criminal offender.<sup>3</sup> A youth's

<sup>1</sup> Caitlin Cavanagh, "Healthy Adolescent Development and the Juvenile Justice System: Challenges and Solutions," *Child Development Perspectives* 16, no. 3 (July 7, 2022): 141-147, <https://doi.org/10.1111/cdep.12461>.

<sup>2</sup> Dustin Albert and Laurence Steinberg, "Judgment and Decision Making in Adolescence," *Journal of Research on Adolescence* 21, no. 1 (February 15, 2011): 211-24, <https://doi.org/10.1111/j.1532-7795.2010.00724>.

<sup>3</sup> I Nyoman Dipa Rudiana and I Ketut Rai Setiabudhi, "Reconstruction of the Diversion Concept in a Child Criminal Jurisdiction System Based on Dignified Justice," *Prizren Social Science Journal*, (April 29, 2021), <https://doi.org/10.32936/pssj.v5i1.210>.

social context is critically important to healthy development and resistance to crime. Although an individual's social context spans many social interactions across levels, parents and peers are adolescents' two primary agents of socialization.<sup>4</sup> The Indonesian government strives to ensure the fulfillment of the child's rights and manifest the child's protection and welfare through the formation of Law Number 23 of 2002 on Child Protection. In order to adapt to developments in society, several efforts have been made for criminal law reform in the form of amendments to the Law on Child Protection to the enactment of Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection and Government Regulations in place of Law Republic of Indonesia Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection which was later promulgated by Law Number 17 of 2016 on Stipulation of Government Regulation in place of Law Number 1 of 2016 on the Second Amendment to the Law Number 23 of 2002 on Child Protection into Law. Children in Act Number 11 of 2012 concerning the Juvenile Criminal Justice System (from now on referred to as JCJS) is defined as "Children in Conflict with the Law, starting now referred to as Children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who suspected having committed a crime.

Protecting the legal interests of children, all components of the nation reinforce the commitment that their children must be protected by their rights. Indonesia already has a child protection law. The law can be applied to impose sanctions on perpetrators of crimes against children. This is under the legality principle owned by Indonesian criminal law. The principle of legality explains that no action can be punished unless there are legal or statutory rules that govern it first. If there are rules governing, now how are the rules implemented to punish perpetrators of crimes against children?<sup>5</sup>

There is an ongoing need for effective programs in the criminal justice system.<sup>6</sup> Settlement cases of children who conflict with the law must go through a non-penal route, often referred to by society as a family settlement. Act 11 of 2012 concerning the Juvenile Criminal Justice System has included the concept of amicable problem-solving at every level of investigation, prosecution, and trial. Handling children in conflict with the law, those that are resolved amicably or settlements out of court are called diversions. Concept diversion exists to divert the settlement of child cases from the criminal justice process to processes outside of criminal justice. With the birth of the Act JCJC, there was a fundamental change, namely the use of a Restorative Justice approach through a diversion system, as in Article 1 Point 7 Act JCJC.

Restorative justice is a concept of thinking that responds to the criminal justice system's development by focusing on the need to involve society and victims who feel excluded from mechanisms that work in the existing criminal justice system. The Act JCJC recognizes restorative justice. Restorative justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to find a just solution by emphasizing restoration to its original circumstances and not retribution.

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<sup>4</sup> Amanda W. Harrist and Michael M. Criss, "Parents and Peers in Child and Adolescent Development: Preface to the Special Issue on Additive, Multiplicative, and Transactional Mechanisms," *Children (Basel)* 8, no. 10 (September 22, 2021): 831, <https://doi.org/10.3390/children8100831>.

<sup>5</sup> Oksidelfa Yanto et al., "Legal Protection of the Rights of the Child Victims in Indonesian Juvenile Criminal Justice System," *Jurnal Yustika: Media Hukum Dan Keadilan* 23, no. 01 (September 10, 2020): 24-35, <https://doi.org/10.24123/yustika.v23i01.2818>.

<sup>6</sup> Florian Bootsman, "Neurobiological Intervention and Prediction of Treatment Outcome in the Juvenile Criminal Justice System," *Journal of Criminal Justice* 65 (November 1, 2019): 101554, <https://doi.org/10.1016/j.jcrimjus.2018.05.001>.

In principle, the Act JCJC puts forward a Restorative Justice approach and diversion process as an effort to resolve crimes committed by children so that the application of Restorative Justice will offer answers to essential issues in settlement of criminal cases, namely; First, criticism of the criminal justice system which does not provide opportunities, especially for individual victims (criminal justice system that disempowers), Second, eliminating conflicts, especially between perpetrators and victims and society (taking away the conflict from them); Third, the fact that feelings powerlessness experienced; as a result a crime must be overcome to achieve reparation.<sup>7</sup>

The concept of diversion is to prevent children in conflict with the law from the damaging effects of criminal justice on children. The United Nations Standard Minimum Rules for the Administration of Juvenile (The Beijing Rules) have provided guidelines to prevent children in conflict with the law from negative impacts, namely by giving law enforcement authority to take policy action in dealing with or resolving the problem of child offenders by not take formal channels, including by stopping or not continuing or releasing from court proceedings or returning or handing over to society and other forms social service activities. These actions are called diversions, as stated in Rules 11.1, 11.2 and 17.4 SMRJJ (The Beijing Rules). With this diversion action, it is hoped that it will reduce the negative impact due to the involvement of children in the judicial process.

In essence, the purpose of diversion is to avoid detention, to avoid being labelled as a criminal, to improve life skills for perpetrators, to make perpetrators responsible for their actions, to prevent a repetition of criminal, and to advance necessary interventions for victims and perpetrators without having to go through formal track, to distance children from negative influences the judicial process, and diversion will prevent children from following the judicial process. As mentioned, that diversion has reasonable goals, but from these goals, one must also think about the model or pattern of handling diversion so that diversion can run optimally. Diversion must be carried out based on restorative justice. As in Article 8, paragraph 1 Act JCJS: 1) Diversion process is carried out through discussion involving children and their parents/guardians, victims or parents/guardians, societal advisors, and professional social workers based on a restorative justice approach. Furthermore, in Article 8, paragraph 3 Act JCJS, it is explained that the things that must be considered in the diversion are: 3) The diversion process must pay attention: a. Interests of the victim; b. Welfare and responsibility child; c. Avoidance of negative stigma; d. Avoidance of retribution; e. Society harmony; And f. Propriety, decency, and public order. Progress in protecting children in the Indonesian legal system is getting better. However, that does not mean children who conflict with the law are decreasing. Statistical data shows that in 2014 children committed crimes reaching 5,066 cases. In 2017 it decreased to 4,309 cases, and in 2016 it increased again to 4,620 cases.<sup>8</sup> This means that every year the cases that occur in children are increasing.

Seeing the data above, children who conflict with the law must look for settlement patterns for their crimes. This has endeavored so that children who commit crimes do not end up in prison, face and countermeasures these problems. It is necessary to consider the position of children with all

<sup>7</sup> Ivo Aertsen et al., "Restorative Justice and the Active Victim: Exploring the Concept of Empowerment," *Temida* 14, no. 1 (January 1, 2011): 5-19, <https://doi.org/10.2298/tem1101005a>.

<sup>8</sup> Komaruddin Bagja Arjawinangun, "Hari Anak Nasional, KPAI: Kasus pelanggaran anak makin kompleks," *SINDOnews Metro*, (July 23, 2017), <https://metro.sindonews.com/read/1223179/170/hari-anak-nasional-kpai-kasus%20pelanggaran-anak-makin-kompleks-1500787147>.

the characteristics and characteristics that are typical of perpetrators of crimes. Not seeing whether the act is based on his thoughts, feelings, and will, but must also look at various things that can influence a child to commit a criminal. Therefore, the role of parents and surrounding society is needed. In dealing with children as perpetrators of crime, law enforcers must always pay attention to the conditions of children who are different from adults. The fundamental nature of children as individuals who are still unstable, the future of children as national assets, and the position of children in society who still need protection can be used as a basis for finding an alternative solution how to prevent children from a formal criminal justice system that can affect the child's future, placement of children in prison, and stigmatization the position children as prisoners.

Stated that the meaning of reconstruction can be understood by renewal or re-actualization. These aspects and dimensions have three meanings: 1. Reconstructing or updating with things that have been there before (reviving); 2. Reconstructing or updating something outdated (patchwork); 3. Reconstructing or updating with entirely new forms / innovative creations; The word reconstruction in this research is reshaping or reconstructing the concept of diversion based on the protection of children who are faced with the law in a dignified juvenile justice system.<sup>9</sup>

One solution is to divert or place child offenders in the criminal justice system. This means that not all child case problems must be resolved with prison sanctions; JCJS provides an alternative for settlement with a justice approach in the child's best interest and by considering justice for victims and perpetrators, known as a restorative justice approach. It is crucial to find a suitable model diversion for juvenile offenders. So, diversion provides a solution perpetrator and victim.

Restorative justice is justice that emphasizes improvement over damages caused or associated with criminal actions. Restorative justice is made through a cooperative process involving all stakeholders. Restorative justice is an alternative or another way that criminal justice pursues its integration approach on one side and the victim/society on the other as a unit to find solutions and return to the pattern of good relations in society.<sup>10</sup>

## 2. Method

This research seeks the truth of coherence, namely whether there is coherence between legal rules and legal norms, whether norms in the form of orders or prohibitions are coherent with legal principles, and whether an action is legal. This research uses the statute Approach and conceptual approach. Primary legal materials used in this study are legal materials of an authoritative nature consisting of Act number 11 of 2012 concerning the Juvenile Criminal Justice System relating to the model countermeasures children who commit crimes in a review of restorative justice.

## 3. Restorative Justice as a Solution fir Handling Juvenile Criminal Cases in the Juvenile Criminal Justice System

Handling the problem of children who conflict with the law does not only focus on their rights. More than just that, it is necessary to apply restorative justice. Restorative justice in the juvenile criminal justice system is part of implementation diversion. The main principle of imple-

<sup>9</sup> Ahmad Syafiq, "REKONSTRUKSI PEMIDANAAN DALAM HUKUM PIDANA ISLAM (PERSPEKTIF FILSAFAT HUKUM)," *Jurnal Pembaharuan Hukum* 1, no. 2 (August 1, 2014): 178, <https://doi.org/10.26532/jph.v1i2.1484>.

<sup>10</sup> Abrori Shobarnas, "Critical Studies in the Implementation of Restorative Justice's Principle to Realize Religious Justice," *Ijssrr.Com*, (April 13, 2023), <https://doi.org/10.47814/ijssrr.v6i4.1187>.

menting concept diversion is a persuasive or non-penal approach and allows someone to correct mistakes. Formulation diversion is regulated clearly in Indonesian positive law, particularly in Article 1 number 7 Act 11 of 2012 concerning the Juvenile Criminal Justice System.

Law enforcers who are involved in handling children in conflict with the law do not only refer to Act number 11 of 2012 concerning the Juvenile Criminal Justice System or other statutes relating to handling children in conflict with the law but prioritise peace rather than a formal legal process that has come into effect two years after enactment Act JCJS or 31 July 2014 (Article 108 Act Number 11 of 2012). On that basis, the reason for the amendment to Act JCJS was due to the following: First, the failure juvenile justice system to produce justice; Second, the rate of criminal and child recidivism has not decreased; Third, the judicial process failed to treat children; fourth, courts make more use crimes deprivation liberty (prison sentences) than other forms sanctions; and fifth, an overly legalistic approach.<sup>11</sup>

Covenant on Civil and Political Rights in Article 24, paragraph (1) states that every child has the right to obtain the right to protective measures because his status as a minor should be used as a legal basis for Judges to stop child cases. The formulation is the legal basis for implementing Restorative Justice. Such a decision is valid because the judge is given the freedom to explore, follow and understand legal values and the sense of justice in society. a) This is in line with the formulation of Beijing Rules Point 11.1, which stipulates that the transfer of formal legal processes to non-formal settlement channels through the application restorative justice model in handling child cases can be carried out by judges. Restorative justice can be a reference for judges to resolve child cases. Beijing rules provide maximum protection for children's future because they contain the following principles: a) Best interests of the child are a priority. b) Criminal justice is avoided as much as possible. c) All forms of intervention are as minimal as possible to do. d) Police, prosecutors, judges, and other law enforce much as possible, use policy/discretion in dealing with children's cases. e) Criminalization and punishment of children must be avoided unless there is serious harm to the child or another person. f) Legal aid service must be provided immediately without charge.

Guided by the principles of the SPPA Law as described above, diversion should not need to limit the threat of imprisonment under 7 (seven) years and no repetition of criminal acts, but diversion efforts should be implemented for all criminal acts committed by children. Legal treatment of children must not be differentiated as stipulated in Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that every person has the right to recognition, guarantees, protection, and legal certainty that is just and equal treatment before the law.<sup>12</sup>

Restorative justice involves three stakeholders, namely, victims, perpetrators, and civil society or society, in determining the settlement of child cases. Through restorative justice, there are efforts to bring together victims and perpetrators to seek recovery for victims. On the other hand, child offenders, even though their status is perpetrators, children who become perpetrators are also victims who have the right to receive recovery or even socialize with the child perpetrators, not by retribution. This is under the formulation of Article 1, number 6 Act Juvenile Criminal Justice System,

<sup>11</sup> Nevey Varida Ariani, "IMPLEMENTASI UNDANG- UNDANG NOMOR 11 TAHUN 2012 TENTANG SISTEM PERADILAN PIDANA ANAK DALAM UPAYA MELINDUNGI KEPENTINGAN ANAK," *Jurnal Media Hukum* 21, no. 1 (June 30, 2014): 16, <https://doi.org/10.18196/jmh.v21i1.1160>.

<sup>12</sup> Yul Ermis, "DIVERSI DAN KEADILAN RESTORATIF DALAM PENYELESAIAN PERKARA TINDAK PIDANA ANAK DI INDONESIA (Diversion And Restorative Justice In Case Settlement Of Juvenile Justice System In Indonesia)," *Jurnal Ilmiah Kebijakan Hukum* 10, no. 2 (February 13, 2017): 163-174, <https://doi.org/10.30641/kebijakan.2016.v10.163-174>.

which regulates restorative justice. Restorative justice can be formulated as an idea that responds to the development criminal justice system by focusing on the need for societal involvement and victims feeling marginalized by mechanisms that work in the existing criminal justice system. In addition, restorative justice can be used as a frame of mind to respond to a crime for law enforcers.

In various principles and models of restorative justice approaches, process dialogue between perpetrators and victims is the primary and most crucial part of implementing this justice. Direct dialogue between perpetrators and victims allows victims to express their feelings and hopes for the fulfillment of rights and desires from a settlement of criminal cases. Through dialogue, it is hoped that the perpetrators will be moved to self-correct, realize their mistakes and accept responsibility as a consequence of a crime committed with full awareness. Society can also realize an agreement on the results of this dialogue process and monitor its implementation. Therefore, restorative justice is also known as the settlement of cases through mediation (mediation penal). Penal mediation in criminal law aims to resolve criminal cases in society. Conceptually, Stefanie Trankle said in Barda Nawawi Arief, penal mediation developed was based on the ideas and working principles: 1) Conflict Handling (Conflict Handling/*Konfliktbearbeitung*): mediator's job is to make the parties forget about the legal framework and encourage them to get involved in the communication process. This is based on the idea that crime has created interpersonal conflict. Conflict is what the mediation process aims at. 2) Oriented to process (Process Orientation/*Prozessorientierung*): Penal mediation is more oriented to quality process than the results, namely: making the perpetrators of crime aware of their mistakes, conflict needs resolved, calming victims from fear, and so on. 3) Informal process (Informal proceedings/*Informalität*): Penal mediation is informal, not bureaucratic, avoiding strict legal procedures. 4) There is active and autonomous participation of the parties (Active and autonomous participation/*Parteiautonomie/ Subjektivierung*): The parties (perpetrators and victims) are not seen as objects of criminal law procedures but rather as subjects who have personal responsibility and the ability to do. They are expected to act of their own will.

#### **4. Model Handling Child Cases Using a Restorative Justice Approach**

Act Number 11 of 2012, concerning the Juvenile Criminal Justice System through a restorative justice model or diversion, recognizes restrictions on criminal threats under 7 (seven) years. While every child has the same human rights to get the child's best interests, in handling cases of children who conflict with the law, diversion is in the realm of criminal policy (penal policy). Soedarto provides an understanding that criminal policy is a whole policy carried out through statutes and official bodies that aim to uphold the central norms of society. Soedarto's views were influenced by Marc Ancel's definition of criminal policy as a rational effort by society to tackle crime.

The foundational tenets of the U.S. juvenile justice system are that youth are amenable to rehabilitation and fundamentally different from adults regarding criminal responsibility. Nevertheless, despite this founding mandate, "get tough." Crime policies during the 20th century shifted the goal of the juvenile justice system from rehabilitation to punishment. During this period, the number of youth who were detained, transferred to adult courts, and housed in adult facilities increased sharply, even as juvenile crime rates fell.<sup>13</sup> Courts can provide developmentally appro-

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<sup>13</sup> Caitlin Cavanagh, Jennifer Paruk, and Thomas Grisso, "The Developmental Reform in Juvenile Justice: Its Progress and Vulnerability.," *Psychology, Public Policy and Law* 28, no. 2 (May 1, 2022): 151-166, <https://doi.org/10.1037/law0000326>.

appropriate re-habilitative care by assessing each youth's areas of need and matching the youth to skill-oriented services accordingly.<sup>14</sup>

The punishment itself is more oriented to the individual perpetrator, commonly referred to as individual responsibility, where the perpetrator is seen as an individual who can take full responsibility for his actions. While children are individuals who have not been able to realize the actions they are doing entirely, this is because children are individuals who are immature in thinking. Unknowingly, punishment can, of course, have a tremendous psychological impact on children, ultimately affecting the child's mental and soul development. The success of these hinges on juvenile courts ensuring that they are reliable and valid for the local population and are administered with fidelity.<sup>15</sup>

Law enforcers, Police, prosecutors, and judges, in handling children's cases, need to pay attention to the factors that influence children to commit crimes. The family environment greatly influences the growth and development of children. The family is an environment that children know for the first time, and henceforth children learn a lot in family life. Therefore, the role, attitude, and behavior of parents in the process of raising children have a tremendous influence on the formation and development of a child's personality.<sup>16</sup>

When a child is faced with a situation in the criminal justice system, the judge must still consider that a child in conflict with the law is still a "child". Talking about criminals is a human problem. Therefore, efforts to overcome it are a social problem that is not enough to be overcome only by criminal law with imprisonment alone. Society has already thought that being sentenced to prison solves social problems.

How the law is enforced should be understood, seen from the problem of choosing means that are seen as most effective and beneficial for achieving goals. If a child gets a prison sentence, the prison sentence that can be given to the child is a maximum of 1/2 (half) of an adult's prison sentence. Judges by paying attention to the background of the occurrence of criminal acts and the values of justice so that judges can give sanctions in the form of actions to children who are in conflict with the law and do not have to be a prison sentence.

The concept of a restorative justice approach is an approach that focuses more on conditions for the creation of justice and balances for perpetrators of crime and victims themselves. Criminal procedures and justice mechanisms are transformed into a process of dialogue and mediation to create an agreement on a more just and balanced settlement of criminal cases for perpetrators and victims. Artidjo Alkostar, in his writing "Restorative Justice", explains the propriety of imposing a crime through restorative justice will be an institution that can be a means of equal distribution of justice, especially for victims and vulnerable parties such as groups of children, the elderly and the poor.

Handling cases for child offenders, as stated in the provisions of Article 5 Act Number 11 of 2012, requires that Juvenile Criminal Justice System must prioritize a restorative justice approach.

<sup>14</sup> Rebecca J. Nelson and Gina M. Vincent, "Matching Services to Criminogenic Needs Following Comprehensive Risk Assessment Implementation in Juvenile Probation," *Criminal Justice and Behavior* 45, no. 8 (June 27, 2018): 36-53, <https://doi.org/10.1177/0093854818780923>.

<sup>15</sup> Evan D. Holloway et al., "Juvenile Probation Officers' Evaluation of Traumatic Event Exposures and Traumatic Stress Symptoms as Responsivity Factors in Risk Assessment and Case Planning," *Law And Human Behavior* 42, no. 4 (August 1, 2018): 369-384, <https://doi.org/10.1037/lhb0000283>.

<sup>16</sup> Mulia Astuti, "ANAK BERHADAPAN DENGAN HUKUM DITINJAU DARI POLA ASUHNYA DALAM KELUARGA," *Sosio Informa* 16, no. 1 (April 26, 2011), <https://doi.org/10.33007/inf.v16i1.40>.

While the handling child cases, especially child victims, must be handled precisely. Both repressive and preventive measures in order to create a promising and prosperous future for children.

Laws made by humans must be able to follow human will in seeking justice and legal order as the goal of establishing legal rules. A judicial process that children must take as a form of responsibility for their actions impacts their development. The stages starting from process investigation, prosecution, court, and child correctional institutions, take quite a long time, and it is not uncommon for irregularities and injustice to occur in this process. The judge must make the child's inherent rights the main thing in deciding cases. An educative sentencing system must be a priority for judges in making decisions. Analyzing the judge's policy in each decision is necessary for children in conflict with the law. Judges placing children in prison should be a last choice and for the shortest possible time.

Using the word child in juvenile justice shows the limitations of the cases handled, namely only children's cases. The juvenile court includes all activities examining and deciding cases involving the child's interests so that the process of providing justice in the form of a series of actions taken by the judicial body or institution must also be adapted to the child's needs. In its development to protect children, exceptional protection, namely legal protection in the justice system, there have been 2 (two) acts that specifically regulate juvenile justice. First is Act Number 3 of 1997 concerning Juvenile Court, which was changed to Act 11 of 2012 concerning the Juvenile Criminal Justice System.

The juvenile justice system (juvenile justice) must utilize a balanced approach that can meet the needs of society for offenders (children) who, after going through a restorative process, are expected to be more capable of integrating with society than before; and value society's protection because the restorative justice system is responsible for protecting the society from the criminal of children through peaceful means (peacefully resolved).

In the juvenile justice system, the application of diversion with a restorative approach in the settlement of cases of juvenile crimes has a significant meaning. It forms the basis of the current Criminal Code. The purpose of punishment has changed from merely resolving conflicts produced by criminals to restoring balance, creating peace in society, and providing attention to victims. Restorative justice, also known as mind-based justice, involves a collaborative process in which all parties involved in a crime must work together to solve a problem and commit to remedy through their participation. Victims, children, and society are all important in this process. Despite a consensus that parents should be partners in their child's rehabilitative process, no transparent model or set of expectations exists for parental involvement.<sup>17</sup> Youth detained in adult facilities are vulnerable to exploitation by older inmates.<sup>18</sup>

This approach relies not only on remediation, reconciliation, and expected solution. However, it is also critical for rebuilding good relationships after a crime rather than widening the gap between perpetrators, victims, and society. Community is the core of today's modern criminal justice system. Through the transfer of the restorative justice system into the juvenile criminal justice system, the settlement of juvenile crimes will be transferred from criminal procedures to today's modern unfair criminal justice procedures. Through the transfer restorative justice system into

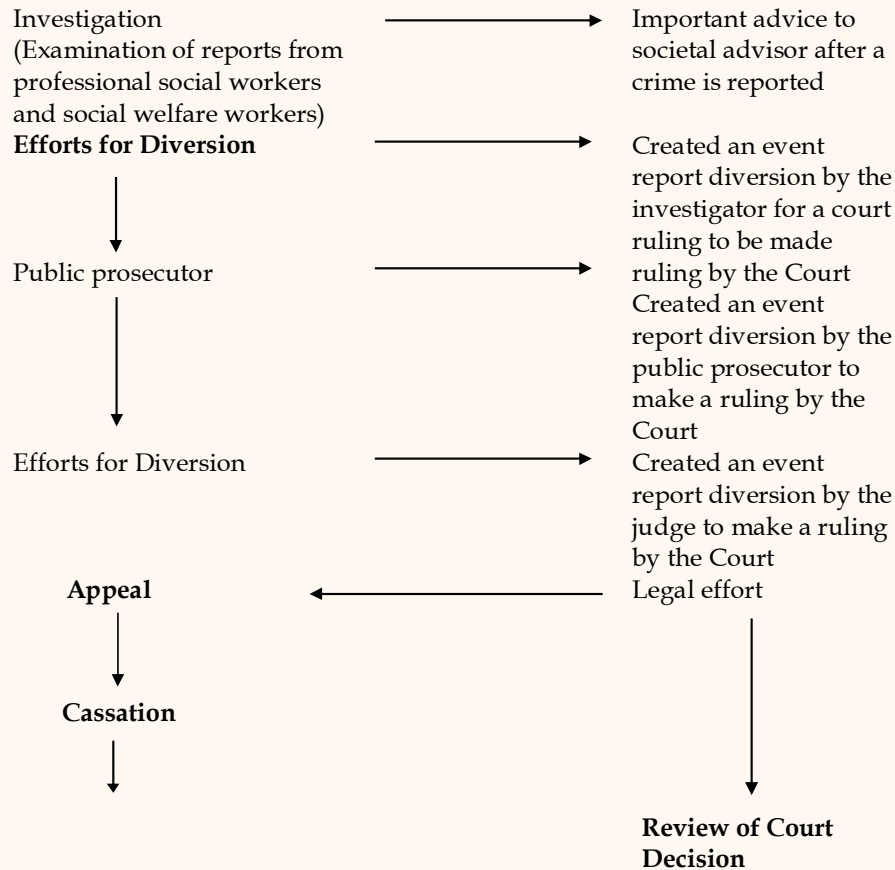
<sup>17</sup> Jeffrey D. Burke et al., "The Challenge and Opportunity of Parental Involvement in Juvenile Justice Services," *Children and Youth Services Review* 39 (April 1, 2014): 39-47, <https://doi.org/10.1016/j.chilyouth.2014.01.007>.

<sup>18</sup> Philip Birch Birch, and Louise A. Sicard. "Prisons and Community Corrections," (1st ed.), (London: Routledge, 10 August 2020). <https://doi.org/10.4324/9781003010562>.



the juvenile criminal justice system, the settlement of juvenile cases will be diverted from criminal procedures to unfair criminal justice procedures. The focus is on restoration to the original state and not on retribution. In addition, diversion is a form of punishment with an educational aspect against children.

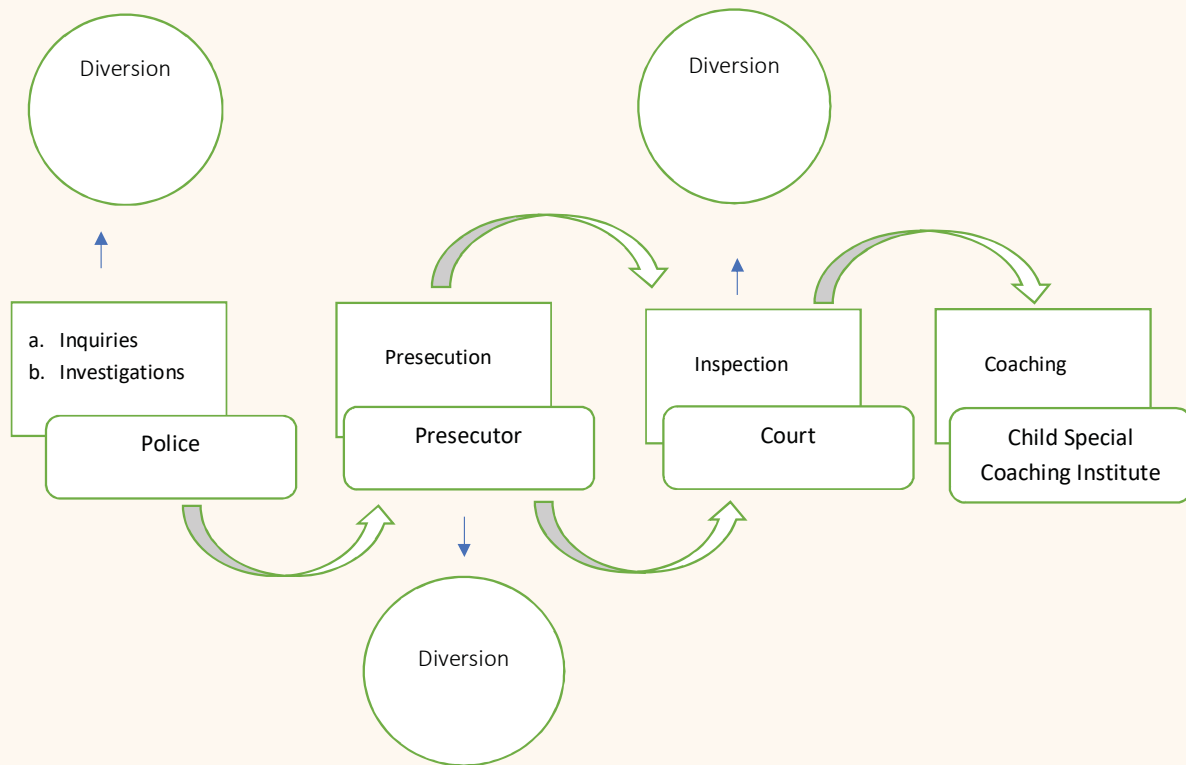
**Figure 1:** The following is a model for handling juvenile criminal cases according to Act JCS:



This becomes the substance implementation act which is considered binding; implementation of diversion should be a professional responsibility in life-related to child problems; it contains a deep meaning in these sanctions in order to protect the rights and best interests of children because the act is done not for interests groups but for the welfare of every society. Beyond that, cases of children can be resolved through non-formal mechanisms based on standard guidelines.

In a regulatory approach to Restorative Justice prior to entry into force of Act Number 11 of 2012 in settling cases of juvenile offenses, Restorative Justice has been regulated in Articles 45 to 47 Criminal Code, although not strictly regulated. Article 45 states: In the case of criminal prosecution of a minor for committing an act before the age of 16, the judge may determine: a) order that the guilty person be returned to his parents, guardian, or carer without any punishment; or b) order that the guilty be handed over to the government without any penalty if the act constitutes a crime or one violation under articles 489, 490, 492, 496, 497, 503-505, 514, 517, 519, 526, 531, 532, 536 and 540 and less than two years have passed since being found guilty of committing a crime or one violation mentioned above and the decision is final; punish the guilty.

**Figure 2:** Diversion Scheme in Juvenile Criminal Justice System



## 5. Conclusion

The implementation of Act Number 11 of 2012 concerning the Juvenile Criminal Justice System mandates a process of changing the paradigm of criminal law that prioritizes the child's best interests and the protection of children's rights. So, the implementation Act JCJS tries to carry out the juvenile justice process through a restorative justice approach with the aim of diversion because in every process these efforts are made, both in the investigation, prosecution, and trial process, the diversion process is sought with conditions, for example, paying attention to the child's age and criminal threats not more of seven years. This diversion effort will create a conducive and fair trial because it involves perpetrators, victims, and society. However, this legal effort is carried out due to the absence of a professional attitude and conditions of interest. In that case, the implementation and Act JCJS will be far from society's values of justice and welfare through the court's determination. Suppose the implementation of this diversion cannot be carried out. In that case, the judicial process is an *ultimum remedium* while still paying attention to the child's best interests by placing the child in a temporary child placement institution.

## Recommendation

1. Diversion Method and Restorative Justice are an option and solution to resolve criminal cases committed by children because it contains a noble concept, namely placing the child's best interests and not ignoring children's rights.

2. Three crucial things must be prepared by the government related to the implementation of Act JCJS, namely, preparing supporting legal products, preparing for the role of law enforcement, and preparing places for detention and correctional children.

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