

# Analysis of Diversion Arrangements in the Beijing Rules and the Juvenile Criminal Justice System in Indonesia

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## ABSTRACT

Diversion is very important to pay attention to in handling children of delinquent perpetrators, because it can prevent children from the stigmatization process that usually occurs in the process of criminalizing children through the juvenile justice system. In terms of protecting the best interests of children, diversion arrangements can be found in several international legal instruments such as The Beijing Rules, and in national legal instruments such as the Juvenile Criminal Justice System Act. The purpose of this study is to examine the diversion arrangements in The Beijing Rules and their arrangements in the Law on the Juvenile Criminal Justice System in Indonesia, then to examine these two arrangements. The research method used is normative legal research using statutory, conceptual, and comparative approaches. The results of the study show that the purpose of diversion in The Beijing Rules is not fully seen in the Law on the Juvenile Criminal Justice System. Because even though the provisions for diversion have been regulated, the existence of space that diversion can be pursued at the stages of investigation, prosecution and examination at trial has resulted in cases still being included in the juvenile justice system by giving a stronger stigma to children who are in conflict with the law.

**Keywords:** diversion, Juvenile Criminal Justice System Act, the Beijing rules.

**Published Online:** February 26, 2023

**ISSN:** 2736-5522

**DOI:** 10.24018/ejpolitics.2023.2.1.53

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## I. INTRODUCTION

In Indonesia's positive law, protection of children's rights can be found in various laws and regulations, as stated in Presidential Decree Number 36 of 1990 on August 25, 1990, which is a ratification and convention of the United Nations Convention on the Rights of the Child, Law No. 4 of 1979 concerning Child Welfare, Law Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Becomes Law, Law Number 39 of 1999 concerning Human Rights, and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Juvenile Criminal Justice System Act).

In spite of Indonesian laws restricting it, the number of crimes perpetrated by youngsters, for instance, is rising every year in the age of globalization. According to Steve Allen, more than 4,000 kids in Indonesia are prosecuted for very minor offenses like theft each year. As a result, it is not shocking that nine out of 10 of these kids wind up in jail or a detention facility (Djamil, 2013, p. 2). In addition, it was stated that 655 kids had to go to court for using violence between 2016 and 2020 based on information from the Indonesian Child Protection Commission (KPAI). More specifically, 149 children engaged in psychological violence and 506 children engaged in physical violence (Pahlevi, 2022).

Therefore, it is crucial to uphold the principles of child protection in situations where children are at odds with the law, especially the principle of non-discrimination, which prioritizes the best interests of the child and their right to life, survival, and development and calls for respect for the child's opinion (Fatahilla & Syukur, 2011, p. 13). As a result, the notion that juvenile offenders should be kept as far away from the criminal justice system as possible evolved. Based on these ideas, the concept of diversion—known as diversion or diversion in Indonesian—was created (Marlina, 2010, p. 1). As a result, it is crucial to uphold the principles of child protection in situations where children and the law are at odds, especially the principle of non-discrimination, which puts the best interests of children and their rights to life, survival, and development first and necessitates respect for the child's viewpoint (Fatahilla & Syukur, 2011, p. 13). Consequently, the idea that juvenile offenders should be kept as far away from the criminal justice system as is humanly possible came into being. These ideas led to the conception of the idea of distraction, also known as diversion or diversion in Indonesian (Marlina, 2010, p. 1).

Diversion is being implemented to avoid negative effects on children's souls and development caused by

their involvement with the criminal justice system. This diversion effort or diversion concept is the best solution that can be used as a formula in solving several cases involving children as criminal perpetrators.

The term diversion comes from the English word “diversion” which means diversion, then the term “diversion” in Indonesian is absorbed into the term diversion (Ministry of Education and Culture of the Republic of Indonesia, 2005, p. 84). The term “Diversion” was first conveyed by the President of the Australian Crime Commission in the United States in 1960 which was put forward as a vocabulary in reports on the implementation of juvenile justice (Folk, 2003, p. 1). The basis of this idea of diversion aims to avoid the negative effects caused by conventional criminal justice examinations on children. These negative effects are those that arise when the process is in court as well as the negative effects in the form of stigma (evil stamp) in the judicial process, so that conventional examinations need to be diverted.

This diversion provision is also in line with the development of the current criminal justice system which has begun to prioritize the concept of restorative justice (Nasution *et al.*, 2022, p. 32). Because the provisions of diversion and restorative justice in their implementation both involve third parties in solving problems between children as perpetrators and children as victims in these criminal acts, and in this case their respective families, as well as other parties determined by law. The law is also involved. The goal is that the case settlement process is endeavored not to reach the court.

One of the international legal instruments that is used as a reference related to the application of diversion is United Nations Standart Minimum Rules for Administration of Juvenile Justice (The Beijing Rules) (Irwan, 2020, p. 530). According to The Beijing Rules, diversion is the authority given to law enforcement officials to take discretionary measures in handling and settling juvenile criminal cases by not taking formal steps, which is done by stopping or not continuing/releasing from the criminal justice process or returning/handing over to community and other forms of social service activities (Wahyudi, 2011, p. 1). Meanwhile, according to the Law on the Juvenile Criminal Justice System, it is stated that diversion is a diversion in resolving child cases from the criminal justice process to processes outside the criminal justice system (Article 1 point 7).

In connection with this diversion, this article will elaborate further on its arrangements in The Beijing Rules and the Juvenile Criminal Justice System in Indonesia.

## II. METHOD

The normative legal research methods are used in this study. Normative legal research is the process of discovering a rule of law, legal principles, and legal doctrines in order to resolve legal issues (Hamdani, 2021, p. 41). The statutory, conceptual, and comparative approaches are employed. The statutory approach is a method of conducting research that prioritizes legal material in the form of statutory regulations as a primary source of information (Hartono, 2006, p. 139). The conceptual approach is a method of legal study that offers an analysis point of view for resolving issues from the perspectives of the underlying legal concepts, or even from the values contained in the normalization of a regulation in respect to the concepts utilized (Nasution, 2011, p. 16). While the comparative technique is a comparison-based study (Arikunto, 1997, p. 236).

## III. DIVERSION ARRANGEMENTS IN THE BEIJING RULES

The Beijing Rules, one of the international legal instruments that serves as a foundation for the administration of justice for children, governs the granting of authority to law enforcement officials to take policy actions in handling or resolving child cases by keeping them out of formal channels or not. forward it on to the criminal justice system (Wiyono, 2016, p. 47). The Beijing Rules contains clauses that state that the best interest of the child's welfare and guaranteed rights must have precedence in the criminal justice system for children, and that children should be kept as far away from the criminal justice system as is reasonably possible.

To put it simply, Rule 11 of The Beijing Rules, which governs diversion, states that it is meant to divert the resolution of legal disputes outside of the formal justice procedure. This protects kids from being negatively stigmatized as a result of the juvenile justice system. Additionally, rule 5.1 of the SMR-JJ (Beijing Rules), which confirms the primary goal of this criminal justice system, states that:

- 1) Enhance child welfare. Therefore, the juvenile justice system must be seen with this principle as its primary objective. The employment of sanctions that are merely criminal or punitive in nature is prohibited under this principle. When possible, juvenile justice should see criminal penalties, particularly incarceration, as a last resort;
- 2) Propose the proportionality principle. The second principle is a way to limit the use of retaliatory or punitive punishments. In this case, Paul H. Hann voiced his belief that juvenile court should not serve only as a social institution and as a means of administering juvenile justice. (H. Hann in

Oktaviani, Kuswendari, & Apectriyas, 2015, p. 1811–1812).

Due to the Beijing Rules, child custody disputes no longer have to be settled through exclusion but rather through diversion or the idea of diversion. Diversion is used to resolve situations involving children who are in trouble with the law because of the detrimental effects of the criminal justice system. (Rover C. De, 2000, p. 41).

#### IV. DIVERSION PROVISIONS IN THE JUVENILE CRIMINAL JUSTICE SYSTEM ACT

The Juvenile Criminal Justice System Law shall largely conform with international and national instruments that promote the legal principles and standards set forth in the Juvenile Criminal Justice System Law. Article 6 of the Law on the Juvenile Criminal Justice System provides the following requirements on diversion:

Article 6:

*“Purposeful diversion:*

- a. Bring about peace between victims and children;*
- b. Resolve child matters outside the legal system.*
- c. Protect children from deprivation of independence.*
- d. Protect children from being deprived of independence; and*
- e. Instill a feeling of duty to youngsters.”*

In essence, the five goals of the Law on the Juvenile Criminal Justice System in Article 6 are limited to giving children’s welfare and their best interests top priority. This is in line with the protection principles outlined in the Juvenile Criminal Justice System Law, which states that all actions and decision-making involving children must prioritize the welfare of the child. This is true whether the action is taken by the family, the community, or law enforcement (Djamil, 2013, p. 28).

The provision for diversion is of course very good which has the aim of being in the best interests of the child. However, the application of diversion in Article 7 of the Law on the Juvenile Criminal Justice System is attempted not only at the investigation (police) stage, but the application of diversion is sought at three stages, namely investigation, prosecution and examination at trial.

#### V. ANALYSIS OF DIVERSION DIFFERENCES IN THE BEIJING RULES AND THE JUVENILE CRIMINAL JUSTICE SYSTEM ACT

The purpose of diversion regulated in The Beijing Rules in Rule 11 clearly states that diversion is an effort to divert settlement of cases outside the formal justice process with the aim of preventing children from stigmatization for children from the juvenile justice process. Although the diversion provisions in The Beijing Rules are not regulated in detail, because the Beijing Rules are only a general reference that is used as a basis by world countries in implementing diversion, it is understandable that the purpose of diversion in The Beijing Rules is to require that every juvenile criminal case be may not make it to criminal justice.

So, in this case when comparing the purpose of diversion in The Beijing Rules with the provisions of diversion in Indonesia, in fact the Law on the Juvenile Criminal Justice System does not fully reflect protection. Because even though the provisions for diversion have been regulated, the existence of space that diversion can be pursued at the stages of investigation, prosecution and examination at trial has resulted in cases still being included in the juvenile justice system by giving a stronger stigma to children who are in conflict with the law.

One example of the application of diversion that is very close to the purpose of diversion regulated in The Beijing Rules is South Australia, where South Australia really distances itself from the juvenile criminal justice system. Because the application of diversion is attempted only at the investigation (police) stage with two mechanisms for granting diversion, namely from the beginning of the process by implementing informal and formal police countions and family conferencing before entering court. Formal and informal police count mechanisms are mechanisms in which the police with their authority provide diversion to perpetrators of crimes committed by children by giving a warning or warning to order the perpetrator to apologize to the victim which results in an agreement. As for family conferencing, in giving this diversion the perpetrators and victims and their families are consulted to reach an agreement. So that the process of legal accountability will be completed at the stage of amicable settlement.

Therefore, the provision for diversion in the Law on the Juvenile Criminal Justice System should really only be pursued at the investigation stage. In addition, with regard to the requirements for diversion in the Juvenile Criminal Justice System Act it is also not in line with the principles contained in The Beijing Rules, because decisions must be made in the best interest of the child. If there must be a will for the consent of the victim (Article 9 paragraph (2) of the Juvenile Criminal Justice System Law), then it weakens the

principle of legal certainty and degrades the principle of equality before the law, which, if it depends on the will of the victim, will allow the diversion process to fail. will be implemented in the end the child must undergo a formal justice process.

## VI. CONCLUSION

### A. Conclusion

The Beijing Rules state that diversion refers to the discretionary powers granted to law enforcement officials to handle and resolve juvenile criminal cases without taking formal action. This is accomplished by stopping or not continuing/releasing from the criminal justice process or by returning/handing over to community and other types of social service activities. While this is going on, it is noted in the Law on the Juvenile Criminal Court System that diversion is the process of resolving juvenile cases outside of the criminal justice system. The Beijing Rules' diversion objectives have not been completely reflected in Indonesia's current diversion laws (the Law on the Juvenile Criminal Justice System). Even though the provisions for diversion have been regulated, cases are still included in the juvenile justice system because children in conflict with the law are given a stronger social stigma due to the space that diversion can take during the stages of investigation, prosecution, and examination at trial. One example of the use of diversion in South Australia, which fully abandoned the juvenile justice system, is remarkably similar to the goal of diversion outlined in The Beijing Rules. Because only at the police investigation stage is the deployment of diversion tried.

## CONFLICT OF INTEREST

The authors affirm that there are no conflicts of interest.

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