

**THE APPLICATION OF DIVERSION IN THE INVESTIGATION OF CRIMINAL
OFFENCES IN THE FIELD OF TRAFFIC AGAINST CHILDREN**

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Article info	Abstract
Received :2024-11-20 Revised :2025-01-20 Accepted :2025-02-25 Keywords: Diversion; restorative justice; Child;	<i>Restorative justice is a diversion process in which all parties involved in a particular criminal offence together solve problems, create an event to make things better by involving child victims, children and the community in finding solutions to repair, reconciliation and reassurance that are not based on revenge. The purpose of this study is the application of diversion in the investigation of criminal offences in the field of traffic against children and the application of diversion by investigators has been effective to be able to handle children as perpetrators of criminal offences in the field of traffic. The research method used is normative juridical research method. The Police in order to provide protection to Children Against the Law through the discretionary authority granted by the law have made various best efforts in handling child criminal cases as a whole and this can be seen from the various child criminal cases that can be resolved through the concept of restorative justice or through diversion and various rules / guidelines made to support the implementation of handling child crimes.</i>

1. INTRODUCTION

A child offender is a child in conflict with the law where the child is 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a criminal offence.¹ The age limit of a child provides a grouping of a person to be referred to as a child. What is meant by the age limit is the maximum age grouping as a manifestation of the child's ability in legal status, so that the child switches status to adulthood or becomes a legal subject who is independently responsible for the actions and legal actions carried out by the child .²

Specifically regarding sanctions against children are determined based on differences in the age of the child, namely for children who are still less than 12 (twelve) years old only subject to action, while for children who have reached the age of 12 (twelve) years up to 18 (eighteen) years can be sentenced to criminal offences.³ Considering the characteristics and nature of children and for the protection of children, cases of children in conflict with the law must be tried in a juvenile criminal court within the general criminal justice environment.⁴

Deviations from legal norms committed by adolescents are part of the social problems faced by society. The problem is a symptom of bad will, which can lead to acts that violate the applicable law.⁵ Deviations in adolescent behaviour are manifested in the form of branding, motorcycle gangs, brawls, terrorists, thuggery, drugs, sexual harassment, moral decadence.⁶

Genk motorbike usually starts with a group of teenagers who like to speed on motorbikes, both during the day and at night. This illustrates that traffic violations committed by children are very high and even reach the level of traffic accidents that result in victims, both material victims, injured victims and death victims. Traffic Law No. 22 of 2009⁷ does not regulate how the process of investigating criminal acts of traffic accidents against

¹Article 1 paragraph (3) of the Law of the Republic of Indonesia Number 11 of 2012, concerning the Juvenile Justice System hereinafter referred to as the SPPA Law

minors but in general explains the form of the investigation process against perpetrators or suspects of motor vehicle drivers so that when a child who experiences a criminal act of Traffic accidents both children as perpetrators and children as victims are handled by Traffic investigators.

The Traffic Law also explains the types of traffic accidents can be classified into 3 (three) parts, namely minor traffic accidents resulting in material casualties, moderate traffic accidents resulting in serious injuries and serious traffic accidents resulting in fatalities and it is also explained that for cases of minor traffic accidents resulting in material casualties can be resolved out of court if there is an amicable agreement between the parties involved while moderate traffic accidents and serious traffic accidents although the driver, The owner, and / or public transport company is obliged to provide assistance to victims in the form of medical expenses and / or funeral expenses by not dropping criminal charges but in practice there are several cases of moderate traffic accidents that cause serious injuries and serious traffic accidents that result in the death of victims resolved in a family manner using a peaceful approach using the concept of *restorative justice*.⁸

Restorative justice is a diversion process where all parties involved in a particular criminal offence together solve problems, create an incident to make things better by involving child victims, children and the community in finding solutions to repair, reconcile and reassure hearts that are not based on revenge. Because cases of traffic accidents involving minors as perpetrators of criminal acts are legal subjects, the investigation process uses the procedural law stipulated in Law No.11 of 2012 concerning the Child Criminal Justice System, this is in accordance with the principle of statutory law *Lex Specialis Derogate Lex Generalis*.⁹

2. Maulana Hasan Wadong, 2000, Introduction to Child Protection Legal Advocacy, Jakarta, Gramedia Widiasarana Indonesia P.24

3. General Elucidation of Law No. 11 of 2012, on the Juvenile Justice System

4. Ibid.

5. Marwan Setiawan, Criminality Characteristics of Children & Adolescents, Ghalia Indonesia, Bogor, 2015, p.97

6. Ibid.p.97

7. Law No. 22 Year 2009, on Road Traffic & Transport

Law No.11/2012 regulates the entire process of children who are in conflict with the law starting from the investigation stage to the coaching stage after serving the sentence. At the investigation level the police can determine the form of diversion of a child case through the authority of police discretion.¹⁰

Diversion is a transfer of resolution of cases suspected of committing certain criminal offences from the formal criminal process to an amicable settlement between the suspect/defendant/offender and the victim facilitated by the family and/or community, child community advisors, police, prosecutors or judges.¹¹

The diversion process is carried out through deliberation involving the Child and his/her parents/guardians, the victim and/or his/her parents/guardians, community advisors, and professional social workers based on the Restorative justice approach.¹² Investigators, Public Prosecutors, and Judges in conducting Diversion must consider; a. the category of the criminal offence. The Explanation of Article 9 paragraph (1) Letter a of this provision is an indicator that the lower the criminal offence, the higher the priority of Diversion. Diversion is not intended to be implemented against perpetrators of serious criminal offences such as murder, rape, drug trafficking, and terrorism, which are punishable by more than 7 (seven) years.¹³ b. Age of the Child; the age of the child in this provision is intended to determine the priority of providing Diversion and the younger the age the higher the priority of Diversion.¹⁴ c. Results of community research from Bapas; and d. support from the family and community environment. The diversion agreement as referred to in Article 9 paragraph (1) is carried out by the Investigator upon the recommendation of the Community Supervisor.¹⁵

⁸. M. Nasir Djamil, Children are not to be punished, Sinar Grafika, East Jakarta, p.132.

⁹. Cristine S.T.Kansil, Introduction to Indonesian Law.RinekaCipta.Jakarta.2011. pp. 392

¹⁰. Law No.22 Year 2002, concerning the National Police of the Republic of Indonesia

¹¹. M. Nasir Djamil, Op.Cit.p.137

¹². Elucidation of Article 8 paragraph (1) of Law No.11 Year 2012 on SPPA

¹³. explanation of Article 9 paragraph (1) Letter a, Law No.11 of 2012 concerning SPPA

2. Problems

- a. How is diversion applied in the investigation of criminal offences in the field of traffic against children?
- b. Has the application of diversion by investigators been effective in dealing with children as perpetrators of criminal offences in the field of traffic?

3. Research Methods

The research method used is the *juridical normative* research method¹⁶, which is directed at finding and formulating legal arguments, all of which have a relationship with the material of this research. Analysing the articles using relevant legal materials, it is hoped that legal arguments can be formulated that are useful for the development of legal science. The research data was collected in two ways, namely literature study and interviews. The method of data analysis is descriptive and qualitative.

4. Discussion

4.1. Implementation of Diversion in the Investigation of Traffic Offences by Children

Diversion in children's cases according to Article 9 paragraph (2) of Law No. 11 of 2012 according to Article 10 paragraph (2) of Law No. 11 of 2012 is carried out by

investigators on the recommendation of community supervisors can take the form;

- a. restitution in the event of a victim;
- b. medical and psychosocial rehabilitation;
- c. handing back to parents or guardians; or
- d. participation in education or training at an educational institution or LPKS
- e. community service for a maximum of 3 (three) months.

¹⁴. Elucidation of Article 9 paragraph (1) Letter b, Law No.11/2012 on SPPA

¹⁵. Explanation of Article 10 paragraph (2) of Law No.11 Year 2012, concerning SPPA

¹⁶ Because in the end, to be able to create a legal analysis or legal doctrine or a legal product, a researcher must return to legal research methods. Philosophy or doctrine that is poured into juridical products, must return to using juridical normative thinking and research. On page 139 it is said that normative legal research is the daily activity of

Article 11 of Law No. 11 of 2012 stipulates that the result of a diversion agreement can take the form of, among others:

- a. peace with or without compensation;
- b. handover back to parents or guardians;
- c. participation in education or training at an educational institution LPKS for a maximum of 3 (three) months; or
- d. community service.

The diversion agreement is signed by the parties involved, then by Article 12 paragraph (2) of Law No. 11/2012 determined by the *immediate superior of the* responsible official at each level of examination is submitted to the Court within a maximum of 3 (three) days after the agreement is reached to obtain a determination.

It is hoped that with these regulations, the implementation of diversion and restorative justice can provide support for the process of protecting children facing the law in every criminal offence case, not just certain crimes. This is because the main principle of diversion and *restorative justice* is to avoid criminal offenders from the formal criminal justice system and provide opportunities for offenders to carry out alternative sanctions without imprisonment. Diversion is closely related to the concept of *restorative justice*, and can be applied if the child is willing to admit his/her guilt, as well as provide an opportunity for the child to correct his/her mistakes. Diversion is a good form of intervention to change a child's behaviour and with the involvement of the family, community and police, the child can understand the impact of their actions.

The following is a list of cases handled by Children Against the Law within the Maluku Regional Police jurisdiction issued by Masohi District Police¹⁷:

a legal scholar. In fact, normative legal research can only be done by a legal scholar, who is deliberately educated and masters the discipline of law. See: Sunaryati Hartono, *Legal Research in Indonesia at the End of the 20th Century*, Alumni, Bandung, 1994, pp. 128-129 and 139.

¹⁷ . Table 1 is a list of cases handled by children in the jurisdiction of Central Maluku Polic

Table 1. Data Of Traffic Accidents In 2023-2024

No.	YEAR	NUMBER OF CASES	Diversion/RJ	RJ (Child of the Perpetrator)
1.	January - December 2023	33	28	Nil
2.	JANUARY-August 2024	14	13	Nil
3.	AMOUNT			

Table 1 shows that in 2023 the number of criminal cases by children in conflict with the law that were resolved using a diversion approach using the concept of restorative justice there were 33 cases from January to December 2023 with a successful diversion of 28 cases for the Restorative justice approach there was no data because the settlement was directly at the scene of the crime (TKP) and in 2024 from January to August 2024 there were 24 cases and resolved with a Diversion approach of 59 cases while the Restorative Justice approach was resolved at the scene of the crime so that no real data was obtained.

Table 2 is a list of the handling of child cases in the Seram Bagian bara t police jurisdiction as follows: :¹⁸

Table 2. Diversion And Restorative Justice Data Child Offender 2022 - 2023

Year 2022						
No	Amount	Age	Job	Victims	Causes	Crime Scene
1.	KASS	15 Thn	Students	Light Injuries	High Speed	Piru Village
		15 Thn	Students	Light Injuries	High Speed	Murnaten Village, Taniwel
		16 Thn	Students	Light Injuries	High Speed	Piru Village
		17 Thn	Students	Light Injuries	High Speed	Waimital Village, Keiratu
		17 Thn	Students	Light Injuries	Not Keeping Your Distance	Piru Village

Year 2023						
No	Amount	Age	Job	Victims	Causes	Crime Scene
1.	4 KASS	15 Thn	Students	Light Injuries	High Speed	Kamarian Village Kairatu
		16 Thn	Students	Light Injuries	High Speed	Kamal Village, Kairatu Barat
		15 Thn	Students	Light Injuries	High Speed Nighttime Abnormal Vehicle Lights	Seruawan Village, Kairatu
		17 Thn	Students	Light Injuries	High Speed	Waimital Village, Keiratu

Table 2 shows that in 2022 the number of cases of criminal offences by children in conflict with the law was 5 cases, and all cases were successfully resolved so that children were not sentenced to criminal punishment but were transferred to non-litigation settlement. In 2023 the number of children's cases resolved using the diversion approach was 4 cases. while in 2024 the case was resolved using the Restorative Justice approach and was resolved at the scene of the crime and at the integrated police service centre.

4.2. The effectiveness of Diversion by investigators has been effective in dealing with children as perpetrators of criminal offences in the field of traffic.

According to the author, talking about the concept of restorative justice in handling criminal acts of traffic accidents, which result in victims as referred to in Article 229 paragraph (2) can be carried out outside the court if there is an amicable agreement between the parties involved, of course, by paying attention to the rights of victims or the interests of victims, namely in the form of compensation for damage to vehicles and/or goods.¹⁹

¹⁸ Table 2 is a list of juvenile cases in the Seram Bagian Barat Police jurisdiction.

¹⁹ See Article 236 paragraph (2) of Law No. 22 Year 2009, concerning Road Traffic and Transport.

Similarly, the National Police Chief Regulation No. 15 of 2013 concerning Procedures for Handling Traffic Accidents explains that the settlement of traffic accident cases can be resolved outside the court session in the case of traffic accidents that result in material losses, where the form of settlement is in the form of compensation and is carried out in deliberation to reach an amicable agreement and the agreement is set out in the form of a peace agreement letter.²⁰

Of the many cases of traffic accidents handled in the Traffic Traffic Unit of the Polres, there are several cases involving minors, be it minor traffic accidents, moderate traffic accidents or serious traffic accidents, In handling traffic accidents involving minors, investigators must pay attention to the age category of the perpetrator whether he is 12 (twelve) years old and not yet 18 years old and the article used whether it is punishable by imprisonment above 7 (seven) years or under 7 (seven) years if the criminal act violated with a threat of under 7 (seven) years then the investigator is obliged to do diversion by using the concepts of restorative justice. In conducting diversion, the approach used is family deliberation to find a good and profitable solution or win in solution prioritizing by the rights of the victim or the demands of the victim, usually in the deliberations carried out the victim offers his rights in the form of compensation in the form of compensation in the form of damage to vehicles and goods as well as compensation in the form of medical expenses and funerals and if in the deliberations a peaceful agreement is reached, then the agreement is set out in the form of a peace agreement letter and minutes of the peace agreement and signed by all parties involved in the implementation of the specified deliberations, namely the child and his/her parents/guardians, the victim and his/her parents/guardians, community supervisors, and professional social workers.

²⁰ See Article 61(1), (2) and Article 62(2), (3) and Article 63(1), (2), (3). Perkap No. 15 of 2013, concerning rocedures

5. Conclusion

1. The National Police in order to provide protection to Children Against the Law through the discretionary authority granted by the law has made various best efforts in handling child criminal cases as a whole and this can be seen from the various child criminal cases that can be resolved through the concept of restorative justice or through diversion and various rules / guidelines made to support the implementation of handling child crimes.
2. For the handling of cases of Children Against the Law, especially in handling cases of traffic accidents, the Police are still guided by the SPPA Law and various other supporting regulations both formally and informally, namely formally by referring to various existing laws and regulations by promoting the principles of restorative justice so as to achieve diversion, and informally by promoting the concept of restorative justice to the parties involved in a deliberation to reach a peaceful agreement.

6. Suggestion

The perspective of each police investigator who is still rigid and too legalistic towards every problem of Children Against the Law also greatly affects the diversion process so that there needs to be a change in perspective, namely that each police investigator is equipped with skills in handling Children Against the Law, namely by attending training or vocational education (DIKJUR) and certified on Children Against the Law so that every investigator who handles children's problems is able and mastering the problem of child criminal cases and can find a way out so that the diversion process can be carried out properly. In addition to strengthening the human resources of police investigators through various trainings and Vocational Children Against the Law needs to be improved, It is also necessary to strengthen in the field of budget and regulation, namely the absence of a Perkap regarding the handling of criminal cases of Children Against the Law, both criminal acts of children in general and criminal acts of children in cases of traffic accidents which serve as guidelines for Police investigators in carrying out their investigative duties as investigators of children, then the investigation budget

for Handling Traffic Accidents

that has not been divided into various functions of other criminal investigations of children such as Criminal Children Against the Law in cases of Criminal Traffic Accidents whose investigation process is still sourced from the operational budget for investigating Criminal Traffic Accidents in general and this is also very influential in handling cases of Traffic Accidents against Children.

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