


# The Effectiveness of Diversion Through Restorative Justice For Handling Children In The East Java Police

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Article Info	Abstract	
<p><b>Keywords:</b> Effectiveness of Handling Child Cases; Diversion and Restorative Justice; East Java Regional Police.</p>	<p><b>Introduction:</b> Children are the next generation of the nation who must be protected in order to grow up properly. Handling children's cases through the Juvenile Criminal Justice System has devastating impacts on children's futures.</p> <p><b>Purposes of the Research:</b> This study aims to analyze the effectiveness of handling children's cases through diversion in the East Java Regional Police and analyze obstacles to handling children's cases through diversion so that solutions are found to achieve maximum diversion implementation as mandated by the Children's Criminal Justice System Law.</p> <p><b>Methods of the Research:</b> This type of research is sociolegal research with a statutory approach, a conceptual approach, and a comparison approach, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.</p> <p><b>Results of the Research:</b> The results showed that of the five police and police in the East Java Regional Police area, it showed that not 50% of the handling of children's cases had been successfully resolved through diversion. The causative factors include the non-achievement of the consent of the victim's child and his family. Therefore, the condition of consent of the victim's child and his family in Article 9 paragraph (2) must be abolished because Article 7 paragraph (2) of Law Number 11 of 2012 does not require the consent of the victim's child and his family. In practice is the main obstacle to achieving diversion, should be eliminated in the best interest of the child in accordance with the principles of the Convention on the Rights of the Child.</p>	

## 1. INTRODUCTION

The conversation about children and their protection never ends throughout life. Because children are the next generation of the nation, the successors of development, the generation that is ready to become the agents of sustainable development and the bearers of sustainable development. It determines the future of the country and Indonesia is no exception<sup>1</sup>. The sociological implication that children are national assets and heirs of national ideals and therefore need guidance and protection to ensure their growth and physical and mental development<sup>2</sup>. Therefore, every child's rights must be upheld so that

<sup>1</sup> Nashriana, *Perlindungan Hukum Pidana Bagi Anak di Indonesia* (Jakarta: RajaGrafindo Persada, 2012).

<sup>2</sup> Salundik, "Anak Yang Berkonflik Dengan Hukum," *Anak Yang Berkonflik Dengan Hukum Dalam Perspektif Penegakan Hukum* 5, no. 1 (2020): 629.

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they grow into a healthy young generation for the continuation of the nation's life<sup>3</sup>. Unitary State Constitution of the Republic of Indonesia Section 28B(2) that "Every child has the right to survival, growth, and development, and is entitled to protection from violence and discrimination".

In the process of growth and development a child, there are various factors that can affect this affect him, both internally and externally, all actions that he will take, including actions that deviate or contradict applicable legal norms. Deviations in children's behavior result in the social welfare of the child himself, which is influenced by several factors, including: (1) lack of parental attention; (2) lack of attention from the surrounding environment; (3) lack of Government Attention; (4) the result of audio-visual stimulating the child to dabble in; (5) the result of a lack of oversight<sup>4</sup>. In these unusual situations and situations, children are often put on trial for their actions - the commission of crimes.

Fundamentally, the causes of violence against children, Abuse, Exploitation, Neglect are interconnected. According to Harry's Pratama Teguh, knowing the root of the problem and identifying the different measures that need to taking action to protect children requires a system, not a narrow, problem-based approach that focuses only on specific groups of children.. A base approach is required<sup>5</sup>. The handling of child cases was regulated by the Juvenile Justice System Act No. 11 (2012). Beyond the juvenile justice system, this law regulates diversion and restorative justice, forms of resolving children's cases involving the offender, the victim, the offender's family, and the victim. Community leaders and stakeholders find fair solutions and put things back together. According to Yoachim Agus, in the results of his research, restorative justice is justice centered on the needs of victims, perpetrators of crimes, and society<sup>6</sup>. Restorative justice is an interesting concept because it can cover the need for justice for all parties, not only for the perpetrator, but also for the victim and the community. Understanding restorative justice will certainly find a passion that leads to solving the problems of the parties in social relations rather than prioritizing the rule of law. The spirit built in restorative justice is to seek solutions, improve, peace, and rebuild relationships<sup>7</sup>. However, there are still many children whose cases enter the legal process and end in punishment. The conventional criminal justice system is largely focused on applying the law, assessing errors and providing penalties<sup>8</sup>. The making of these rules is very clear that the state is very concerned about and protects the rights of the children. Everyone's rights must be upheld by everyone. However, unfortunately, in it is application, law enforcement problems often experience obstacles, both due to internal and external factors.<sup>9</sup>

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<sup>3</sup> Harrys Pratama Teguh, *Hukum Pidana Perlindungan Anak di Indonesia, Teori dan Perlindungan Anak di Indonesia* (Bandung: CV Pustaka Setia, 2020).

<sup>4</sup> Fitri Jayanti Eka Putri, "Perlindungan Hukum Terhadap Anak Berkonflik Dengan Hukum Dalam Sistem Peradilan Pidana Anak" 3, no. 1 (2021): 115.

<sup>5</sup> Teguh, *Hukum Pidana Perlindungan Anak di Indonesia, Teori dan Perlindungan Anak di Indonesia*.

<sup>6</sup> Yoachim Agus Tridiatno, *Keadilan Restoratif* (Yogyakarta: Cahaya Atma Pustaka, 2015).

<sup>7</sup> Kuat Puji Prayitno, "Restorative Justice Untuk Peradilan Di Indonesia (Perspektif Yuridis Filosofis dalam Penegakan Hukum In Concreto)," *Jurnal Dinamika Hukum* 12, no. 3 (2012), <https://doi.org/10.20884/1.jdh.2012.12.3.116>.

<sup>8</sup> Dewi Setyowati, "Memahami Konsep Restorative Justice sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan," *Pandecta Research Law Journal* 15, no. 1 (2020), <https://doi.org/10.15294/pandecta.v15i1.24689>.

<sup>9</sup> Pettanasse, Ismail, Prasetyo Teguh and Yudianto Otto, "Diversion policy against children in conflict with internal law serious crime based on justice value," *Technium Social Sciences Journal* 21 (2021): 487-91.

An overview of children's issues could prompt reforms juvenile justice aimed at ensuring the legal protection of children. The purpose of the juvenile law reform is to ensure that a child who breaks the law is justified as a child who commits a crime and is not punished<sup>10</sup>. Governments and other state agencies have duties and responsibilities to provide legal protection for children exposed to the law, in this case children in conflict with the law. Child legal protections that conflict with the law are often subject to criminal prosecution and tend to harm children. The principles of legal protection of children must be consistent with the Convention on the Rights of the Child established by her Presidential Decree No. 36 of 1990 on ratification of the Convention on the Rights of the Child.

Issues to be considered are the effectiveness of implementing diversion and restorative justice in handling child cases in the East Java Regional Police and the implementation of circumvention and what obstacles are encountered in implementing diversion and restorative justice in handling child cases in the East Java Regional Police. The specific purpose of this investigation is to find out whether the police are adequate to handle cases involving children or whether they are implementing Provisions of Law No. 11 of 2012 Concerning the Juvenile Justice System. Was, Article 1(7) regulates diversion, in which case the child's case is settled outside the legal process. Handling a child's case through court often ends up in jail. This can certainly hurt and destroy a child's future as it creates a negative stigma in society<sup>11</sup>. Child imprisonment shows a tendency toward impaired mental development in children.

## 2. METHOD

Peter Mahmud Marzuki argues that "Social research on law or so-called socio-legal research is often misinterpreted as legal research".<sup>12</sup> This is because both socio-legal research and legal research have the same object, namely law. However, socio-legal research only places the law as a social symptom. In such cases, the law is viewed from an external point of view only. Therefore, in socio-legal research, law is always associated with social problems. In socio-legal research, what is studied is the problem of the effectiveness of the rule of law, compliance with the rule of law, the role of legal institutions or institutions in law enforcement, the implementation of the rule of law, the influence of the rule of law on certain social problems or vice versa, the influence of certain social problems on the rule of law.<sup>13</sup> Since the law consists of abstract ideas and concepts, it is to obtain an idea of how these ideas are realized in practice.<sup>14</sup> The result to be achieved by this kind of research is to answer the following questions: a). Are certain provisions effective in a particular area?, b). Are certain provisions effective for all of Indonesia?, c). What non-legal factors influence the formation of the provisions of a law?, d). Is the role of certain institutions effective in law enforcement?.<sup>15</sup> In this study, all documents, references, facts, theories, doctrines and laws related to the juvenile criminal justice system will also be studied, especially those related to diversion and restorative justice. The approaches used in this study are the statutory

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<sup>10</sup> Erny Herlin Setyorini, Sumiati Sumiati, dan Pinto Utomo, "Konsep Keadilan Restoratif Bagi Anak Yang Berkonflik Dengan Hukum Dalam Sistem Peradilan Pidana Anak," *DiH: Jurnal Ilmu Hukum* 16, no. 2 (2020), <https://doi.org/10.30996/dih.v16i2.3255>.

<sup>11</sup> Setyorini, Sumiati, dan Utomo.

<sup>12</sup> Peter Mahmud Marzuki, *Metode Penelitian Hukum Edisi Revisi* (Jakarta: Prenada Group, 2016).

<sup>13</sup> Marzuki.

<sup>14</sup> Jhonny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Cetakan ke-6 (Malang: Bayumedia Publishing, 2012).

<sup>15</sup> Marzuki, *Metode Penelitian Hukum Edisi Revisi*, hal. 128-129.

approach, the conceptual approach, and the comparison approach. The provisions used in this study are Law Number 11 of 2012 concerning the Criminal Justice System and other related laws and regulations.

### 3. RESULTS AND DISCUSSION

#### 3.1 Effectiveness of treatment of child cases of diversion by restorative justice approach in East Java Regional Police

The jurisdiction of the East Java Regional Police covers 38 cities/regencies, with details of one Big City Resort Police (Polrestabes Surabaya), 3 city resort police, and 35 resort police including the Tanjung Perak KPPP Police (total in charge of 39 Resort Police). Basically, the child case that is often handled by Women and Child Protection Unit, East Java Regional Police is a case of copulation in Article 81 (1) and (2) Child Protection Act Article 82). Article 81 of the Child Protection Act stipulates that: (1) Imprisonment for not less than five years but not more than fifteen years and Rp.5,000,000,000 (Rp.5 billion) for any person who violates the provisions of section 76d. (2) The penalties of subsection (1) also apply to anyone who knowingly tricks, tells a series of lies, or induces a child to have sexual intercourse with him or with another person.

Article 76D stipulates that any person is prohibited from committing violence or threats of violence forcing a child to have intercourse with him or with another person. Meanwhile, Article 82 paragraph (1) of the Child Protection Law states that "Any person who violates the provisions of Article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000,- (five billion rupiah). Article 76E provides for the prohibition of any person from committing violence or threats of violence, coercing, committing deception, committing a series of lies, or persuading a child to commit or allow to be committed an obscene act.

From the preceding two articles, it can be seen that the criminal act of sexual intercourse is a criminal notice of 7 years or more, and due to the criminal notice, the following contents are not complied with, so diversion will not be performed. Provisions of Article 7, Paragraph 2 of Law No. 11 of 2012 on Juvenile Justice System. One of which he requires is that the crime committed was less than seven years old for her. Child molestation is distinguished from adults because the moral and psychiatric maturity of children differs from that of adults. Therefore, the penalty given to a child is no more than 1/2 (1 second) of the maximum adult penalty. Luisa Yesami Krisnalita argues that a child's criminal liability is measured by the child's moral and psychiatric maturity and the degree of response to the crime committed, and by the state of the child's physical, mental and social condition. Regarding the process of handling the criminal act of copulation, the victim is interrogated and the perpetrator is interrogated, but the perpetrator is not arrested by the East Java provincial police during the trial, and the perpetrator is not arrested. is entrusted to SALTER Kebonsari (if the perpetrator is arrested). Residents of Surabaya as evidenced by an ID card). If the perpetrator is outside the residents of Surabaya, they are deposited at MARSUDI PUTRA located in Balongsari. Both of the perpetrators' daycares belong to the provincial Social Service.

According to Dinik Suciharti, there are several purposes why the perpetrator's child is not detained but prefers custody, namely: 1) The custody time is longer than the detention; 2). In addition, as long as the child undergoes legal proceedings, which consists of



investigation, investigation (collection of evidence, etc.) until the file is declared complete (P-21) then devolved to the public prosecutor requires a long time, which is 15 (fifteen) days, and if it has not been completed then an additional 15 (fifteen) days, even until the file is declared complete (P-21). As long as the child is entrusted to the daycare, they are taught about skills, worship, and other useful activities accompanied by officers from the Correctional Center and Advocates who accompany the child since the child gets into legal trouble<sup>16</sup>.

This is a form of the state providing protection (to protect) the human rights of children from any form of discrimination, so that the state must guarantee and ensure that the law does not injure the rights of every child. Examples of two cases successfully resolved by diversion by the Women and Child Protection Unit of the East Java Regional Police in 2021 and 2022: 1) Obscenity (child victim aged 6 years and perpetrator 9 years), in 2021, this case was resolved by diversion through restorative justice. The case did not reach the investigation stage, but was returned to his parents (the victim and perpetrator are still brothers). Because their residences are next to each other, one of them, namely the victim and his family, changed their residences that were still in the area of one RT. East Java Provincial Police Department of Women and Child Protection came to the homes of the perpetrators and victims wearing plainclothes, and did not use their attributes as police officers but as Officers of bapas. This is to avoid stigma from society towards perpetrators and victims; 2) Cases of violence/abuse (Article 76 letter c of the Child Protection Law) in 2022. The case was resolved by diversion through restorative justice (RJ), the threat of his sentence of 6 (six) years. The case occurred at the school, so a resolution involving the victim's parents, the perpetrator and his parents, the principal, and the teacher was also included because it represented his students who were children of the cottage (did not go home).<sup>17</sup>

This step is the right step because putting children in the criminal justice system like adult criminals, is not appropriate. Given the psychiatric condition, mental, mindset of the child, is still in the developmental period. Solving children's cases with formal criminal justice pathways, can damage the future of the child<sup>18</sup>. In line with this opinion, Yusuf Luqita Danawiharja stated that "The child is not a human being in miniature but an autonomous personal figure who is growing and developing. He will achieve optimal growth if he is guaranteed the fulfillment of his rights and is protected from mistreatment, exploitation, violence, and discrimination."<sup>19</sup> Article 70 of Decree No. 65 of 2015 on Guidelines for Rerouting and Treating Children Under 12 Years of Age states: "Children who are not yet 12 (twelve) years old who commit or are suspected of committing criminal acts can be placed in their parents/guardians, government agencies or LPKS in agencies that handle the field of social welfare, both at the central and regional levels". Some of the

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<sup>16</sup> "Interview with Dinik Suciharti, Head of Women and Child Protection Unit, East Java Regional Police," August 31 2022.

<sup>17</sup> "Interview with Dinik Suciharti, Head of Women and Child Protection Unit, East Java Regional Police."

<sup>18</sup> beniharmoni Harefa, "Mediasi Penal Sebagai Bentuk Diversi Dalam Penyelesaian Perkara Pidana Anak Berbasis Keadilan Restoratif," *Jurnal Komunikasi Hukum (JKH)* 4, no. 1 (2018), <https://doi.org/10.23887/jkh.v4i1.13657>.

<sup>19</sup> Yusuf Luqita Danawiharja, "Analisis Yuridis Penerapan Diversi Terhadap Anak Yang Berhadapan Dengan Hukum Dihubungkan Dengan Peraturan Mahkamah Agung Nomor 4 Tahun 2014 Tentang Pedoman Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak," *Aktualita (Jurnal Hukum)*, 2020, <https://doi.org/10.29313/aktualita.v0i0.6325>.

cases that entered the East Java Regional Police between 2019 and 2022 (August 2022), which can be shown in the table below.

**Table 1.**  
**Data On Violence Against Children Period 2019**

No	Month	TYPES OF CRIMES													Sum
		Setbo o	Cabh ive	Ania alrea dy	take the child to run	Cur e	Expl oitati on	Kr oy ok	Arsei	Thugs	De str uct ion	carry ing shar p weap ons	Porn ogra phy	E t c	
1	Jan	61	19	14	2	2	1	-	-	2	-	-	-	3	104
2	Feb	50	21	17	-	1	8	-	1	-	-	-	-	-	98
3	March	35	18	20	-	-	1	2	-	-	-	-	-	3	79
4	Apr	32	18	22	2	8	3	2	1	-	-	-	-	-	88
5	May	37	13	20	4	1	2	-	-	-	-	-	-	-	77
6	June	21	6	17	2	-	-	-	-	-	-	-	-	-	46
7	July	35	18	15	-	-	1	4	-	-	-	-	-	1	74
8	August	35	17	24	-	3	2	-	-	-	-	-	-	-	81
9	Sept	31	14	14	4	3	1	2	-	-	-	-	-	3	72
10	Oct	34	13	12	1	2	-	4	-	2	-	1	-	1	70
11	Nov	21	6	17	2	-	-	-	-	-	-	-	-	-	46
12	Des	27	18	20	-	-	1	2	-	-	-	-	-	3	79

SUM	427	181	212	17	20	20	16	2	4	-	1	-	1	914
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Source: East Java Regional Police PPA Unit, August 31, 2022

From Table 1 above, it can be explained that the East Java Regional Police received 914 cases of data on violence against children during the period of 2019. 104 in January, 98 in February, 79 in March, 88 in April, 77 in May, 46 in June, 74 in July, 81 in August, 72 in Sept, 70 in October, 46 in November, 79 in December. The number of cases is erratic, there are times when it increases, and in the next month it decreases. Out of a total of 914 cases in 2019 there is no explanation of how many were successfully resolved through diversion at the level of investigation, and how many were unsuccessful which then proceeded to the prosecution level.

**Table 2.**  
**Data On Violence Against Children Period 2020**

No	Month	TYPES OF CRIMES														Sum
		Setbo	Cabhive	Anialready	Bring the Child Run	Cure	Explorati on	Kroyok	Culik	Thugs	Broken	Fair	Pornography	d		
1	Jan	65	16	18	2	5	-	2	2	-	-	-	-	5	115	
2	Feb	54	29	19	-	2	2	4	-	-	-	-	-	2	112	
3	Mar	35	25	23	5	4	3	5	-	-	-	-	-	9	109	
4	Apr	32	22	29	-	8	5	1	-	-	-	1	3	-	101	
5	May	38	29	15	1	1	1	3	-	-	-	-	-	1	89	
6	June	27	17	19	2	-	1	-	-	1	-	-	-	-	67	
7	July	32	12	11	2	2	2	3	-	-	-	2	-	2	68	
8	Aug	35	19	23	-	4	2	-	-	2	-	-	-	1	86	

	Se														
9	ve	39	24	8	3	1	-	9	2	-	-	-	1	3	90
1	Oc	34	18	13	1	2	3	2	-	-	-	1	-	4	78
1	No	29	17	19	2	3	-	1	-	-	-	-	-	1	72
1	So	37	19	18	1	-	1	1	-	-	-	-	-	2	79
2	me														
<b>SUM</b>		<b>457</b>	<b>247</b>	<b>215</b>	<b>19</b>	<b>32</b>	<b>20</b>	<b>31</b>	<b>4</b>	<b>3</b>	<b>-</b>	<b>4</b>	<b>4</b>	<b>3</b>	<b>1066</b>
														<b>0</b>	

Source: East Java Regional Police PPA Unit, August 31, 2022

From Table 2 above, it can be explained that the East Java Regional Police received 1066 cases of violence against children data in 2020. By month, January 115, February 112, March 109, April 101, May 89, June 67, July 68, August 86, August 90 was. September, October 78 cases, November 72 cases, December 79 cases. As in 2019, in 2020 the number of cases was erratic, there were times when it increased, and in the following month it decreased. Out of a total of 1066 cases in 2020 there is no explanation of how many were successfully resolved through diversion at the level of investigation, and how many were unsuccessful which then proceeded to the level of prosecution.

**Table 3.**  
**Data On Violence Against Children Period 2021**

No	Month	TYPES OF CRIMES													Sum
		Set boo	Cab hive	Ania alrea dy	Take the child on the run	Cure	Explo itatio n	Kroyo k	Culi k	Thugs	Bro ken	Fai r	Pornog raphy	D l l	
1	Jan	55	27	8	1	3	1	-	-	-	-	-	-	4	99
2	Feb	34	24	17	-	1	-	3	1	-	-	-	-	-	80
3	March	61	18	20	1	-	-	1	-	-	-	-	-	8	109
4	April	31	12	21	1	5	-	2	1	-	-	-	-	-	73
5	May	42	20	29	2	1	2	1	-	-	-	-	-	-	97
6	June	39	22	18	-	4	-	2	-	-	-	-	-	2	87



7	July	56	34	13	-	6	-	3	-	-	-	-	-	-	112
8	Aug	66	39	7	3	-	-	2	-	-	-	-	-	5	122
9	Seven	47	25	19	-	3	1	-	-	-	-	-	-	-	95
10	Oct	49	17	23	-	2	-	4	2	-	-	-	-	3	100
11	Nop	46	25	7	-	-	-	-	-	-	-	-	-	-	78
12	Some	48	28	3	2	-	-	-	-	-	-	-	-	-	81
	<b>Sum</b>	<b>574</b>	<b>291</b>	<b>185</b>	<b>8</b>	<b>25</b>	<b>4</b>	<b>18</b>	<b>4</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2</b>	<b>1133</b>
														<b>2</b>	
														<b>2</b>	

Source: East Java Regional Police PPA Unit, August 31, 2022.

Based on table 3 above, it can be explained that the data on child violence for the 2021 period that entered the East Java Regional Police amounted to 1133 cases. If it is described per month, in January there are 99 cases, in February there are 80 cases, in March there are 109 cases, in April there are 73 cases, in May there are 97 cases, in June there are 87 cases, in July there are 112 cases, August there are 122 cases, September there are 95 cases, October has 100 cases, November has 78 cases, and December has 81 cases. Just like in 2019 and 2020, the number of cases in 2021 is uncertain, there are times when it increases, and in the next month it decreases. Out of a total of 1133 cases in 2021, there is no explanation of how many were successfully resolved through diversion at the investigation level, and how many were unsuccessful which then proceeded to the prosecution level.

**Table 4.**  
**Data On Violence Against Children For The 2022 Period 2022**

No	Month	TYPES OF CRIMES													Sum
		Setbooo	Cabhi ve	Aniaa lread y	Take the child on the run	Curi	Ekspl oitasi	Kroyo k	Culik	Thug s	Broke n	Fair	Porno graph y	D 1	
1	Jan	48	10	33	1	25	3	4	-	2	-	-	1	-	27
2	Peb	67	13	40	4	42	-	1	-	1	-	-	-	2	170
3	Mart	3	14	22	-	30	-	1	-	2	-	-	-	1	73

4	April	29	15	6	1	24	1	6	-	1	-	-	2	1	86
5	May	31	7	23	2	23	1	1	-	1	-	-	-	-	89
6	June	8	7	15	3	7	-	-	-	2	-	1	-	4	47
<b>Sum</b>		<b>186</b>	<b>66</b>	<b>15</b>	<b>135</b>	<b>151</b>	<b>5</b>	<b>13</b>	<b>-</b>	<b>9</b>	<b>-</b>	<b>1</b>	<b>3</b>	<b>8</b>	<b>592</b>

Source: PPA Unit of the East Java Regional Police, August 31, 2022

From Table 4 above, it can be explained that East Java Police received 592 cases of violence against children from 2022 to June 2022. By month, there were 127 cases in January, 170 cases in February, 73 cases in March, 86 cases in April, 89 cases in May, and 47 cases in June. The number of cases is volatile, with some ups and downs in the following month. Of the 592 total cases (January to June 2022), there is no explanation as to how many were resolved by diversion at the investigative level and how many were unsuccessful and progressed to the prosecution level.

**Tabel 5.**  
**Data P-21 And Diversion Violence Against Children 2019 To 2022**

No	UNITY	2019		2020		2021		2022		Ket
		P.21	SEVERAL	P.21	SEVERAL	P.21	SEVERAL	P.21	SEVERAL	
1	POLICE DEPARTMENT	32	18	37	15	25	10	18	12	
2	POLICE SIDOARJO	33	21	32	11	30	13	12	4	
3	POLICE GRESIK	26	11	19	8	22	8	9	3	
4	POLICE MOJOKERJO CITY	31	19	21	9	20	10	11	6	
5	POLICE MOJOKERTO	23	13	23	12	26	7	13	8	
<b>Sum</b>		<b>145</b>	<b>82</b>	<b>132</b>	<b>55</b>	<b>123</b>	<b>48</b>	<b>63</b>	<b>33</b>	

Source: PPA Unit of the East Java Regional Police, August 31, 2022

From table 5 above, it can be explained that in 5 (five) Police and Polresta in the East Java Regional Police area, as a sample, children's cases between 2019 and June 2022, it can be explained that: In 2019 at the Police Department, there were 50 child cases, 32 were declared P-21 (the full file was transferred to the public prosecutor), while another 18 were successfully resolved through diversion. At the Sidoarjo Police Station, there were 54 child cases, 33 were declared P-21, while 21 others were successfully resolved through diversion. At the Gresik Police Station, there were 37 child cases, 26 were declared P-21, while 11 others were successfully resolved through diversion. At the Mojokerto City Police Station, there were 50 child cases, 31 were declared P-21, while 19 others were successfully resolved through diversion. At the Mojokerto Police Station, there were 36 child cases, 23 were declared P-21, while 13 others were successfully resolved through diversion.

In 2020 at the Police Department, there were 52 child cases, 37 were declared P-21, while 15 others were successfully resolved through diversion. At the Sidoarjo Police Station, there were 43 child cases, 32 were declared P-21, while 11 others were successfully resolved through diversion. At the Gresik Police Station, there were 27 child cases, 19 were declared P-21, while the other 8 were successfully resolved through diversion. At the Mojokerto City Police Station, there were 35 child cases, 23 were declared P-21, while 12 others were successfully resolved through diversion. At the Mojokerto Police Station, there were 33 child cases, 23 were declared P-21, while 12 others were successfully resolved through diversion.

In 2021 at the Police Department, there were 35 child cases, 25 were declared P-21, while 10 others were successfully resolved through diversion. At the Sidoarjo Police Station, there were 43 child cases, 30 were declared P-21, while 13 others were successfully resolved through diversion. At the Gresik Police Station, there were 30 child cases, 22 were declared P-21, while the other 8 were successfully resolved through diversion. At the Mojokerto City Police Station, there were 30 child cases, 20 were declared P-21, while the other 10 were successfully resolved through diversion. At the Mojokerto Police Station, there were 33 child cases, 26 were declared P-21, while the other 7 were successfully resolved through diversion.

In 2022 (January-June), in the Police Department, there were 30 child cases, 18 were declared P-21, while 12 others were successfully resolved through diversion. At the Sidoarjo Police Station, there were 16 child cases, 12 were declared P-21, while the other 4 were successfully resolved through diversion. At the Gresik Police Station, there were 12 child cases, 9 were declared P-21, while the other 3 were successfully resolved through diversion. At the Mojokerto City Police Station, there were 17 child cases, 11 were declared P-21, while 6 others were successfully resolved through diversion. At the Mojokerto Police Station, there were 19 child cases, 13 were declared P-21, while 8 others were successfully resolved through diversion. Based on the data and descriptions above, it can be understood that at the level of investigation, it is not until 50% that the settlement of children's cases through diversion with a restorative justice approach is reached. This is an important thing to pay attention to and find a solution so that children who get legal problems do not enter the prosecution process, let alone until the trial. The purpose of restorative justice is an effort or a new model approach in Indonesia that is very close to the principle of deliberation which is the soul of the nation (*volgeist*) Indonesia itself to provide the best solution in resolving private crime case between people or legal entities by giving priority to the core problems

of crime.<sup>20</sup> Howard Zeir says that “Restorative justice is a process to involve to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligation, in order to heal and put things as possible”.<sup>21</sup> When compared to Australia, the police have the authority to carry out diversion in handling child cases. The authority of the police to carry out this diversion, according to Kate Warner with consideration of: 1). Avoiding adverse effects of labeling which exposure to the juvenile justice system can cause; 2). Doubts about efficacy of measures available for young offenders.<sup>22</sup>

Based on the above two considerations, Kate Warner further stated that “Police have traditionally had the discretion to formally caution young offender rather than prosecute”. Police discretion is regulated in Law Number 2 of 2002, Article 18 paragraph (1) that "For the public interest of an official of the National Police of the Republic of Indonesia in carrying out his duties and authorities may act according to his own judgment". Based on Article 18 paragraph (1), it is in the best interest of the child, in order for the child to avoid the negative label of the juvenile criminal justice system, the police can act to resolve the child's case by using his discretion as a form of implementing diversion. In Malaysia, children accused of wrongdoing also use the speech procedures established by the 2001 Act (Seksyen 83 (1) of the 2001 Act. In the best interest of the child, Seksyen 11 (5) of the 2001 Act affirms that the court for children has the power to address all wrongdoing, except for the guilt imposed by the death penalty.

### **3.2 Obstacles in Handling Child Diversion Cases by Restorative Justice Approach in East Java Regional Police**

Based on the findings, the Women and Child Protection Unit of the East Java Provincial Police has essentially implemented the treatment of child-by-diversion cases using a restorative justice approach regulated by the SPPA law. I understand. Nevertheless, the diversion implementation is not 100% achieved by her in the sense that while the diversion requirements under Section 7(2) of the SPPA Act are met, they are not fully implemented in practice.

According to the PPA unit head, Dinik Suciharti, there are several obstacles why children's cases are not successfully resolved through diversion, including:

- a. No agreement has been reached between the perpetrator and/or his family and the victim and/or victim's family. As with compensation, there are no collection points. Section 8 of the SPPA Act mandates that an agreement be reached with the victim and/or her family if the victim and/or her family disagrees, thus satisfying the diversion requirement. Child lawsuits continue. in criminal proceedings.
- b. Victims and/or their families, wanting to dissuade the perpetrator's child, insisted on filing a lawsuit.
- c. Lack of awareness settle the case through diversion between the offender and/or his/her family and the victim and/or his/her family. There is a case of her mistreatment based on which she is sentenced to less than seven years in prison. Section 76C of the Child Protection Act states that "No one is prohibited from

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<sup>20</sup> Yoyok Subagiono, Teguh Prasetyo, dan Otto Yudianto, “The Nature of Termination of Criminal Criminal Attendance Based On Restorative Justice,” *International Journal of Scientific and Research Publications (IJSRP)* 9, no. 12 (2019), <https://doi.org/10.29322/ijsrp.9.12.2019.p9655>.

<sup>21</sup> Howard Zehr, *The Little Book of Restorative Justice* (Good Books, 2002).

<sup>22</sup> Kate Warner, *Juveniles in the Criminal Justice System*, Dalam George Zdenkowski, Chris Ronald, Mark Richardson (Ed.), *The Criminal Injustice System Volume Two* (Sydney and London: Pluto Press, 1987).

committing, authorizing, perpetrating, ordering or participating in violence against children."

- d. In addition, since Dinik Suciharti was assigned as the Head of the PPA Unit (in 2021), the case of a child conscripted into the PPA unit of the East Java Provincial Police is a non-transferable case due to the threat of criminal offenses of more than 7 years.

Restorative justice as a law enforcement paradigm is intended to be an alternative way of dealing with criminal acts or crimes in which restoration of balance is a priority offenders and victims. Achieving justice for all parties therefore requires a gradual and responsive procedure to shift the positivist paradigm to that of restorative justice. We work directly with criminals, victims and communities as actors to find solutions that are fair for all involved. Encourage perpetrators to take responsibility for their victims, their criminal acts, or acts that injure or harm victims, and build accountability for not repeating their criminal acts. The concept of restorative justice is primarily represented as crimes committed by persons (groups) against persons (groups), rather than representing criminal acts or criminal acts primarily as violations of the law. Criminals therefore focus on accountability to victims rather than prioritizing legal liability.<sup>23</sup>

On the other hand, criminal sanctions against persons or perpetrators of violence or abuse who violate the above provisions are provided for in Article 80 of the Child Protection Act : 1). Any person who violates the provisions referred to in Article 76C shall be subject to imprisonment up to three years and six months and/or fine up to Rp.72,000,000 (Rp.72 million); 2). If a child suffers a serious injury as referred to in paragraph 1, the offender shall be punished with imprisonment not exceeding five years and/or a fine not exceeding one hundred million rupiah (one hundred million rupiah).

The police, in this case the PPA Unit had tried to carry out the diversion, but to no avail, so the case proceeded to the investigation process. However, after the dossier was declared P-21 by the public prosecutor, the perpetrator wanted to withdraw his report on the grounds that there had been peace with the victim and his family. In cases like this, the PPA Unit continues to pursue legal proceedings by transferring the case file to the public prosecutor, arguing that it is too late because the file is already P-21. Dinik Suciharti as the Head of the PPA Unit stated that "For such a case, according to Article 7 paragraphs (1) and (2) of the SPPA Law, it has the right to be resolved through diversion, namely at the level of prosecution by the public prosecutor.

Supreme Court Order No. 14 of 2014 Concerning Guidelines for the Implementation of Diversion in the Juvenile Justice System, in Article 5 concerning Diversion Deliberations, paragraph (7) stipulates that "If deemed necessary, diversion facilitators may hold separate meetings (caucuses) with the parties". This provides a great opportunity for a peace agreement to be reached between the perpetrator and the victim as well as the families of the perpetrator and victim. However, this Supreme Court Rule can only serve as a guideline at the hearing of the examination of children's cases in court.

Based on the results of an interview with Dinik Suciharti, the main factor in the failure to handle children's cases through diversion and restorative justice is the absence of agreement between the perpetrator and the victim and their respective families to solve the case through diversion. This is in accordance with the requirements specified by Article 9 paragraph (2) of Law Number 11 of 2012, which states that: The diversion agreement must

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<sup>23</sup> Nurfa Caesarini Putri, "Pendekatan Keadilan Restoratif dalam Penanganan Tindak Pidana Pencurian yang Dilakukan oleh Anak," *Jurist-Diction* 4, no. 5 (2021), <https://doi.org/10.20473/jd.v4i5.29825>.



obtain the consent of the victim and/or the family of the victim's child and the willingness of the child and his family, except for: a). Criminal acts in the form of violations; b). Misdemeanor crimes; c). Victimless crime; or d). The value of the victim's loss is not more than the value of the local provincial minimum wage.

Meanwhile, Article 7 paragraph (2) of Law Number 11 of 2012 states that there are two conditions for children's cases to be resolved through Diversion, namely the first condition, in the event that the criminal act committed is threatened with imprisonment under 7 (seven) years, and the second condition, does not constitute a repetition of a criminal act. Thus, based on Article 7 paragraph (2) above when linked to Article 9 paragraph (2) of Law Number 11 of 2012, diversion should be carried out without the need to obtain the consent of the victim's child or his family. Diversion is also not only enforced with criteria as against the type of crime specified by Article 9 paragraph (2), but diversion must be carried out if the conditions as specified by Article 7 paragraph (2) are met, namely a criminal act committed by a child under 7 (seven) years old, and the child has only committed a criminal act for the first time.

#### 4. CONCLUSION

Effectiveness of treatment of children's cases of diversion by restorative justice approach in East Java Regional Police. Based on the findings of the investigation, it can be explained that the treatment of children's cases of diversion by restorative justice approach in the East Java Regional Police was not effective, it has been proven that 50% has not been successfully completed by diversion. Of the 5 (five) Polres and Polresta, namely the Surabaya Police, Sidoarjo Police, Mojokerto City Police, and Mojokerto Police, it also shows that the handling of child cases through diversion has been implemented but has not been effective, it is proven that 50% has not been achieved. Obstacles to the handling of child cases by diversion through a restorative justice approach in the East Java Regional Police are: a). No agreement has been reached between the perpetrator and/or his family and Victim and/or Victim's Family. As in the case of compensation there is no rallying point. b). Although the diversion requirement is met, because there is a requirement prescribed by Article 8 of the SPPA Law, Consent with the victim and/or family is required, and if the victim and/or family do not agree, the child's case proceeds through the criminal justice process. I insisted on filing a lawsuit. c). Lack of awareness between offenders and/or their families and victims and/or their families to solve cases by diversion. The need for continued engagement with the community regarding leave arrangements and restorative justice in the Juvenile Court Act when dealing with children in conflict with the law. d). The delay in reaching an agreement between the offender and/or his family and the victim and/or his family and the inability of the investigator to close the investigation because the file was declared complete by the prosecution ( P-21). The recommendation from the results of this study is that the police (in this case especially the Women and Child Protection Division) should join the police as gatekeepers in child cases, and every effort should be made to ensure that children's problems are not diverted. It must be done. Do not enter into legal proceedings. Investigators initiate the implementation of diversion as facilitators of the treatment of child cases, and community supervisors explain to attendees the nature of treatment of child cases with diversion, communicate the results of community studies, and make recommendations. Indicates the result of the matter. We need some kind of executive order from the chief of police on guidelines for diversionary behavior in the juvenile justice system and Supreme Court Order No. 14 on guidelines for diversionary behavior in the juvenile justice system. In addition, the police can also use discretion in handling children's



cases so that the implementation of diversion is effective. The purpose of diversion is to resolve children's cases outside the judicial process, so the researcher's recommendation is to abolish the conditions for the consent of the child victim and his family as stipulated in Article 9 paragraph (2) by remembering the provisions of Article 7 paragraph (2) of Law Number 11 of 2012, which does not require the consent of the victim and the victim's family, so that the government's efforts to provide protection for children from deprivation of independence can be realized.

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