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Exploring the implementation of diversion in addressing child-on-child sexual violence in Indonesia

Explorando la implementación de la desviación para abordar la violencia sexual infantil en Indonesia

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Summary: 1. Introduction. 2. Literature review. 3. Methodology. 4. Results and discussion. 4.1.1. The development of human rights and the challenge of protecting children from sexual violence in Indonesia. 4.2. Restorative justice through diversion in Indonesia: Balancing child offender rehabilitation and Victim protection in cases of juvenile sexual violence. 4.3. Between law and conscience: The ethical dilemma of diversion for child sex offenders. 4.4. Introducing a new dimension in diversion: Social transformation to prevent sexual violence among children. 5. Conclusion. 6. References.

Abstract: This study explores the application of diversion in addressing sexual violence committed by children against other children in Indonesia, employing a restorative justice framework. The research aims to identify barriers to the effective implementation of diversion, assess its impact on victim recovery and offender rehabilitation, and offer sustainable, contextually relevant policy recommendations. Using Doctrinal Legal Research, the study critically analyzes Indonesia's legal framework, focusing on the Juvenile Justice System Law and relevant Supreme Court Regulations. The study also compares Indonesia's approach with international models from New Zealand and Canada, known for their successful community-based restorative justice programs. Data collection involves analyzing primary legal sources, such as statutes and judicial decisions, along with secondary data from scholarly literature. The study identifies gaps in Indonesia's legal provisions, including inconsistent application of diversion, lack of technical guidelines, and inadequate psychosocial support for both victims and offenders. The comparative analysis shows that community-based restorative justice models, which involve local communities in offender rehabilitation and victim recovery, could be effective in Indonesia. The research concludes with recommendations to improve Indonesia's diversion program, including developing national technical guidelines, enhancing judicial discretion, strengthening institutional capacities, and formalizing inter-agency collaboration. The study's limitations include the lack of quantitative data, suggesting a need for further empirical research to evaluate the proposed policy changes.

Keywords: Diversion, Sexual Violence, Children, Restorative Justice, Legal Reform

Resumen: Este estudio explora la aplicación de la desviación para abordar la violencia sexual cometida por niños contra otros niños en Indonesia, empleando un enfoque de justicia restaurativa. La investigación tiene como objetivo identificar las barreras para una implementación efectiva de la desviación, evaluar su impacto en la recuperación de las víctimas y la rehabilitación de los delincuentes, y ofrecer recomendaciones políticas sostenibles y contextualmente relevantes. Utilizando la Investigación Jurídica Doctrinal, el estudio analiza críticamente el marco legal de Indonesia, centrándose en la Ley del Sistema de Justicia Juvenil y las Regulaciones pertinentes de la Corte Suprema. El estudio también compara el enfoque de Indonesia con modelos internacionales de Nueva Zelanda y Canadá, conocidos por sus programas exitosos de justicia restaurativa basada en la comunidad. La recolección de datos involucra el análisis de fuentes legales primarias, como estatutos y decisiones judiciales, junto con datos secundarios provenientes de la literatura académica. El estudio identifica brechas en las disposiciones legales de Indonesia, incluida la aplicación inconsistente de la desviación, la falta de directrices técnicas y el apoyo psicosocial insuficiente tanto para las víctimas como para los delincuentes. El análisis comparativo muestra que los modelos de justicia restaurativa basados en la comunidad, que involucran a las comunidades locales en la rehabilitación de los delincuentes y la recuperación de las víctimas, podrían ser efectivos en Indonesia. La investigación concluye con recomendaciones para

mejorar el programa de desviación de Indonesia, incluida la elaboración de directrices técnicas nacionales, la mejora de la discreción judicial, el fortalecimiento de las capacidades institucionales y la formalización de la colaboración interinstitucional. Las limitaciones del estudio incluyen la falta de datos cuantitativos, lo que sugiere la necesidad de una investigación empírica adicional para evaluar los cambios propuestos en la política.

Palabras clave: Desviación, Violencia Sexual, Niños, Justicia Restaurativa, Reforma Legal

1. Introduction

Sexual violence and its complex dynamics present challenges that are not effectively addressed solely through punitive measures against the perpetrators, particularly when those individuals lack legal accountability.^{4,5,6,7,8} It is important to emphasise that the individuals who commit acts of sexual violence are not exclusively adults subject to criminal prosecution; children can also engage in such behaviour, particularly against other children.^{9,10,11,12} A notable case occurred in Siak Regency, Riau, where a child was raped by six individuals, three of whom were elementary school students (under 12 years old) and the other three were junior high school students.¹³ The occurrence of children engaging in acts of child sexual abuse is observed not only in Indonesia but also across various countries worldwide.^{14,15} Nonetheless, there exists a limited number of studies that investigate the factors contributing to children becoming perpetrators of child

⁴ BERGELSON, V. Victims and Perpetrators: An Argument for Comparative Liability in Criminal Law. En *Buffalo Criminal Law Review*. 2005, vol. 8, n° 2. DOI: 10.1525/nclr.2005.8.2.385

⁵ KELLY, L. *Surviving Sexual Violence*. John Wiley & Sons, 2013. Available at: <https://www.wiley.com/en-us/Surviving+Sexual+Violence-p-9780745667430> (accessed on 24 June 2025).

⁶ KIRBY, P. Ending Sexual Violence in Conflict: The Preventing Sexual Violence Initiative and Its Critics. En *International Affairs*. 2015, vol. 91, n° 3. DOI: 10.1111/1468-2346.12283

⁷ LOGAN, T.K., WALKER, R., COLE, J. Silenced Suffering: The Need for a Better Understanding of Partner Sexual Violence. En *Trauma, Violence, & Abuse*. 2015, vol. 16, n° 2. DOI: 10.1177/1524838013517560

⁸ RANDALL, M. Sexual Assault Law, Credibility, and "Ideal Victims": Consent, Resistance, and Victim Blaming. En *Canadian Journal of Women and the Law*. 2010, vol. 22, n° 2. DOI: 10.3138/cjwl.22.2.397

⁹ GLORIA, D.C., M., S.G., LAETITIA, C. Contributory Factors to Child on Child Sexual Abuse: Perceptions of Diverted Female Youth Sex Offenders. En *Child Abuse Research in South Africa*. 2014, vol. 15, n° 2. DOI: 10.10520/EJC161327

¹⁰ HERSHKOWITZ, I., LAMB, M.E. Interviewing Young Offenders About Child-on-Child Sexual Abuse. En *Development and Psychopathology*. 2024, vol. 36, n° 5. DOI: 10.1017/S095457942400066X

¹¹ OMAR, A Study of Child-on-Child Sexual Abuse of Children Under 12 Years. (Doctoral dissertation, University of Johannesburg (South Africa)). 2010. Available at: <https://www.proquest.com/openview/ea89d49fbac6422fd8f350c0fec76495/1?pq-origsite=gscholar&cbl=2026366&diss=y> (accessed on 24 June 2025).

¹² SHAW, J.A. et al. Child on Child Sexual Abuse: Psychological Perspectives. En *Child Abuse & Neglect*. 2000, vol. 24, n° 12. DOI: 10.1016/S0145-2134(00)00212-X

¹³ TIM DETIK SUMUT. Pulu Siswi SMP di Siak yang Dicabuli Hingga Disetubuhi 6 Teman Prianya. En *Detik Sumut*. Available at: <https://www.detik.com/sumut/hukum-dan-kriminal/d-7569412/pulu-siswi-smp-di-siak-yang-dicabuli-hingga-disetubuhi-6-teman-prianya> (accessed on 24 June 2025).

¹⁴ LAETITIA, C., CHRISTIAAN, B. An Assessment of Youth Sex Offender Empathy Levels for General Victims of Child-on-Child Sexual Abuse. En *Child Abuse Research in South Africa*. 2016, vol. 17, n° 1. DOI: 10.10520/EJC188024

¹⁵ OMAR, A Study of Child-on-Child Sexual Abuse of Children Under 12 Years. 2010. Ibid.

sexual abuse.^{16,17}

In principle, they are entitled to and can obtain preferential treatment to resolve criminal cases via the juvenile justice system (Law No. 11 of 2012 on the Juvenile Justice System). Diversion represents a practical application of restorative justice principles, emphasising restoring the victim's violated rights while minimising undue suffering for the perpetrator.^{18,19,20} The restorative justice approach via diversion is based on the understanding that children cannot engage effectively in resolving criminal cases through a retributive framework.^{21,22,23} This method presents significant drawbacks for young offenders, particularly when considering the limitations children face in realising their full potential for future development.^{24,25}

The implementation of diversion in addressing juvenile criminal cases undoubtedly presents a range of substantive and procedural challenges.^{26,27,28,29} The perspective on diversion within the context of restorative justice, whether considered a method or an objective for addressing criminal cases, serves as the foundation for the complex issue of whether implementing diversion in juvenile criminal cases can deliver justice to victims.^{30,31} The rationale for prioritising

¹⁶ VIZARD, E. Sexually Abusive Behaviour by Children and Adolescents. En *Child and Adolescent Mental Health*. 2006, vol. 11, nº 1. DOI: 10.1111/j.1475-3588.2005.00375.x

¹⁷ WARNKE, A. Children and Adolescents as Perpetrators and Victims of Violence and Sexual Abuse. En *Dtsch Arztebl International*. 2014, vol. 111, nº 41. Available at: <https://www.aerzteblatt.de/int/article.asp?id=162672> (accessed on 24 June 2025).

¹⁸ ASMARA, T., NATALIS, A. Rethinking Diversion Programs in Indonesia: A Critical Analysis Through the Lens of Social and Cultural Context. En *Revista Brasileira de Alternative Dispute Resolution-Brazilian Journal of Alternative Dispute Resolution-RBADR*. 2024, vol. 6, nº 12. DOI: 10.52028/rbadr.v6.i12.art11.en

¹⁹ KARSUDIN, K., CAHYANINGTYAS, I. Government Policy on Child Crime Through the Concept of Diversion as a Solution Amid the Spread of Covid-19. En *Lex Scientia Law Review*. 2021, vol. 5, nº 2. DOI: 10.15294/lesrev.v5i2.49914

²⁰ SETYOWATI, D. Diversion in the Child Criminal Justice System as an Effort to Implement Restorative Justice. En *Unram Law Review*. 2020, vol. 4, nº 1. DOI: 10.29303/ulrev.v4i1.108

²¹ GAL, T. *Child Victims and Restorative Justice: A Needs-Rights Model*. Oxford University Press, 2011. DOI: 10.1093/acprof:oso/9780199744718.001.0001

²² LYNCH, N. Restorative Justice through a Children's Rights Lens. En *The International Journal of Children's Rights*. 2010, vol. 18, nº 2. DOI: 10.1163/157181810X12592206285646

²³ SKELTON, A. Restorative Justice as a Framework for Juvenile Justice Reform: A South African Perspective. En *The British Journal of Criminology*. 2002, vol. 42, nº 3. DOI: 10.1093/bjc/42.3.496

²⁴ HAINES, K., O'MAHONY, D. *Restorative Approaches, Young People and Youth Justice*. En *Youth Crime and Justice*. Pine Forge Press, 2006. Available at: <https://us.sagepub.com/en-us/nam/youth-crime-and-justice/book237575#contents> (accessed on 24 June 2025).

²⁵ MARDER, I.D., FORDE, L. Challenges in the Future of Restorative Youth Justice in Ireland: Minimising Intervention, Maximising Participation. En *Youth Justice*. 2023, vol. 23, nº 2. DOI: 10.1177/14732254221122568

²⁶ HUDSON, B. Restorative Justice and Gendered Violence: Diversion or Effective Justice? En *The British Journal of Criminology*. 2002, vol. 42, nº 3. DOI: 10.1093/bjc/42.3.616

²⁷ KLEIN, M.W. Deinstitutionalization and Diversion of Juvenile Offenders: A Litany of Impediments. En *Crime and Justice*. 1979, vol. 1. DOI: 10.1086/449061

²⁸ LEMERT, E.M. *Instead of Court: Diversion in Juvenile Justice*. National Institute of Mental Health, Center for Studies of Crime and Delinquency, 1971. Available at: <https://www.ojp.gov/ncjrs/virtual-library/abstracts/instead-court-diversion-juvenile-justice> (accessed on 24 June 2025).

²⁹ WONG, J.S. et al. Can At-Risk Youth Be Diverted From Crime?: A Meta-Analysis of Restorative Diversion Programs. En *Criminal Justice and Behavior*. 2016, vol. 43, nº 10. DOI: 10.1177/0093854816640835

³⁰ PAYLOR, I. Restorative Justice in Practice—Evaluating What Works for Victims and Offenders. En *Security Journal*. 2015, vol. 28, nº 1. DOI: 10.1057/sj.2012.26

children within the criminal justice system through diversion strategies centres on safeguarding children from becoming offenders.^{32,33,34} It examines how to secure the future of youth in legal conflict while simultaneously addressing the need to prevent the repetition of offences that minors may commit. This perspective is grounded in the evaluation that the pattern of criminal case settlements for adults will exert a psychological influence on children, subsequently affecting the future of those children who find themselves in conflict with the law. Furthermore, there is a concern that the process involved in settling the case may result in a negative stigma for children in conflict with the law.^{35,36,37,38}

The specialisation of children through diversion, grounded in the principle of restorative justice outlined in Law Number 11 of 2012 regarding the Juvenile Criminal Justice System, is implemented to avert retributive law enforcement.^{39,40} This approach serves the interests of children in conflict with the law and the victims involved. Nevertheless, specific criteria must be fulfilled, particularly regarding the child identified as the perpetrator, who must be under 18. Furthermore, determining the resolution mechanism is subsequently categorised according to more specific age groups. According to Article 21 of Law No. 11 of 2012, children under 12 who conflict with the law must be returned to their parents or placed in a mentoring program at a government agency or a social welfare organisation within a maximum timeframe of 6 months.^{41,42,43} The resolution of criminal offences involving children in conflict with the law is conducted within the

³¹ SHAPLAND, J. et al. *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders*. London: Routledge, 2011. Available at: <https://www.routledge.com/Restorative-Justice-in-Practice-Evaluating-What-Works-for-Victims-and-Offenders/Shapland-Robinson-Sorsby/p/book/9781843928454> (accessed on 24 June 2025).

³² HAINES, K., CASE, S. *Positive Youth Justice: Children First, Offenders Second*. Policy Press, 2015. DOI: 10.2307/j.ctt1t899qx

³³ MARSHALL, H. Victims first? Examining the place of 'child criminal exploitation' within 'child first' youth justice. *En Children & Society*. 2023, vol. 37, n° 4. DOI: 10.1111/chso.12696

³⁴ SMITH, R. Diversion, Rights and Social Justice. *En Youth Justice*. 2021, vol. 21, n° 1. DOI: 10.1177/1473225420902845

³⁵ ALPUTILA, M.J., TAJUDDIN, M.A., KAHAR. Diversion approach as an alternative case resolution son of the conflict with the law on child criminal justice system (case study of Merauke). *En IOP Conference Series: Earth and Environmental Science*. 2019, vol. 343. DOI: 10.1088/1755-1315/343/1/012249

³⁶ ANDERSON, D.B., SCHOEN, D.F. Diversion Programs: Effect of Stigmatization on Juvenile/Status Offenders. *En Juvenile and Family Court Journal*. 1985, vol. 36, n° 2. DOI: 10.1111/j.1755-6988.1985.tb01295.x

³⁷ KARRE, S. Unfolding Stories of Children in Conflict with Law: Contextual Dynamics, Stigma and Its Impact on Schooling. *En Institutionalised Children Explorations and Beyond*. 2024. DOI: 10.1177/23493003241269068

³⁸ MAHONEY, A.R. The Effect of Labeling upon Youths in the Juvenile Justice System: A Review of the Evidence. *En Law & Society Review*. 1974, vol. 8, n° 4. DOI: 10.2307/3052885

³⁹ LISTYARINI, D. Juvenile Justice System Through Diversion and Restorative Justice Policy. *En Diponegoro Law Review*. 2017, vol. 2, n° 1. DOI: 10.14710/dilrev.2.1.2017.168-184

⁴⁰ RAHMAN, F. Contextualizing Restorative Justice Through Diversion Mechanism: A Study of Indonesia Juvenile Justice System. *En Indonesia Law Review*. 2019, vol. 9, n° 3. DOI: 10.15742/ilrev.v9n3.584

⁴¹ DAVIES, S.G., ROBSON, J. Juvenile (In)justice: Children in Conflict with the Law in Indonesia. *En Asia-Pacific Journal on Human Rights and the Law*. 2016, vol. 17, n° 1. DOI: 10.1163/15718158-01701009

⁴² PRABASINI, O.S. Legal Protection for Children in Conflict with the Law: Process and Problems. *En Indonesian Journal of International Clinical Legal Education*. 2021, vol. 3, n° 3. DOI: 10.15294/ijicle.v3i3.48264

⁴³ RASDI, R. et al. Reformulation of the Criminal Justice System for Children in Conflict Based on Pancasila Justice. *En Lex Scientia Law Review*. 2022, vol. 6, n° 2. DOI: 10.15294/lesrev.v6i2.58320

juvenile criminal justice system, emphasising the protection of victims' interests, the welfare and accountability of children, the reduction of stigma associated with the child, the prevention of retaliation, and the consideration of socio-cultural contexts, all while adhering to principles of order, decency, and public order.^{44,45,46}

The juvenile criminal justice system represents a systematic approach to enshrining the protection of human rights for children who find themselves in conflict with the law.^{47,48,49} Achieving a balance between the interests of victims and social security, while ensuring that the rights of child perpetrators are not compromised, is a critical objective that warrants careful consideration and optimal pursuit. In specific instances, achieving this balance is regarded as more challenging, particularly in cases involving sexual violence crimes committed by child perpetrators. A moral dilemma exists regarding the balance between offering diversion programs for child offenders and ensuring social protection for the community. The phenomenon of sexual violence, particularly when perpetrated by minors, warrants examination as it captures public attention and instils a sense of insecurity within the community. This concern aligns with the fundamental objectives of criminal law, which are primarily focused on ensuring social protection.^{50,51} The central consideration in this case is the prevention of negative stigmatisation towards child offenders who engage in restorative justice, while concurrently addressing the equally important goal of achieving restorative justice for victims of sexual violence.^{52,53,54}

The approach to addressing crimes of sexual violence, frequently conducted through settlements outside the criminal court, should not be automatically viewed as the implementation of restorative justice, even before the introduction of Law Number 12 of 2022 regarding Crimes of Sexual Violence.^{55,56,57} Historically, the

⁴⁴ CAHYANINGTYAS, I. Penal Mediation of Treatments for Children in The Juvenile Justice System. En *Diponegoro Law Review*. 2018, vol. 3, n° 2. DOI: 10.14710/dilrev.3.2.2018.264-276

⁴⁵ DAUD, B.S., CAHYANINGTYAS, I. Criminal Justice System Toward Children With Legal Conflict Seen In Justice Restorative Prefective. En *Jurnal Hukum Prasada*. 2020, vol. 7, n° 1. DOI: 10.22225/jhp.7.1.1223.14-26

⁴⁶ KARSUDIN, CAHYANINGTYAS, Government Policy on Child Crime Through the Concept of Diversion as a Solution Amid the Spread of Covid-19. DOI: 10.15294/lesrev.v5i2.49914

⁴⁷ ASMARA, NATALIS, Rethinking Diversion Programs in Indonesia: A Critical Analysis Through the Lens of Social and Cultural Context. 2024. *Ibid.*

⁴⁸ FORDE, L., SWIRAK, K. The Development of the Irish Youth Justice System: Toward a Children's Rights Model of Youth Justice? En *Journal of Contemporary Criminal Justice*. 2023, vol. 39, n° 1. DOI: 10.1177/10439862221138682

⁴⁹ SETYOWATI, D. Diversion in the Child Criminal Justice System as an Effort to Implement Restorative Justice. 2020. *Ibid.*

⁵⁰ ASHWORTH, A., HORDER, J. Principles of criminal law. Oxford University Press, USA, 2013. Available at: https://archive.org/details/principlesofcrim0000ashw_t9r1(accessed on 24 June 2025).

⁵¹ FLETCHER, G.P. Basic Concepts of Criminal Law. Oxford University Press, 1998. DOI: 10.1093/oso/9780195121704.001.0001

⁵² COSSINS, A. Restorative Justice and Child Sex Offences: The Theory and the Practice. En *British Journal of Criminology*. 2007, vol. 48, n° 3. DOI: 10.1093/bjc/azn013

⁵³ HODGSON, J. Restorative Justice, Shame and Stigma: Compounding Structural Inequalities in Relation to Gender. En HODGSON, J. ed. *Gender, Power and Restorative Justice: A Feminist Critique*. Cham: Springer International Publishing, 2022. DOI: 10.1007/978-3-030-90827-0_5

⁵⁴ LANNI, A. Taking Restorative Justice Seriously. En *Buffalo Law Review*. 2021, vol. 69, n° 3. Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol69/iss3/2/> (accessed on 24 June 2025).

⁵⁵ HAIRI, P.J., LATIFAH, M. Implementasi Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual (Implementation of Law Number 12 of 2022 on Criminal

perpetrators have suggested peaceful means, which indirectly highlights a limited perspective on sexual violence crimes, positioning them as unequal to other criminal acts. In this context, the “peaceful” approach has consistently been employed as a means to address incidents of rape or sexual harassment. Critiques regarding the implementation of diversion in cases of sexual violence frequently highlight the absence of systems designed to safeguard the interests of victims.^{58,59,60} For instance, it is observed that victims often lack sufficient psychological support, whereas child perpetrators tend to receive greater focus during their rehabilitation process. This results in a disparity that undermines the position of victims, prompting an examination of the degree to which restorative justice is effectively applied.

Furthermore, social and cultural pressures may impact the diversion process. In certain instances, victims or their families may perceive a compulsion to consent to the diversion process to mitigate stigma or community pressure. This situation illustrates that the implementation of diversion frequently occurs under less than optimal conditions, often shaped by external factors that adversely affect victims. Consequently, it is crucial to guarantee that the diversion process is executed with transparency and rigorous oversight to avoid fostering a perception of injustice among victims. When implementing diversion strategies, it is essential to consider the juvenile offender’s psychological condition.^{61,62} In numerous instances, juvenile offenders may lack a comprehensive understanding of the consequences of their behaviour. This indicates that incorporating rehabilitation and education for child offenders is essential within the diversion process. Nonetheless, this should also be paired with initiatives aimed at offering remedies for victims, ensuring that a balance between the requirements of offenders and victims is attained.

Conversely, communities frequently view the diversionary approach in child sexual abuse cases as lacking sufficient deterrent impact. This may lead to insecurity and a lack of trust in the legal system. This situation can potentially erode the legitimacy of the juvenile criminal justice system over time. Consequently, establishing an evaluation mechanism to assess the effectiveness of diversion is

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⁵⁶ SUSILOWATI, C.M.I., FRANS, M.P. Interpreting Power, Grooming, and Deception in Sexual Violence Cases: A Hermeneutic Study on Legal Challenges in Indonesia. En *International Journal for the Semiotics of Law-Revue internationale de Sémiotique juridique*. 2024. DOI: 10.1007/s11196-024-10223-2

⁵⁷ SUSILOWATI, C.M.I., FRANS, M.P. Legal Reform in Addressing Sexual Violence in Indonesia: An Analysis of the Implementation of Law No. 12 of 2022 on Sexual Violence Crimes. En *Revista Direito e Sexualidade*. 2024, vol. 5, n° 2. DOI: 10.9771/rds.v6i2.63279

⁵⁸ BROWNLIE, J. ‘An Unsolvable Justice Problem’? Punishing Young People’s Sexual Violence. En *Journal of Law and Society*. 2003, vol. 30, n° 4. DOI: 10.1111/j.1467-6478.2003.00268.x

⁵⁹ DALY, K., BOUHOURS, B., CURTIS-FAWLEY, S. South Australia Juvenile Justice and Criminal Justice (SAJJ-CJ) Technical Report No. 4: In-depth study of sexual assault and family violence cases. En Brisbane, Queensland: School of Criminology and Criminal Justice, Griffith University. 2007. Available at: <https://restorativejustice.org/rj-archive/south-australia-juvenile-justice-and-criminal-justice-sajj-cj-research-on-conferencing-and-sentencing/> (accessed on 24 June 2025).

⁶⁰ KEENAN, M., ZINSSTAG, E. Introduction: Exploring Restorative Justice in Cases of Sexual Violence. En KEENAN, M., ZINSSTAG, E. eds. *Sexual Violence and Restorative Justice*. Oxford University Press, 2022. DOI: 10.1093/oso/9780198858638.003.0001.

⁶¹ SCHWALBE, C.S. et al. A Meta-Analysis of Experimental Studies of Diversion Programs for Juvenile Offenders. En *Clinical Psychology Review*. 2012, vol. 32, n° 1. DOI: 10.1016/j.cpr.2011.10.002

⁶² WILLIAMS, F.S. et al. An Examination of a Juvenile Justice Diversion Program for Youth with Mental Health Needs and Traumatic Stress Symptoms: A Strengths-Based Approach. En *Psychology, Crime & Law*. 2024, vol. 30, n° 7. DOI: 10.1080/1068316X.2022.2109632

crucial, considering both offender rehabilitation and victim recovery aspects. In the context of policy, the government needs to establish more precise guidelines regarding the implementation of diversion in cases of sexual violence.

These guidelines must encompass strategies that guarantee victims obtain suitable remedies, child offenders undergo efficient rehabilitation, and communities experience a sense of security. Furthermore, there is a necessity to enhance the training for law enforcement officers, mediators, and other pertinent individuals to ensure they manage child sexual abuse cases with greater sensitivity and professionalism. The issue of diversion in addressing crimes of sexual violence committed by children against other children illustrates the intricate balance between safeguarding the rights of child offenders, facilitating the recovery of victims, and ensuring the social protection of the community. To enhance the juvenile justice system, it is crucial to implement a more inclusive and evidence-driven strategy. Achieving restorative justice in this manner ensures that all parties involved can derive meaningful benefits.

2. Literature review

Sexual violence represents a widespread and pressing global concern that crosses various cultural, social, and economic divides.^{63,64,65,66} This phenomenon affects millions globally, with a notable disproportionate impact on women and children.^{67,68,69} The World Health Organisation reports that around one-third of women worldwide have encountered some physical or sexual violence, perpetrated by either intimate partners or non-partners. This epidemic transcends mere health concerns; it represents a significant infringement on human rights, which continues to be inadequately reported as a result of cultural taboos, stigma, and the fear of retaliation.^{70,71,72,73}

⁶³ FEATHERSTONE, L. Sexual Violence against Children: A Global Perspective. En EDWARDS, L., PENN, N., WINTER, J. eds. *The Cambridge World History of Violence: Volume 4: 1800 to the Present*. Cambridge: Cambridge University Press, 2020, vol. 4. DOI: 10.1017/9781316585023.009

⁶⁴ ARNEZ, M., NISA, E. Advocating for Change: Cultural and Institutional Factors of Sexual Violence in Indonesia. En ARNEZ, M., BUDIANTA, M. eds. *Gender, Islam and Sexuality in Contemporary Indonesia*. Singapore: Springer Nature Singapore, 2024. DOI: 10.1007/978-981-99-5659-3_2

⁶⁵ DUBEY, S., BAILEY, A., LEE, J. (Brian). Women's Perceived Safety in Public Places and Public Transport: A Narrative Review of Contributing Factors and Measurement Methods. *En Cities*. 2025, vol. 156. DOI: 10.1016/j.cities.2024.105534

⁶⁶ NATALIS, A., SURAYDA, H.I. Overcoming Legal Barriers: Ensuring Justice for Persons with Disabilities Victimized by Sexual Violence. *En Revista Direito e Sexualidade*. 2024, vol. 5, nº 1. DOI: 10.9771/rds.v5i1.58997

⁶⁷ VANWESENBEECK, I. Sexual Violence and the MDGs. *En International Journal of Sexual Health*. 2008, vol. 20, nº 1-2. DOI: 10.1080/19317610802157028

⁶⁸ LONDOÑO, P.A.V. et al. The Exacerbation of Violence Against Women as a Form of Discrimination in the Period of the COVID-19 Pandemic. *En Heliyon*. 2021, vol. 7, nº 3. DOI: 10.1016/j.heliyon.2021.e06491

⁶⁹ DARTNALL, E., JEWKES, R. Sexual Violence Against Women: The Scope of the Problem. *En Clinical Aspects of Sexual Violence*. 2013, vol. 27, nº 1. DOI: 10.1016/j.bpobgyn.2012.08.002

⁷⁰ ABRAHAMS, N. et al. Worldwide Prevalence of Non-Partner Sexual Violence: A Systematic Review. *En The Lancet*. 2014, vol. 383, nº 9929. DOI: 10.1016/S0140-6736(13)62243-6

⁷¹ LI, L. et al. Sexual Violence Against Women Remains Problematic and Highly Prevalent Around the World. *En BMC Women's Health*. 2023, vol. 23, nº 1. DOI: 10.1186/s12905-023-02338-8

⁷² MCDONALD, F. Nearly a Billion Women Face Domestic or Sexual Violence, Report Finds. *En BMJ*. 2025, vol. 391. DOI: 10.1136/bmj.r2483

Violence against women, especially in the forms of intimate partner violence and sexual violence, represents a significant public health issue and constitutes a breach of women's human rights. The World Health Organisation estimates that approximately one in three women, or 30%, have experienced physical or sexual violence from either an intimate partner or a non-partner at some point in their lives. A significant portion of this violence is characterised as intimate partner violence. Globally, approximately 27% of women aged 15-49 who have been in a relationship indicate that they have encountered some physical or sexual violence from their intimate partner.⁷⁴

The impact of violence on women encompasses significant negative consequences for their physical, mental, sexual, and reproductive health, and in certain contexts, it may elevate the likelihood of HIV acquisition. Violence against women can be effectively prevented. The health sector is essential in delivering comprehensive healthcare to women who have experienced violence, acting as a pivotal entry point for linking them to other vital support services.⁷⁵

This statistic represents a cautious approximation, given that cultural and societal norms regarding sexual violence frequently lead to underreporting. Data indicates that sexual violence is a global issue, manifesting in multiple forms across different regions. Gender inequality, poverty, and the normalisation of violence within cultures are significant contributors to the high prevalence rates of sexual violence.⁷⁶

One of the most troubling manifestations of sexual violence is child-on-child sexual abuse, commonly identified in clinical literature as "harmful sexual behaviour." This form of abuse manifests when a child or adolescent participates in sexual behaviour with another child or adolescent through coercive or manipulative tactics, which is distinctly different from consensual and developmentally suitable exploration.^{77,78,79,80}

Worldwide, 650 million women and girls, representing 1 in 5, have experienced sexual violence during their childhood. Between 410 and 530 million boys and men, which equates to approximately 1 in 7, have reported experiencing sexual violence in their childhood. Sexual violence against children is characterised as "Any intentional, unwanted, and inappropriate sexual act, whether completed or attempted, performed against a child, including for exploitation, and which results

⁷³ WORLD HEALTH ORGANIZATION. Devastatingly Pervasive: 1 in 3 Women Globally Experience Violence. En. 2021. Available at: <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence> (accessed on 24 June 2025).

⁷⁴ WORLD HEALTH ORGANIZATION. Violence Against Women. En. Available at: <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> (accessed on 24 June 2025).

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ EKERS, T. Preventing Harmful Sexual Behaviours in Children and Young People: Evaluating the Role of Primary Education. En *Pastoral Care in Education*. 2024, vol. 42, n° 4. DOI: 10.1080/02643944.2024.2332701

⁷⁸ HACKETT, S. Children and Young People with Harmful Sexual Behaviours. Research in Practice Dartington, 2014. Available at: <https://www.ncsby.org/sites/default/files/2022-08/UK%20Report%20on%20Children%20and%20Young%20People%20with%20Harmful%20Sexual%20Behavior.pdf> (accessed on 24 June 2025)

⁷⁹ HUNT, G.R. et al. Scoping Review of the Definitions Used to Describe and Understand Harmful Sexual Behaviors in Children and Young People. En *Trauma, Violence, & Abuse*. 2024, vol. 25, n° 4. DOI: 10.1177/15248380231218294

⁸⁰ WATERS, J. Turning a Blind Eye? Teachers' Lived Experiences of Child-on-Child Harmful Sexual Behaviour at Three Schools in the UK. An Interpretative Phenomenological Analysis. Cardiff University, 2019. Available at: <https://orca.cardiff.ac.uk/id/eprint/127462/> (accessed on 24 June 2025).

in or is likely to result in injury, pain, or psychological suffering.” To generate global and regional estimates, sexual violence is classified into two main categories: contact sexual violence, which encompasses rape and sexual assault, and non-contact sexual violence, as specified in the International Classification of Child Abuse.⁸¹

The global and regional figures derive from comprehensive datasets and adjustments to align with established definitions and a standardised set of parameters. Interpreting these estimates requires careful consideration, as they represent attempts to produce the most precise figures possible, grounded in the data available at the country level.⁸²

Furthermore, over 370 million individuals, representing 1 in 8, have encountered rape or sexual assault in their childhood. The regions with the highest incidence of rape and sexual violence victims are predominantly the world’s most densely populated areas, notably sub-Saharan Africa, East and Southeast Asia, and Central and South Asia. Worldwide, an estimated 410 to 530 million boys and men currently living have experienced sexual violence in their childhood. Among this group, 240 to 310 million individuals, which equates to approximately 1 in 11, have encountered rape or sexual assault in their childhood.⁸³

Understanding the difference between child-on-child sexual abuse and typical childhood curiosity is essential. In abusive situations, the behaviour exhibits a notable imbalance of power, frequently shaped by variables including age, physical strength, social status, and institutional authority. Older siblings, peers with significant social influence, or children in caregiving roles may exert their power to manipulate or coerce younger children into engaging in sexual acts. The defining feature of this type of abuse is the lack of voluntary consent, with victims often unable to resist due to their developmental immaturity or the coercive methods employed by the perpetrator. Child-on-child sexual abuse predominantly takes place in settings characterised by trust and familiarity, including homes, schools, or care facilities, which complicates detection and intervention efforts. The trauma that victims endure is frequently intensified by emotions such as shame, guilt, and the apprehension of disbelief from others. This adds complexity to the disclosure process and may result in enduring psychological effects for both the victim and the perpetrator.^{84,85}

The legal framework for addressing child-on-child sexual abuse in Indonesia is established by Law No. 11 of 2012, which pertains to the Juvenile Criminal Justice System Law. This law indicates a transition from a punitive justice model to one that emphasises rehabilitation, prioritises the child’s best interests, and seeks social reintegration rather than punitive measures. The Juvenile Criminal Justice System Law acknowledges that children who engage in criminal behaviour, such as sexual offences, are at a critical developmental juncture and should be addressed in a manner that reflects their capacity for rehabilitation.⁸⁶

The Juvenile Criminal Justice System Law stipulates that diversion, resolving juvenile cases outside the formal judicial framework, is the principal method for addressing issues involving children in conflict with the law. This approach aligns

⁸¹ UNITED NATIONS CHILDREN’S FUND, Sexual Violence - UNICEF Data. Available at: <https://data.unicef.org/topic/child-protection/violence/sexual-violence/> (accessed on 24 June 2025).

⁸² Ibid.

⁸³ Ibid.

⁸⁴ CRAIG, E. Child’s Play or Sexual Abuse? Reviewing the Efficacy of the Justice Framework in Dealing with Child on Child Sexual Abuse in the United Kingdom. En *Journal of Child Sexual Abuse*. 2020, vol. 29, nº 6. DOI: 10.1080/10538712.2020.1719448

⁸⁵ SHAW et al., *Child on Child Sexual Abuse: Psychological Perspectives*. 2000. Ibid.

⁸⁶ ASMARA, NATALIS, *Rethinking Diversion Programs in Indonesia: A Critical Analysis Through the Lens of Social and Cultural Context*. 2024. Ibid.

with the worldwide movement towards restorative justice, emphasising the importance of addressing the harm inflicted on victims, rehabilitating offenders, and re-establishing social harmony without relying on punitive measures such as detention.⁸⁷

The Juvenile Criminal Justice System Law outlines various forms of diversion, including direct settlements between the parties, community-based measures, and participation in restorative justice programs. The measures are designed to facilitate the offender's understanding of the consequences of their actions, promote empathy towards the victim, and establish a path to rehabilitation through counselling or community service. Nonetheless, the legislation clearly indicates that diversion is not permissible for minors charged with serious offences, including those that carry a potential prison sentence of seven years or longer, as well as crimes associated with drugs, terrorism, or repeat offences.⁸⁸

Diversion is a fundamental element of restorative justice, emphasising the importance of addressing the harm inflicted on the victim while facilitating the offender's rehabilitation.^{89,90,91,92} In cases of child-on-child sexual abuse, diversion presents a chance for both the victim and the perpetrator to access necessary support, while circumventing the stigmatisation and frequently distressing nature of a formal court process.⁹³

Diversion processes encompass a range of stakeholders, such as child offenders, their families, the victim, and social workers. The objective is to develop a solution that addresses the requirements of all stakeholders, promoting recovery for the victim and motivating the child offender to acknowledge their actions and participate in rehabilitative behaviour. Measures aimed at restoration, including apologies, restitution, or community service, may be incorporated into the diversion process.^{94,95}

Evidence suggests that when diversion programs are effectively executed, they have the potential to lower recidivism rates and facilitate the social reintegration of young offenders. A more comprehensive approach can be employed to tackle the

⁸⁷ SETYOWATI, Diversion in the Child Criminal Justice System as an Effort to Implement Restorative Justice. 2020. Ibid.

⁸⁸ NASHRIANA et al. Enhancing Restorative Justice in Indonesia: Exploring Diversion Implementation for Effective Juvenile Delinquency Settlement. En *Sriwijaya Law Review*. 2023, vol. 7, n° 2. DOI: 10.28946/slrev.Vol7.Iss2.2427.pp318-334

⁸⁹ BAZEMORE, G., MCLEOD, C. Restorative Justice and the Future of Diversion and Informal Social Control. En *Restorative Justice: Theoretical Foundations*. Routledge, 2012. DOI: 10.4324/9781843924838

⁹⁰ LISTYARINI, D. Juvenile Justice System Through Diversion and Restorative Justice Policy. *Diponegoro Law Review*. 2017. Ibid.

⁹¹ HUDSON, Restorative Justice and Gendered Violence: Diversion or Effective Justice?. 2002. Ibid.

⁹² ASMARA, NATALIS, Rethinking Diversion Programs in Indonesia: A Critical Analysis Through the Lens of Social and Cultural Context. 2024. Ibid.

⁹³ PRATIWI, D.N. Balancing The Interests of Child Offenders and Child Victims through Diversion in Child-on-Child Crime: Evaluation through The International Children's Rights Legal Framework: In The Context of Indonesia Juvenile Justice System. Leiden University, 2018. Available at:

<https://www.universiteitleiden.nl/binaries/content/assets/rechtsgeleerdheid/instituut-voor-privaatrecht/jeugdrecht/jr-thesis-pratiwi-july-2018.pdf> (accessed on 24 June 2025).

⁹⁴ WOOD, W.R. Victims as Stakeholders: Research from a Juvenile Court on the Changing Roles of Victims in Restorative Justice. En *Critical Criminology & Justice Studies Articles*. 2014, vol. 4, n° 1. Available at: <https://research-repository.griffith.edu.au/items/63d0d061-85ed-5301-8a5d-5367bcb624f7> (accessed on 24 June 2025).

⁹⁵ RABBANI, N., WULANDARI, C. The Existence of Victims in the Implementation of Diversion in the Resolution of Criminal Acts Committed by Children. En *PAMALI: Pattimura Magister Law Review*. 2025, vol. 5, n° 2. DOI: 10.47268/pamali.v5i2.3117

underlying factors contributing to harmful sexual behaviour, including exposure to violence or early traumatic experiences.^{96,97}

Although diversion presents potential benefits, various challenges hinder its implementation in instances of child-on-child sexual abuse. The primary concern is the lack of detailed, trauma-informed protocols for managing these delicate situations. The Juvenile Criminal Justice System Law treats a child who commits a non-sexual offence, such as theft, the same as a child who engages in sexual violence, despite the significant differences in the underlying causes and consequences of these offences.⁹⁸

The existing legal framework exhibits a significant deficiency in the absence of standardised, risk-based assessments that critically analyse the appropriateness of diversion in cases involving sexual violence. In the absence of a comprehensive assessment of the harm inflicted, the victim's needs, and the offender's capacity for rehabilitation, the process of making diversion decisions may lack consistency and objectivity. This situation places at-risk individuals in a position where they may encounter additional trauma, as they could be coerced into a diversion process that fails to meet their needs or ensure their safety sufficiently.⁹⁹

A notable challenge is the emotional and psychological effects on the victim. Child victims of sexual violence frequently endure trauma that can result in enduring impacts on their mental health and overall well-being. Diversion processes should focus on the emotional safety of the victim, guaranteeing that their perspective is acknowledged and that they are not pressured into engaging in a process that could lead to further trauma. The individual affected should have the option to engage in diversion voluntarily and should receive sufficient support, which includes access to therapy that is informed by trauma and legal advocacy services.^{100,101}

Furthermore, it is essential to take into account the child offender's personal history of victimisation during the diversion process. A significant number of child perpetrators of sexual violence have encountered trauma in their own lives, often as a result of abuse or exposure to violence. Neglecting to tackle the fundamental causes of their detrimental behaviour may result in recidivism, highlighting the necessity of integrating therapeutic interventions into the diversion process that

⁹⁶ STEINBERG, L., CHUNG, H.L., LITTLE, M. Reentry of Young Offenders from the Justice System: A Developmental Perspective. En *Youth Violence and Juvenile Justice*. 2004, vol. 2, nº 1. DOI: 10.1177/1541204003260045

⁹⁷ MANGWIRO, V.P., TANGA, P.T., EKObI, G.A. Assessing the Impact of Diversion Programmes on Young Offenders in the Eastern Cape Province, South Africa. En *E-Journal of Humanities Arts and Social Sciences*. 2024, vol. 5, nº 16. Available at: <https://www.ajol.info/index.php/ehass/article/view/302883> (accessed on 24 June 2025).

⁹⁸ ANANTA, A.R.R. et al. Criminal Limitations on Diversion of Children Against the Law Based on the Juvenile Criminal Justice System from a Comparative Perspective. En *Jurnal Penegakan Hukum dan Keadilan*. 2025, vol. 6, nº 2. DOI: 10.18196/jphk.v6i2.26234

⁹⁹ HASAN, Z., RAMADHAN, D.Y. Legal Review of the Protection of Minors as Victims of Sexual Exploitation Based on Law No. 35 of 2014 Concerning Child Protection. En *Journal of Social and Communication (JSC) Terekam Jejak*. 2025, vol. 1, nº 1. Available at: <https://journal.terekamjejak.com/index.php/jsc/article/view/306> (accessed on 24 June 2025).

¹⁰⁰ SIGURDARDOTTIR, S., HALLDORSOTTIR, S., BENDER, S.S. Deep and Almost Unbearable Suffering: Consequences of Childhood Sexual Abuse for Men's Health and Well-Being. En *Scandinavian Journal of Caring Sciences*. 2012, vol. 26, nº 4. DOI: 10.1111/j.1471-6712.2012.00981.x

¹⁰¹ MANUKRISHNAN, BHAGABATI, K. Surviving Childhood Sexual Abuse: A Qualitative Study of the Long-Term Consequences of Childhood Sexual Abuse on Adult Women's Mental Health. En *Journal of Psychosexual Health*. 2023, vol. 5, nº 4. DOI: 10.1177/26318318231221948

focus on these core issues.^{102,103}

3. Methodology

This research employs a Doctrinal Legal Research methodology to critically analyze the legal framework and practical application of diversion in addressing sexual violence offenses committed by children against other children in Indonesia, within the context of restorative justice. Doctrinal Legal Research is the most commonly used research method in legal practice. This method focuses on the analysis, formulation, and synthesis of legal principles found in various legal sources, such as statutes, court decisions, and constitutional principles.¹⁰⁴

The study aims to identify the existing obstacles in the implementation of diversion, assess its impact on the rehabilitation of child offenders and the recovery of victims, and propose practical, contextually relevant policy recommendations to enhance the effectiveness of the diversion program in the Indonesian juvenile justice system.

The research begins with a detailed examination of Indonesia's legal framework, focusing primarily on the Juvenile Justice System Law and the relevant Supreme Court Regulations that govern diversion. The study involves a comprehensive review of these legal documents to assess their theoretical coherence and the degree to which they support the implementation of diversion as a restorative justice mechanism. Additionally, the research compares Indonesia's legal approach to diversion with models implemented in other countries, specifically New Zealand and Canada, known for their effective community-based restorative justice programs.

To collect data, the research utilizes a documentary study approach, focusing on the analysis of primary legal sources such as statutes, regulations, and judicial decisions, complemented by secondary data from scholarly articles, journals, and books on restorative justice, diversion, and juvenile justice practices. This mixed-source approach ensures a comprehensive understanding of the legal landscape regarding diversion and restorative justice in Indonesia, while also incorporating international best practices to inform the study.

The study's technical analysis is divided into two main stages: first, an in-depth doctrinal analysis of Indonesian laws related to juvenile diversion, and second, a comparative legal analysis with the restorative justice models implemented in New Zealand and Canada. The doctrinal analysis seeks to examine how the current legal framework addresses diversion, identifying any gaps in legal provisions, and the consistency of the application across different judicial levels. The comparative analysis will assess how community-based restorative justice approaches, which focus on involving local communities in both the rehabilitation of offenders and the healing of victims, have been successfully integrated into the legal systems of other nations, with a view to applying similar methods in Indonesia.

The findings reveal that while the legal framework for diversion in Indonesia is conceptually sound, the lack of technical guidelines for its implementation hinders its practical effectiveness. The study identifies several challenges, including the inconsistent application of diversion across different judicial bodies, the absence of standardized procedural protocols for diversion, and the insufficient psychosocial support systems for both victims and offenders. These factors contribute to

¹⁰² SUALANG, M., SOEKORINI, N., BORMAN, S. Handling Victims of Sexual Violence Against Children in the Criminal Justice System in Indonesia. *En Rechtsvinding*. 2026, vol. 4, n° 1. DOI: 10.59525/rechtsvinding.1338

¹⁰³ O'BRIEN, W., FOUSSARD, C. *Violence Against Children in the Criminal Justice System: Global Perspectives on Prevention*. Routledge, 2019. DOI: 10.4324/9780429440793

¹⁰⁴ BHAT, P.I. *Idea and Methods of Legal Research*. Oxford University Press, 2019. DOI: 10.1093/oso/9780199493098.001.0001

inefficiencies in the implementation of diversion and the failure to achieve restorative outcomes. Furthermore, the lack of clear judicial discretion regarding the severity of the offenses and the psychological condition of the child offender leads to inconsistencies in the application of diversion, undermining its intended rehabilitative benefits.

In the comparative analysis, the study highlights how New Zealand and Canada have integrated community-based restorative justice models to address juvenile offenses, including sexual violence. These models emphasize community involvement in the rehabilitation process and victim recovery, significantly reducing recidivism rates and improving victim satisfaction. The research concludes that Indonesia could benefit from a similar model, which would allow local communities to play a more active role in the rehabilitation of juvenile offenders and the restorative process for victims.

The study proposes several technical recommendations to enhance the effectiveness of the diversion program in Indonesia. First, it recommends the development of national technical guidelines for the consistent application of diversion, including standardized protocols for determining eligibility, assessing the severity of the offense, and involving victims in the process. Second, the study suggests that judicial discretion be enhanced by providing clearer criteria for judges to consider when deciding whether diversion is appropriate, taking into account the psychological and emotional conditions of both the offender and the victim. Third, the research calls for strengthening the institutional capacities of the agencies involved in juvenile justice, such as the courts, social services, and law enforcement, to provide the necessary support for successful diversion. Finally, the study advocates for formalizing inter-agency collaboration between judicial, social, and community-based organizations to ensure a coordinated, holistic approach to diversion.

4. Results and discussion

4.1.1. The development of human rights and the challenge of protecting children from sexual violence in Indonesia

The evolution of human rights in Indonesia is marked by a complex history, characterised by significant developments in thought that can be categorised into two main periods: 1908-1945 and post-1945. Indonesia's dedication to human rights is evidenced by the Decree of the Consultative Assembly of the Republic of Indonesia Number XVII of 1998, which ratified multiple UN human rights instruments, in alignment with the Universal Declaration of Human Rights. As a state governed by law, Indonesia emphasises safeguarding human rights through its legal framework, notably through Law No. 39 of 1999 on Human Rights, which specifically addresses children's rights. The rights encompass the right to life, freedom from torture and slavery, as well as safeguards against exploitation, violence, and child trafficking. This legislation outlines the responsibilities of the state, community, and family in protecting children's rights. The Child Protection Law enhances this protection by asserting that children represent a divine mandate and the nation's future. Consequently, the state must guarantee their welfare and safeguard them against various forms of abuse and exploitation. Severe penalties are imposed for breaches of children's rights, including acts of violence, sexual exploitation, trafficking, and participation in armed conflict. Affirming children's rights within the human rights framework is established in Article 28B, paragraph (2) of the 1945 Constitution, and Articles 52-58 of the Human Rights Law. This is further reinforced by the Convention on the Rights of the Child, which mandates

that the state implement legislative and social measures aimed at safeguarding children from all forms of violence and exploitation.¹⁰⁵

The recent resurgence of cases involving sexual violence against minors, particularly those linked to law enforcement officials, has elicited significant public concern. A notable case emerged in East Nusa Tenggara involving the former Ngada Police Chief, AKBP Fajar Widyadharma Lukman, who is alleged to have instructed an individual with the initials F to escort an underage girl to a hotel in Kupang on 11 June 2024.¹⁰⁶ The emergence of this case can be attributed to insights provided by the Australian Federal Police in January 2025, following their discovery of a video depicting sexual violence against a child linked to Kupang.¹⁰⁷ The results were subsequently communicated to the Police International Relations Division and transmitted to the East Nusa Tenggara Regional Police. According to the Acting Head of the Kupang City Women's Empowerment and Child Protection Office, this case involves three victims, aged 5, 13, and 16, respectively.¹⁰⁸

In addition to East Nusa Tenggara, a comparable incident occurred in Solo, Central Java, involving a 16-year-old girl identified by the initials SN. The victim initially encountered the perpetrator, RW, who is 20 years old, via the TikTok application. Following the introduction, the perpetrator extended an invitation to the victim for sexual intercourse over a timeframe of two months, specifically from January 1 to February 2, 2025. This case encompasses not only sexual exploitation but also physical violence, evidenced by injuries to the victim's thigh, cheek, and neck caused by cigarette butts. This incident illustrates that sexual violence against children manifests in multiple forms and transcends regional boundaries and social backgrounds.¹⁰⁹

Data from the Online Information System for the Protection of Women and Children indicates that from January 1 to March 12, 2025, there were 4,821 violent cases. These cases were reported through various service units, including the Women's Crisis Centre, the Integrated Service Centre, and the Integrated Service Centre for the Protection of Women and Children. Among the total cases, 80.4 per cent of the victims were identified as women, while 62.6 per cent were classified as children. East Java province has documented the highest cases, with Central Java and West Java following in succession. In the district of West Bandung, data from the first quarter of this year indicates 12 reported cases of violence against children and women, predominantly involving sexual and domestic violence. The data presented highlights the extensive and concerning nature of sexual violence against children in Indonesia.¹¹⁰

¹⁰⁵ SIMBOLON, L.A. *Gagalnya Perlindungan Anak Sebagai Salah Satu Bagian Dari Hak Asasi Manusia Oleh Orang Tua Ditinjau Dari Mazhab Utilitarianisme*. En *Jurnal Yuridis*. 2016, vol. 3, n^o 2. DOI: 10.35586/.v3i2.180

¹⁰⁶ SELLY, S. *Komnas HAM Pastikan Anak Korban Pencabulan AKBP Fajar Dapat Pendampingan*. En *detikBali*. 2025. Available at: <https://www.detik.com/bali/hukum-dan-kriminal/d-7843459/komnas-ham-pastikan-anak-korban-pencabulan-akbp-fajar-dapat-pendampingan> (accessed on 24 June 2025).

¹⁰⁷ HERIN, F.P. *Starting from a Porn Site, the Crimes of Police Officers in NTT Were Exposed*. En *Kompas.id*. 2025. Available at: <https://www.kompas.id/artikel/en-balita-pun-dicabuli-oleh-kapolres-ngada> (accessed on 24 June 2025).

¹⁰⁸ KEMEN PPPA. *Kemen PPPA Kawal Penanganan Kasus Tindak Pidana Kekerasan Seksual terhadap Anak di Kupang*. En *Kementerian Pemberdayaan Perempuan dan Perlindungan Anak*. 2025. Available at: <https://www.kemenpppa.go.id/siaran-pers/kemen-pppa-kawal-penanganan-kasus-tindak-pidana-kekerasan-seksual-terhadap-anak-di-kupang> (accessed on 24 June 2025).

¹⁰⁹ YAMIN, R.A., PRIHATIN, R.B. *Optimalisasi Pelindungan Terhadap Anak Korban Kekerasan Seksual*. Available at: https://berkas.dpr.go.id/pusaka/files/isu_sepekan/Isu%20Sepekan---II-PUSLIT-Maret-2025-2490.pdf (accessed on 24 June 2025).

¹¹⁰ *Ibid.*

In light of the escalating emergency conditions, Commission VIII of the House of Representatives of the Republic of Indonesia is prompted to implement specific and strategic measures through its legislative, supervisory, and budgetary functions. The execution of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence requires enhancement to effectively deter potential offenders. Furthermore, enhancing the capabilities of service institutions, including the Regional Technical Implementation Unit for the Protection of Women and Children, and providing legal and psychological support for victims, should be prioritised. It is crucial to engage in extensive community education regarding the risks associated with sexual violence and the available reporting mechanisms. The protection of child victims of sexual violence requires a thorough approach, encompassing immediate response, psychological support, meeting essential needs throughout the recovery phase, and facilitating the legal proceedings. Effective cross-sector coordination is necessary to ensure that the state actively fulfils its role in safeguarding the rights and future of Indonesian children.¹¹¹

Sexual violence encompasses a broad range of sexual acts and experiences that are imposed, coerced, or forced upon an individual. This encompasses rape, attempted rape, sexual assault, sexual harassment, and various sexual offences, among others. Although certain types of sexual violence are characterised by physical violence or coercion, this is not the case for all forms. The term encompasses various actions related to sexual exploitation or humiliation, including instances of verbal sexual harassment. The common thread among these phenomena is the occurrence of sexual acts or sexualisation imposed upon another individual without their consent. In this context, each action infringes upon an individual's entitlement to dignity, respect, and autonomy regarding their body.^{112,113,114,115,116}

Sexual violence represents a significant social issue that manifests globally.^{117,118} It manifests in various ways depending on the context, and no location or environment is entirely devoid. Sexual violence encompasses multiple forms, including but not limited to: rape, sexual assault, unwanted sexual touching, the use of inappropriate sexual language, the distribution of sexual images without consent, exhibitionism, and child sexual abuse and exploitation. Sexual violence frequently occurs within the context of an abusive and coercively controlling domestic relationship. In such scenarios, the abusive partner may exhibit sexual violence and exert control over decisions related to reproduction, contraception, gynaecological health, and obstetrics.^{119,120,121,122}

¹¹¹ Ibid.

¹¹² DARTNALL, E., JEWKES, R. *Sexual Violence Against Women: The Scope of the Problem*. 2013. Ibid.

¹¹³ KELLY, L. *The Continuum of Sexual Violence*. En HANMER, J., MAYNARD, M. eds. *Women, Violence and Social Control*. London: Palgrave Macmillan UK, 1987. DOI: 10.1007/978-1-349-18592-4_4

¹¹⁴ KELLY, *Surviving Sexual Violence*. 2013. Ibid.

¹¹⁵ MATHEWS, B., COLLIN-VÉZINA, D. *Child Sexual Abuse: Toward a Conceptual Model and Definition*. En *Trauma, Violence, & Abuse*. 2019, vol. 20, n° 2. DOI: 10.1177/1524838017738726

¹¹⁶ POWELL, A., HENRY, N. *Sexual Violence in a Digital Age*. Springer, 2017

¹¹⁷ DWORKIN, E.R. et al. *Sexual Assault Victimization and Psychopathology: A Review and Meta-Analysis*. En *Clinical Psychology Review*. 2017, vol. 56. DOI: 10.1016/j.cpr.2017.06.002

¹¹⁸ QUIGG, Z. et al. *Sexual Violence and Nightlife: A Systematic Literature Review*. En *Aggression and Violent Behavior*. 2020, vol. 51. DOI: 10.1016/j.avb.2020.101363

¹¹⁹ DE SOUSA, J., BURGESS, W., FANSLOW, J. *Intimate Partner Violence and Women's Reproductive Health*. En *Obstetrics, Gynaecology & Reproductive Medicine*. 2014, vol. 24, n° 7. DOI: 10.1016/j.ogrm.2014.04.012

Surveys conducted at the population level, utilising survivor reports, yield precise estimates regarding the prevalence of dating violence and sexual violence. In 2018, an analysis conducted by the WHO revealed that approximately one-third of women globally encountered physical and/or sexual violence from an intimate partner. Over 25% of women aged 15-49 who have been in a relationship have experienced such violence at least once during their lifetime. Worldwide, 38% of female homicides are attributed to an intimate partner, while 6% have reported incidents of sexual assault by another individual. The COVID-19 pandemic has heightened the risk of violence against women due to restricted access to essential services. Factors contributing to risk encompass inadequate educational attainment, a background of violent behaviour, and disparities in gender norms. The implications of this violence on health are significant, encompassing issues such as depression, physical impairment,¹²³ and adverse effects on children.

Child sexual abuse represents a serious infringement on the rights of children in their critical developmental stages, with significant implications for their growth trajectories and overall quality of life in the long run.¹²⁴ The issue encompasses various forms of exploitation, including commercial sexual exploitation of children, sexual abuse, child marriage, and female genital mutilation. Data indicates that violence prevention initiatives represent a valuable investment; nonetheless, this agenda is not prioritised adequately, as evidenced by the insufficient funding allocated in government budgets. Sexual violence against children can occur through actions taken by adults, significant others, and occasionally by peers as well.¹²⁵

Alan J. Drury et al.¹²⁶ indicate that while adolescent sexual violence is starting to gain the necessary attention from professionals, the presence of child perpetrators is frequently ignored and dismissed. A study detailed 47 boys, aged 4 to 13 years, who had engaged in abusive behaviour towards younger children. In every instance examined, an aspect of coercion was present. The children participated in a specialised program for juvenile offenders at Children's Institute International in Los Angeles. Before exhibiting sexually abusive behaviour, 49% of the boys had encountered sexual violence, whereas 19% had faced physical violence. All of the children were aware of individuals who had victimised them, with 47% of cases involving sexual abuse occurring between siblings. The mean number of victims reported by these children was 2.1, with a range spanning from 1 to 7. The perpetrator's average age at the time of the crime was 8 years and 9 months, in contrast to the victim's average age of 6 years and 9 months. A significant number of offenders' families exhibited a background characterised by

¹²⁰ LUTGENDORF, M.A. Intimate Partner Violence and Women's Health. *En Obstetrics & Gynecology*. 2019, vol. 134, n° 3. DOI: 10.1097/AOG.0000000000003326

¹²¹ PURWANTI, A. et al. Empowering Women: A Reflection on Protecting Against Dating Violence In the Indonesian Context. *En Qubahan Academic Journal*. 2024, vol. 4, n° 1. DOI: 10.58429/qaj.v4n1a245

¹²² WHO. Responding to intimate partner violence and sexual violence against women: WHO clinical and policy guidelines. World Health Organization, 2013. Available at: <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> (accessed on 24 June 2025).

¹²³ Ibid.

¹²⁴ GOODYEAR-BROWN, P. *Handbook of Child Sexual Abuse: Identification, Assessment, and Treatment*. John Wiley & Sons, 2011. DOI: 10.1002/9781118094822

¹²⁵ OSADAN, R., REID, E. Child Sexual Abuse and Sexual Aggression in Children. *En International Journal of Humanities and Social Science*. 2015, vol. 5, n° 6. Available at: <https://www.ijhssnet.com/journal/index/3119> (accessed on 24 June 2025).

¹²⁶ DRURY, A.J., ELBERT, M.J., DELISI, M. Childhood Sexual Abuse Is Significantly Associated with Subsequent Sexual Offending: New Evidence Among Federal Correctional Clients. *En Child Abuse & Neglect*. 2019, vol. 95. DOI: 10.1016/j.chiabu.2019.104035

instances of sexual and physical abuse, in addition to issues related to substance abuse. A comparison was made between this population and juvenile offenders.

Despite the limited focus on child offenders in the literature before the late 1980s, several studies started to appear during that period. Johnson¹²⁷ and Friedrich et al.¹²⁸ conducted research that outlined children displaying deviant sexual behaviour, noting a correlation with a history of sexual issues and aggressive tendencies. The children in question generally exhibit average to low IQ levels, frequently encounter learning difficulties, and are often raised in environments characterised by a history of violence and substance abuse within their families. The typical age for engaging in deviant behaviour is approximately 8 to 9 years, while the average age of the victims is about 6 to 7 years. Furthermore, their dynamics with adults tend to be complex, and their familial structures frequently exhibit instability. Children are often diagnosed with sexual issues using labels that may not be appropriate, resulting in potential stigma. Children exhibiting reactive sexual behaviour typically do not possess harmful intentions; instead, their actions are often a response to traumatic experiences. Conversely, children who engage in sexual abuse frequently employ coercive tactics in their sexual conduct. Assessment tools like the Child Sexual Behaviour Checklist (CSBCL) serve the purpose of identifying issues related to sexual behaviour and developing a suitable treatment strategy. Additional instruments are available to assess the home environment and family relationships, contributing to a comprehensive understanding of the context surrounding children's behaviour.

Shaw et al.¹²⁹ define child-on-child sexual abuse as acts of sexual abuse perpetrated by one child towards another. This phenomenon frequently manifests in well-known settings, including residences, educational institutions, or recreational areas, where children are acquainted and maintain close connections, such as between siblings or friends. This form of abuse manifests in various ways, including inappropriate physical contact and coercion into sexual acts. It is crucial to recognise that a significant number of children exhibiting deviant sexual behaviour frequently come from backgrounds marked by trauma. It is possible that they experienced sexual abuse in the past or were significantly influenced by a childhood environment characterised by violence, abuse, or emotional neglect. In this context, children may lack full awareness of the wrongness of their actions, with such behaviour potentially arising as a reaction to the traumatic experiences or emotional distress they are undergoing. Instances of child-on-child sexual abuse frequently entail the application of coercion or manipulation. The child who commits the act may leverage an imbalance of power, employing threats or intimidation to compel the victim into engaging in sexual acts. This establishes a situation in which the child victim perceives a lack of options and feels obligated to comply. The actions may also be initiated by the child of the perpetrator observing or undergoing sexual violence in their environment, leading them to replicate the behaviours they witness or endure. The consequences of child-on-child sexual abuse are profoundly significant. Children who have been victimised frequently encounter various emotional and psychological issues. Typical manifestations consist of anxiety, depression, behavioural problems, and challenges in establishing healthy interpersonal relationships. Individuals affected may experience post-traumatic stress disorder (PTSD), characterised by the persistent re-experiencing of the traumatic event, coupled with heightened feelings of fear and anxiety.

¹²⁷ JOHNSON, T.C. Child Perpetrators—Children Who Molest Other Children: Preliminary Findings. En *Child Abuse & Neglect*. 1988, vol. 12, nº 2. DOI: 10.1016/0145-2134(88)90030-0

¹²⁸ FRIEDRICH, W.N. et al. Normative Sexual Behavior in Children. En *Pediatrics*. 1991, vol. 88, nº 3. DOI: 10.1542/peds.88.3.456

¹²⁹ SHAW et al., *Child on Child Sexual Abuse: Psychological Perspectives*. 2000. Ibid.

Child Sexual Abuse represents a significant issue that frequently remains hidden and is misunderstood mainly by society. Research on interviewing young perpetrators in cases of child-on-child sexual abuse holds considerable importance in this context. A study examining this issue compared two interview protocols: the Revised Suspect Protocol (RSP) and the Standard Suspect Protocol (SSP). This research, carried out by Irit Hershkowitz and Michael E. Lamb¹³⁰, examined the methodologies for interrogating children who are suspected of committing sexual offences against other children, emphasising sensitivity and effectiveness in the approach. The study examines the impact of evidence-based interview techniques and best practices on child perpetrators, focusing on their ability to convey more precise information regarding their cases.

The study revealed that interviews conducted with RSPs demonstrated greater effectiveness in clarifying children's legal rights and ensuring their comprehension of these rights. Within the legal framework, juvenile offenders frequently lack a comprehensive understanding of their rights, such as the right to remain silent and the right to seek legal counsel. This study indicates that interviewers utilising the RSP demonstrated a higher likelihood of articulating the rights to children more comprehensibly, effectively segmenting the explanation into smaller, manageable parts to enhance understanding for the children. This process is essential, as a comprehensive understanding of rights can significantly affect a child's choice to speak or remain silent during an interview, subsequently influencing the quality of information that authorities can gather.

Shaheda Bibi Omar¹³¹ indicates that, in contrast to peer abuse, abuse occurring during adolescence or adulthood tends to be more invasive and often occurs within the family context. Both groups assessed their experiences as comparably unfavourable and indicated similar overall results. Individuals who experienced abuse from adolescents or adults exhibited markedly elevated scores on the Psychopathic Deviate, Psychasthenia, and Schizophrenia scales in comparison to the non-abused control group; however, analogous results were not observed for those who faced abuse from peers. A minority of individuals within each abuse category indicated that they had shared their experiences with their parents. Participants who did not disclose their experiences indicated that those abused by peers perceived lower support from their parents and reported higher levels of anger from their mothers. A robust causal relationship was identified between child and adolescent perpetrators and their prior experiences of victimisation, whether inflicted by adults or peers. This stands in opposition to findings from studies on adult offenders.

Twenty-three per cent of all child sexual abusers are individuals who are under the age of eighteen. Victims of childhood trauma can sometimes transition into roles as perpetrators. In her research, Shaheda Bibi Omar¹³² detailed an incident involving a ten-year-old boy who deceived his younger seven-year-old female cousin into lowering her trousers and exposing her backside. The older boy positioned the younger one over the arm of the sofa and engaged in a non-consensual act. This specific incident took place at home; however, the same perpetrator has a history of abusing numerous other young boys in the neighbourhood and at his school. Incidents of this nature adversely affect all student demographics within the school environment, as children possess a notable capacity for "overhearing information". Even in the absence of direct victimisation, the awareness of such incidents can contribute to a pervasive sense of insecurity within the school environment.

¹³⁰ HERSHKOWITZ, LAMB, Interviewing Young Offenders About Child-on-Child Sexual Abuse. 2024. Ibid.

¹³¹ OMAR, A Study of Child-on-Child Sexual Abuse of Children Under 12 Years. 2010. Ibid.

¹³² Ibid.

Research indicates that a significant number of children remain silent about their experiences of sexual abuse by another child for years after the abuse has ceased, particularly when the abuser is a sibling. One-third of child sexual abuse cases are committed by other children or adolescents, typically targeting younger children. Children who have experienced sexual abuse by another child or their sibling frequently encounter significant challenges when it comes to discussing their experiences. Several factors may contribute to this situation, including a lack of awareness regarding the presence of violence in a sexualised environment, insufficient positive interactions with adults, and the pressure to remain silent about the violence due to threats from the perpetrator. The extent of sexual violence occurring between siblings is not well-defined, mainly due to societal stigma and insufficient disclosure.¹³³

Incidents of sexual violence among siblings represent the most prevalent type of sexual violence within family structures, potentially occurring three to four times more frequently than instances of sexual violence perpetrated by fathers against daughters. Studies indicate that children subjected to sexual abuse by a sibling are at a heightened risk for psychological issues, including depression, difficulties in relationships, and distress related to their disclosure.^{134,135} While it is not the case that every child exhibiting harmful sexual behaviour has been a victim of sexual violence, it is essential to recognise that elements such as abuse and family dysfunction frequently contribute to these behaviours.^{136,137}

Girls exhibiting harmful sexual behaviour, while less frequently examined than their male counterparts, represent a significantly vulnerable demographic. They often encounter severe and ongoing forms of childhood victimisation. The likelihood of girls engaging in harmful sexual behaviour is shaped by various factors, such as ongoing experiences of violence and compromised mental health. Research indicates that fostering positive social support and creating safe environments may play a crucial role in preventing girls from engaging in harmful behaviours in the future.^{138,139}

4.2. Restorative justice through diversion in Indonesia: Balancing child offender rehabilitation and Victim protection in cases of juvenile sexual violence

¹³³ SCHÖNBUCHER, V. et al. Disclosure of Child Sexual Abuse by Adolescents: A Qualitative In-Depth Study. En *Journal of Interpersonal Violence*. 2012, vol. 27, nº 17. DOI: 10.1177/0886260512445380

¹³⁴ RUSSELL, D.H. et al. The Risk and Protective Factors, Response to Disclosure, and Interventions for Sibling Sexual Abuse: A Systematic Review. En *Child Abuse & Neglect*. 2025, vol. 162. DOI: 10.1016/j.chiabu.2024.107136

¹³⁵ VAN BERKEL, S.R., BICANIC, I.A.E., VAN DER VOORT, A. "Just Listen to Me": Experiences of Therapy After Childhood Sibling Sexual Abuse. En *Child Abuse & Neglect*. 2025, vol. 162. DOI: 10.1016/j.chiabu.2024.107138

¹³⁶ BARBAREE, H.E., MARSHALL, W.L., MCCORMICK, J. The Development of Deviant Sexual Behaviour Among Adolescents and Its Implications for Prevention and Treatment. En *The Irish Journal of Psychology*. 1998, vol. 19, nº 1. DOI: 10.1080/03033910.1998.10558168

¹³⁷ KORDICH HALL, D., MATHEWS, F., PEARCE, J. Factors Associated with Sexual Behavior Problems in Young Sexually Abused Children. En *Child Abuse & Neglect*. 1998, vol. 22, nº 10. DOI: 10.1016/S0145-2134(98)00078-7

¹³⁸ CAMPBELL, F. et al. Young People Who Display Harmful Sexual Behaviors and Their Families: A Qualitative Systematic Review of Their Experiences of Professional Interventions. En *Trauma, Violence, & Abuse*. 2020, vol. 21, nº 3. DOI: 10.1177/1524838018770414

¹³⁹ YATES, P., ALLARDYCE, S., MACQUEEN, S. Children Who Display Harmful Sexual Behaviour: Assessing the Risks of Boys Abusing at Home, in the Community or Across Both Settings. En *Journal of Sexual Aggression*. 2012, vol. 18, nº 1. DOI: 10.1080/13552600.2011.634527

In Indonesia, diversion applies to both offences involving victims and those victimless. In instances involving a victim, whether an adult or a child, obtaining consent is essential. Adult victims possess the autonomy to make their own decisions, whereas for child victims, the approval of a parent or guardian is necessary. From an educational standpoint, diversion strategies are advantageous for child offenders as they align with the principle of prioritising the child's best interests, steering them away from the stigma and challenges associated with formal proceedings. In instances of crimes involving children, it is common for the parents of victims to oppose diversion strategies, citing a sense of unfairness. They often insist that the offender face consequences that are equal to, or even exceed, those experienced by their child. This disagreement hinders the complete execution of diversion and reinforces the sole entitlement of victims, or their parents/guardians, to express their views and influence the resolution process. Article 37(b) of the Convention on the Rights of the Child and Article 11 of the Beijing Rules stipulate that diversion must be executed with voluntary and uncoerced consent. It should encompass alternatives like community service or family conferences, particularly in less severe cases. Voluntary consent serves as a safeguard for children against the dangers of forced labour without legal standing, including unauthorised nursing home placements, which violate the principle aimed at eradicating forced labour.¹⁴⁰

Furthermore, the Beijing Rules indicate that diversion is applicable beyond minor offences, assessed on a case-by-case basis. They highlight the importance of restitution and compensation mechanisms for victims, although specifics regarding implementation remain insufficient. Articles 37 and 40 of the CRC serve as a framework that emphasises the importance of diversionary instruments within the juvenile criminal justice system, ensuring the rights to physical and psychological recovery and the participation of victims (GC 12). The 1985 UN Declaration of Basic Principles on Victim Justice provides a framework for accepting informal mechanisms such as mediation, arbitration, or customary justice to promote peace and restitution. It also delineates the victim's entitlement to restitution and financial compensation in cases where the offender lacks the means to pay. The situation involving a 15-year-old and a 13-year-old underscores the intricate nature of classification: not every sexual interaction among minors is subject to punishment, contingent upon the presence of coercion or abuse. The Law on Child Protection and the Juvenile Justice System fail to differentiate between consent and abuse, leading to a prevalent misconception, particularly among male offenders, that abuse is solely linked to physical violence. Abusive elements manifest in various ways, including persuasion, deception, threats, and actual violence. When any of these are present, criminal liability may be assigned to the perpetrator, irrespective of gender.¹⁴¹

Implementing a restorative justice approach via diversion in managing criminal cases involving juvenile offenders represents a significant advancement over traditional methods, focusing primarily on retributive and restitutive justice. Implementing diversion in achieving restorative justice highlights the dynamics between the perpetrator and the victim. The diversion application in juvenile criminal cases is fundamentally grounded in human rights principles. It is essential to recognise that children possess a future, and resolving criminal cases through retributive justice can impose a detrimental stigma on them, potentially hindering their growth and development.

¹⁴⁰ PRATIWI, D.N. Balancing The Interests of Child Offenders and Child Victims through Diversion in Child-on-Child Crime: Evaluation through The International Children's Rights Legal Framework: In The Context of Indonesia Juvenile Justice System. 2018. Ibid.

¹⁴¹ Ibid.

Protecting children in conflict with the law through diversion is an initiative to foster an understanding among children that their unlawful actions are incorrect. This approach not only seeks to prevent recidivism but also aspires to instil similar awareness in other children who are not directly involved. The Convention on the Rights of the Child represents a significant development in applying restorative justice principles in managing juvenile criminal cases. The ratification of the Convention on the Rights of the Child was initially executed through Presidential Decree No. 36 of 1990. This was subsequently articulated in Law No. 4 of 1979 regarding Child Welfare, Law No. 23 of 2002 concerning Child Protection, and Law No. 11 of 2012 addressing the Child Criminal Justice System. Each of these legal frameworks emphasises the protection of children, ensuring non-discriminatory treatment aligned with the best interests of children, aimed at guaranteeing their survival, growth, development, and participatory resolution of cases involving children.

The resolution of criminal cases within the juvenile criminal justice system encompasses all components of law enforcement officials as outlined in the Juvenile Criminal Justice System Law and Supreme Court Regulation Number 4 of 2014, which provides guidelines for implementing diversion in this system. The resolution of criminal cases within the Juvenile Criminal Justice System via diversion represents a strategic initiative to relocate the resolution of juvenile offences from the traditional criminal justice framework to an extrajudicial approach. This method seeks to facilitate reconciliation between victims and minors, mitigate the potential for youth oppression, promote community involvement, and foster a sense of accountability among children. The Juvenile Criminal Justice System Law is the foundational legal framework for implementing diversion, with practical guidelines outlined in Supreme Court Regulation No. 4 of 2014.

The Supreme Court Regulation No. 4 of 2014 highlights that diversion is a process that includes the child, the victim, correctional authorities, professional social workers, representatives, and other relevant parties, all of whom focus on achieving restorative justice. A judge, designated by the President of the Court, oversees the deliberation process concerning the child's case. Diversion represents a process that disrupts the conventional paradigm of resolving criminal cases, which is often perceived as inflexible and protracted. This approach is supplanted by a deliberative process that facilitates dialogue among the parties involved in a child's criminal case.

The approach to punishing children for juvenile offences must be reconsidered, as it cannot simply be viewed through the lens of justice being served. Protecting children is crucial in evaluating whether true justice has been achieved. A comprehensive approach is necessary to ensure that justice is fully realised. The proposed approach must integrate elements of child protection, considering children's future and opportunities for growth and development.

The implementation of diversion is designed to address the stigmatisation associated with juvenile offenders, which is closely connected to the protection of the child. Rule 11 of the Beijing rule highlights that the diversion of juvenile offences from the criminal justice system can occur at any stage. Conversely, Article 12 of the Law on the Juvenile Criminal Justice System underscores that the implementation of diversion is preferred to occur during the prejudicial process or stage, aligning with the aim of reducing the stigmatisation of juvenile offenders.

Article 11 of the Law on Juvenile Justice System outlines four standard forms of diversion implementation designed to prevent children from entering formal criminal justice processes. Initially, the focus is on establishing a resolution between the child offender and the victim, which could include, but is not limited to, the provision of compensation to the victim and the reintegration of the juvenile offender into the family unit. The child's involvement in educational or training activities within formal educational institutions or the Child Special Development

Institution is limited to three months. Fourth, community service performed by the child offender serves as an expression of social responsibility. The four alternatives create opportunities for children to enhance their personal development and mend social connections while reducing or mitigating the negative stigma frequently associated with formal court procedures.

A method of reconciliation, whether it includes compensation or not, upholds the principle of restorative justice, aiming to reinstate the circumstances to the extent feasible as they existed before the commission of the criminal offence. In this scenario, the child who committed the act and the victim are engaged in mediation. This allows them to express their emotions, discuss the tangible and intangible losses the victim faces, and reach a consensus on the type of compensation, monetary, material goods, or a written or verbal apology. Implementing this type of peace is anticipated to cultivate a sense of responsibility in children, restore the victim's right to justice, and prevent both parties from engaging in the judicial process, which may lead to new trauma.

The transfer of juvenile offenders to their families highlights the critical role that the family plays as the primary environment for guidance. Following the initial legal proceedings, the child is not promptly placed in a correctional facility; instead, they are returned home with support from law enforcement and the diversion facilitator team. Families receive direction on enhancing their parenting approaches to be more responsive and supportive, ensuring children develop in an environment of safety, care, and oversight. This family-oriented strategy aims to provide children with a second opportunity while ensuring they receive sufficient moral and emotional support to mitigate the likelihood of similar behaviours in the future.

Excluding children from education or training activities at formal education institutions or the Witness and Victim Protection Agency for three months limits their opportunities to develop positive skills. The program is structured to align with the child's interests and developmental requirements, incorporating computer training, handicrafts, arts, and various vocational skills. This approach aims to equip the child with viable alternative livelihoods for the future. Furthermore, these activities are conducted by qualified educators and mentors who emphasise the enhancement of technical skills alongside the psychological and social dimensions of children's development, including communication abilities, conflict resolution, and the cultivation of self-confidence.

The fourth form, community service, offers avenues for children to actively enhance their neighbourhood. Child offenders may engage in initiatives like neighbourhood cleanliness, public facility repairs, or social campaigns aimed at raising community awareness regarding the significance of children's rights and the prevention of violence. These activities should not be viewed solely as "work punishments" in the conventional context; instead, they are structured initiatives aimed at cultivating empathy, enhancing social awareness, and promoting collective responsibility. This approach allows children to understand that each action leads to specific outcomes, while also recognising the potential to rectify mistakes through constructive efforts.

The selection of diversion is a decision reached through a collaborative process involving both the victim and the child offender, with assistance from an individual or organisation designated by the President of the Juvenile Court. The facilitator directs the mediation process, ensuring the dialogue remains equitable, transparent, and respectful. Their approach guarantees that the victim is provided ample opportunity to articulate her losses and aspirations, while simultaneously allowing the child to convey his regrets and positive intentions. The facilitator-led dialogue process represents a pivotal moment: achieving an agreement provides for discontinuing the case file and implementing diversion; conversely, failure to reach an agreement will result in the case advancing to the formal justice process.

The victim's consent plays a crucial role in the effectiveness of diversion, as the victim holds the authority to accept or decline alternatives to a court settlement. In instances involving child offenders below the age of 12, the implementation of diversion is mandated and does not rely on the victim's consent. This policy is grounded in the understanding that young children lack the full capacity for criminal accountability, rendering formal legal approaches unsuitable for addressing their behaviour.

In the implementation of diversion, there are often misconceptions about the role of mediation, particularly concerning the importance attributed to the interests of victims. Certain parties occasionally perceive mediation as a mechanism that favours the interests of the perpetrator's children, leading to a situation where victims are regarded merely as "witnesses" or "facilities". Diversion mediation should emphasise restorative justice, balancing the victim's right to justice and safeguarding children in a crucial developmental stage as legal subjects. Mediation facilitators must receive training to uphold neutrality, guarantee that victims are not subjected to pressure or intimidation, and remain attentive to the psychological conditions of victims, their families, and the families of child perpetrators.

Moreover, misunderstandings frequently arise from insufficient socialisation and training among judicial officers, law enforcement agencies, and community organisations. Consequently, it is essential to establish a sustainable mentoring programme and workshop to enhance diversion facilitators' capabilities in effectively managing the complexities of mediation. Training materials must encompass techniques for empathic communication, management of victim trauma, principles of restorative justice, and innovative, context-specific strategies for addressing the unique needs of children.

The effectiveness of diversion should be evaluated not just by the number of cases resolved but also by the psychological healing of victims, the behavioural modifications in child offenders, and the successful social reintegration of both parties involved. An evaluation following the diversion should be conducted to analyse the immediate and extended effects. This includes determining the victim's satisfaction with the settlement, assessing whether the child offender received appropriate guidance, and examining whether the social environment facilitated the sustainability of the diversion outcome. This assessment could encompass interviews, questionnaires, or direct field observation.

Ultimately, the evolution of diversion as a tool within juvenile justice should persist, taking into account social dynamics, cultural contexts, and the advancements in restorative justice theory and practice on a global scale. Enhancing collaboration across various sectors—government, social institutions, academia, and local communities—can transform diversion from a mere administrative process into a tangible reality, providing renewed meaning and hope for both child offenders and victims. By ensuring a thorough understanding, implementing quality training, and conducting ongoing evaluations, diversion can operate at its best to foster a humane, equitable, and efficient criminal justice system for children.

The application of diversion via a restorative justice framework in instances of sexual violence against children frequently diverges from the interests of the victims, straying from the initial intent of the diversion process. Diversion ought to serve as a means of addressing legal responsibility through education and rehabilitation, taking into account the psychological state of the perpetrator while also focusing on the restoration of the victim. Nonetheless, the subsequent cases illustrate that in the absence of explicit technical guidelines, adequate institutional preparedness, and an understanding of trauma-informed principles, diversion may inadvertently exacerbate the suffering of victims and reinforce stigma surrounding perpetrators.

The initial incident took place in East Luwu in 2021, involving a 13-year-old male who reportedly perpetrated sexual violence against his 10-year-old cousin. At first, the victim's family sought to address the situation internally, believing that a restorative method might mend the relationship between the siblings and provide an opportunity for the perpetrator to learn from the incident. However, when law enforcement officials brought the case to court, the diversion effort encountered significant challenges, primarily due to the strong opposition from the victim's family, who believed their child's rights were being overlooked. The lack of psychosocial support for both the victim and the suspect exacerbated the victim's trauma. The ten-year-old girl declined to attend school, apprehensive about encountering the perpetrator or classmates who were aware of the incident. Conversely, the child perpetrator received the designation of "child sexual offender" and was placed in the Child Special Development Centre, lacking sufficient rehabilitative measures. This case exemplifies a significant shortcoming in the system's application of restorative justice. The victim experiences emotional isolation, and the perpetrator lacks the necessary skills and insights to avert future misconduct. The long-term consequences indicate that both the victim and the perpetrator experience a dual stigma—the victim labelled as a "troubled child" and the perpetrator identified as an "ex-convict," resulting in a compromised moral identity.

In the second case, which took place in Garut in 2023, we encounter the issue of the child's notably young age. The individual in question is 12 years old. Per Article 21 of the Law on Juvenile Justice System, minors under 12 are exempt from the criminal justice process and must adhere to diversion protocols. Nevertheless, observations in the field indicate that diversion typically concludes with the child's "return" to their family, lacking any rehabilitation services or additional support. The child is summoned for mediation a single time and subsequently released. The lack of counselling or therapy programs creates a significant risk for the recurrence of deviant sexual behaviour, and simultaneously, the victim's family is not provided with sufficient psychosocial support. The context of sexual violence presents a significant risk for complex trauma, particularly when the victim is at a young age. Therefore, there is a clear need for a comprehensive overhaul and enhancement of institutional readiness across regional technical implementation units, social services, and child protection task forces. Without this measure, diversion for children under 12 years old will merely result in a notation of "completed" in the administrative file, failing to address the underlying issues or safeguard the victim's interests.

The third case, warranting favourable consideration, occurred in Surabaya in 2022. In this situation, three elementary school children in grades V and VI engaged in inappropriate behaviours towards their classmates under the guise of "playing," resulting in a traumatic experience. The school and the victim's family opted for mediation rather than pursuing criminal charges, engaging the assistance of the Regional Technical Implementation Unit for the Protection of Women and Children, and trained social workers. The mediation process culminated in a diversion agreement, stipulating that the perpetrator must participate in age-appropriate sexual education, undergo three months of group psychological guidance, and compose an apology letter to be presented in front of the class, all while ensuring the victim's privacy was maintained. Over three months of implementation, there was a notable increase in empathy towards the perpetrator. Concurrently, the victim benefited from a safe room and a psychosocial assistance program, which effectively contributed to a reduction in anxiety and an enhancement in motivation to return to school. The Surabaya case illustrates that a well-structured diversion approach, characterised by sufficient facilities, skilled facilitators, and collaborative support across sectors, can effectively harmonise the rehabilitation of offenders with the recovery of victims through restorative justice.

The analysis of these three cases reveals that the implementation of diversion encounters significant dilemmas in the context of sexual violence. To ensure the effective implementation of restorative justice, it is essential to establish strict technical guidelines, adopt trauma-informed approaches, and provide specialised training for mediators and law enforcement officers, all while prioritising the interests of victims. Consequently, diversion should not be viewed as a means of evading accountability; rather, it serves as a strategy to educate, rehabilitate, and mitigate potential long-term harm to children in the critical stages of developing their identity and moral framework. The equilibrium between safeguarding offenders and protecting victims should be the foundational ethical and legal framework for implementing effective and humane diversion strategies.

4.3. Between law and conscience: The ethical dilemma of diversion for child sex offenders

The implementation of diversion in cases of sexual violence committed by children reveals a multifaceted tension between established legal standards and prevailing community moral values. On one side, diversion within a restorative justice framework possesses significant legal legitimacy, grounded in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, Supreme Court Regulation No. 4 of 2014, and the Convention on the Rights of the Child, which Indonesia ratified via Presidential Decree No. 36 of 1990. Conversely, its use in instances of sexual violence presents ethical dilemmas, as it is perceived to compromise the public's perception of justice and the moral entitlements of victims.

The legal foundation for diversion is robust from a normative perspective. Article 7, paragraph (1) of the Juvenile Criminal Justice System Law states that diversion should be sought at all stages of review, including within the police, prosecutor's office, and court. Diversion aims to mitigate the likelihood of children engaging with the criminal justice system, as such involvement can adversely affect their prospects. This method aligns with the principle of non-penal treatment for children in legal conflicts and prioritises the child's best interests.

Nonetheless, the ethical dilemma that emerges is whether this principle retains its relevance in the context of sexual violence offences. Hans Kelsen^{142,143} posited that law constitutes a system of norms that maintains a neutral stance regarding morality. Consequently, if the Juvenile Justice System Law governs diversion, it holds validity as a legal norm. This positivist approach overlooks essential factors, including the victim's suffering, the community's perception of justice, and the moral acknowledgement of the offender's guilt.

In his moral philosophy, Immanuel Kant¹⁴⁴ articulated that human dignity should be regarded as an end rather than a means to an end. In the Kantian perspective, sexual violence constitutes a breach of the victim's autonomy and dignity, necessitating a punishment that aligns with moral accountability. The

¹⁴² KELSEN, H. *Pure Theory of Law*. Lawbook Exchange, 2005. Available at: <https://www.lawbookexchange.com/pages/books/42646/hans-max-knight-kelsen/pure-theory-of-law-english-translation-2d-revised-and-enlarged-ed?srsId=AfmBOoreXnTxMzQ5hgTW2llrV0pLocoz1gqVm-KI29yGzliHqCsugTKd> (accessed on 24 June 2025).

¹⁴³ KELSEN, H. *General Theory of Law and State*. Lawbook Exchange, 2009. Available at: https://books.google.co.id/books/about/General_Theory_of_Law_and_State.html?hl=id&id=4dAr24IK4BEC&redir_esc=y (accessed on 24 June 2025).

¹⁴⁴ KANT, I. *Critique of Pure Reason*. TRAD. Paul Guyer, Allen W. Wood. Cambridge University Press, 1999. Available at: <https://www.cambridge.org/us/universitypress/subjects/philosophy/eighteenth-century-philosophy/kant-critique-pure-reason-2nd-edition?format=HB&isbn=9781009600064#description> (accessed on 24 June 2025).

execution of diversion without significant ethical repercussions for the offender obscures the essence of moral justice. The approach of diverting the child back to the family, engaging in community service, or undergoing training without directly addressing the victim's suffering is regarded as inadequate from this viewpoint.

Michael J. Sandel¹⁴⁵ critiques justice models prioritising legal procedures while neglecting the moral aspect. He believes that justice encompasses applying the law and rectifying ethical and social injustices. In instances of sexual violence, prioritising victim recovery is essential to the justice process. Suppose diversion shields the perpetrator from legal consequences without ensuring restitution, participation, or acknowledgement of the victim's pain. In that case, the legal system does not fulfil its obligation to achieve meaningful justice.

John Rawls¹⁴⁶, via his principle of distributive justice, argues that preferential treatment of individuals, such as child offenders, is only defensible if it results in advantages for the most disadvantaged party, namely the victim. If diversion exacerbates the victim's suffering and eliminates their chance for justice, it constitutes a moral failure. Consequently, any implementation of restorative justice must thoroughly evaluate the needs and interests of victims as a criterion for its effectiveness.

The communitarian approach articulated by Alasdair MacIntyre¹⁴⁷ offers a significant viewpoint. In *After Virtue*, MacIntyre posits that morality is intrinsically linked to the values of the community. Local communities that uphold strong social values opposing the punishment of sexual crimes may view diversion as a manifestation of impunity, despite its legal justification. The disconnection of law from community values results in a significant erosion of its social legitimacy. In contrast, from the perspective of law and economics, Richard Posner^{148,149} perceives law as a tool for achieving efficiency. From his perspective, diversion is a logical approach to mitigate the social and economic repercussions of juvenile punishment, including overcriminalisation, mental decline, and the strain of incarceration. This approach has faced criticism for prioritising utility at the expense of justice for the affected individual.

Martha C. Nussbaum¹⁵⁰ proposed an ethics framework that emphasises the importance of empathy and acknowledging human suffering as foundational elements for the law. Diversion that fails to create an environment for victims to achieve emotional and psychological healing or disregards their input in the process constitutes a significant form of injustice. The legal framework should serve as a means to enhance the victim's dignity, rather than merely protecting the offender

¹⁴⁵ SANDEL, M.J. *Justice: What's the Right Thing to Do?*. New York: Penguin Books, 2009. Available at: https://books.google.co.id/books/about/Justice.html?id=cfBNPgAACAAJ&redir_esc=y (accessed on 24 June 2025).

¹⁴⁶ RAWLS, J. *A Theory of Justice: Revised Edition*. United States: Harvard University Press, 1971. Available at: https://books.google.co.id/books/about/A_Theory_of_Justice.html?hl=id&id=PMdsAAAAIAAJ&redir_esc=y (accessed on 24 June 2025).

¹⁴⁷ MACINTYRE, A. *After Virtue: A Study in Moral Theory*. A&C Black, 2013. Available at: https://books.google.co.id/books/about/After_Virtue.html?id=4Wu2QgAACAAJ&redir_esc=y (accessed on 24 June 2025).

¹⁴⁸ POSNER, R.A. *An Economic Theory of the Criminal Law*. *En Columbia Law Review*. 1985, vol. 85, n° 6. DOI: 10.2307/1122392

¹⁴⁹ POSNER, R.A. *Economic Analysis of Law*. Aspen Publishers, 2011. Available at: https://books.google.co.id/books/about/Economic_Analysis_of_Law.html?id=CGBCSQAACAAJ&redir_esc=y (accessed on 24 June 2025).

¹⁵⁰ NUSSBAUM, M.C. *Anger and Forgiveness: Resentment, Generosity, Justice*. Oxford University Press, 2016. Available at: <https://global.oup.com/academic/product/anger-and-forgiveness-9780199335879?cc=id&lang=en&#> (accessed on 24 June 2025).

from the consequences of the system. Ronald Dworkin¹⁵¹ posits that the interpretation of law should encompass considerations of moral integrity. This indicates that adherence to the rule of law must extend beyond mere procedural compliance; it necessitates a connection to consistent and equitable moral principles. The execution of diversion within the confines of procedural formalism, lacking alignment with societal moral principles, is unlikely to achieve comprehensive justice.

The tension between ethical considerations and legal frameworks in the application of diversion for child offenders of sexual violence highlights the disparity between the needs of perpetrators and those of victims. A legal system that places excessive focus on rehabilitating perpetrators while neglecting the recovery needs of victims will result in an ethical disparity. Consequently, society experiences a decline in trust towards the legal system, alongside a deterioration of moral direction. This situation is intensified by the reality that child victims frequently lack both the ability and the authority to advocate for their rights during the diversion process. Their susceptibility to marginalisation arises from a process that prioritises the offender excessively. General Comment No. 13 of the UN Committee on the Rights of the Child clearly states that it is essential for every juvenile justice system to guarantee that victims are afforded complete protection, opportunities for participation, and avenues for remedy. Consequently, it is necessary to formulate a legal framework that effectively integrates legal and moral principles. Initially, the diversion process should ensure that victims are actively and meaningfully involved, particularly in negotiating and formulating the settlement. Secondly, implementing an ethical evaluation system for the diversion process is essential to guarantee substantive justice, rather than merely focusing on procedural aspects. Third, it is necessary to establish a public accountability mechanism for the implementation of diversion in severe cases, such as sexual violence, to mitigate the risk of discretionary abuse by legal officers.

The tension between legal frameworks and ethical considerations in the application of diversion for child sexual abusers transcends theoretical discussions, presenting tangible implications for both the legitimacy of the law and the well-being of society. The diversion policy must be restructured to ensure it is both legally sound and ethically justifiable, gaining acceptance from the broader community. Integrating the positive law approach, moral-philosophical perspectives, and critical insights from the victim community is essential for enhancing the effectiveness of the diversion system. This integration aims to achieve comprehensive justice by safeguarding the future of juvenile offenders, restoring victims' dignity, and upholding the social integrity of law as a collective value system.

4.4. Introducing a new dimension in diversion: Social transformation to prevent sexual violence among children

The execution of diversion in instances of sexual assault perpetrated by children against other children encounters significant obstacles, both normative and practical. Law No. 11 of 2012 on the Juvenile Criminal Justice System mandates diversion at all stages of assessment; however, Article 7, paragraph (2) restricts that diversion does not apply to criminal offences punishable by imprisonment exceeding seven years, nor to joint criminal offences. This is concerning,

¹⁵¹ DWORKIN, R. *Freedom's Law: The Moral Reading of the American Constitution*. Oxford: Oxford University Press, 1999. Available at: <https://global.oup.com/academic/product/freedoms-law-9780198265573?lang=en&cc=de> (accessed on 24 June 2025).

particularly when cases of sexual abuse involve both perpetrators and victims who are minors.^{152,153}

The investigation and trial processes in situations of child sexual abuse, including sexual harassment, encounter numerous challenges. The primary challenge is the difficulty faced by investigators in acquiring testimony from victims who have endured significant trauma. The psychological trauma suffered by children, particularly those who are victims of rape, sodomy, or molestation, significantly impairs their capacity to testify about the incidents encountered. The second difficulty is with the post-mortem procedure, which is crucial for acquiring evidence in instances of sexual violence. While doing a post-mortem poses fewer challenges for investigators, numerous victims and their families from lower socioeconomic backgrounds experience distress due to the substantial expenses, which range from Rp. 500,000 to Rp. 800,000, excluding medicine expenditures. The third impediment is the resolution of cases that do not adhere to the criteria of expeditious, uncomplicated, and cost-effective trials. Law enforcement grounded in these principles seeks to ensure legal certainty for all involved parties, including offenders and victims. Investigators must finalise the investigation file for submission (P-21) within 30 days, and this timeframe should be optimised to ensure legal certainty for minors, preventing case delays. Nonetheless, the investigative process remains inadequate in fully adhering to the stipulations outlined in Article 44, paragraph (1) of the Child Protection Law.

Sexual violence is classified as a grave criminal offence, particularly following the implementation of Law No. 12 of 2022 about the Crime of Sexual Violence, which reinforces the severity of penalties for sexual offences. In the setting of children as both perpetrators and victims, law enforcement officers frequently encounter a moral and legal quandary: they aspire to safeguard the future of the perpetrator's child while simultaneously fulfilling justice and ensuring the victim's right to recovery.¹⁵⁴

Assessments of diversion procedures indicate that restorative methods have not been properly optimised for sexual violence. Data from the Indonesian Child Protection Commission, along with studies from the Witness and Victim Protection Agency and UNICEF, indicate that diversion is often implemented as a mere formality, lacking the active participation of child victims and disregarding the long-term psychological consequences. This shows that the apparatus's comprehension of restorative justice ideas remains limited, or is merely perceived as a means to circumvent the criminal procedure. Diversion has effectively diminished recidivism rates; yet, it has not delivered a sense of justice for victims. In practice, criminals who complete diversion successfully frequently lack sufficient rehabilitation support, while victims do not obtain psychosocial recovery services. Consequently, victims perceive themselves as marginalised inside the legal system, whilst offenders reintegrate into society without enough behavioural modification. Despite Article 7 paragraph (2) of Law No. 11 of 2012 regarding the Juvenile Criminal Justice System stating that diversion is inapplicable to children committing offences punishable by over seven years of imprisonment, this perspective fails to account for the complexities inherent in cases of sexual violence involving minors. Not all sexual violence offences exhibit the same degree of severity. Certain instances stem from ignorance, the impact of a setting that condones sexual material, or maladaptive

¹⁵² LISTYARINI, Juvenile Justice System Through Diversion and Restorative Justice Policy. 2017. Ibid.

¹⁵³ RAHMAN, Contextualizing Restorative Justice Through Diversion Mechanism: A Study of Indonesia Juvenile Justice System. DOI: 10.15742/ilrev.v9n3.584

¹⁵⁴ SANTOSO, T., SATRIA, H. Sexual-Violence Offenses in Indonesia: Analysis of the Criminal Policy in the Law Number 12 of 2022. En PADJADJARAN Jurnal Ilmu Hukum (Journal of Law). 2023, vol. 10, n° 1. DOI: 10.22304/pjih.v10n1.a4

sexual exploration resulting from inadequate sexual education. An amendment to the Juvenile Justice System Law is essential to allow for judicial discretion that aligns with the child's best interest principle, as stated in Article 3 of the Convention on the Rights of the Child, ratified by Presidential Decree No. 36 of 1990.^{155,156}

This discretion is crucial to ensure that law enforcement officers are not strictly confined to formal criminal threats, allowing them to better comprehend the social and psychological context of the case. This approach will facilitate a more empathetic and contextualised resolution while upholding victims' rights. The lack of technical rules expressly governing the application of diversion in cases of child-on-child sexual violence engenders ambiguity and variability in practice within the area. These guidelines should include restorative justice and victim protection principles, encompassing the rights to knowledge, participation, and recovery. A trauma-informed approach must be a fundamental principle in the guidelines established by international organisations like UNICEF and UNODC for the treatment of children in conflict with the law. In the absence of these standards, diversion initiatives may prioritise administrative settlements over the interests of victims. The guidelines must incorporate a risk and needs assessment mechanism to ensure that the diversion process is not solely legalistic, but also considers psychological factors, mental health, and the rehabilitation possibilities for perpetrators and victims.^{157,158}

The efficacy of diversion significantly depends on the comprehension of law enforcement personnel, specifically, detectives from the Women and Children Service Unit, prosecutors, juvenile judges, and correctional facility officers, regarding child development psychology and the tenets of restorative justice. A study by Noviana¹⁵⁹ indicates that numerous legal officers lack sufficient training in managing situations of sexual abuse perpetrated by children, particularly those involving child victims. This underscores the necessity of institutional transformation via comprehensive training programs, consistent oversight, and establishing a performance monitoring system for law enforcement personnel in managing instances involving children.

Before presenting the table, it is important to provide context on the various models of restorative justice used globally. These models emphasize the community's active role in managing instances of juvenile criminal behavior, with a focus on rehabilitation and victim recovery. The comparison below highlights the key legal instruments and roles of the community in addressing child-on-child sexual violence through restorative justice approaches in different countries.

Child service institutions, including the Witness and Victim Protection Agency, the Indonesian Child Protection Commission, and the Regional Technical Implementation Unit for the Protection of Women and Children, should be

¹⁵⁵ ANGGRIAWAN, T.P. Dispensation of Marriage in the Perspective of Children's Rights: Best Interest of the Children. En *Jurnal Penelitian Hukum De Jure*. 2022, vol. 22, n° 3. DOI: 10.30641/dejure.2022.V22.295-310

¹⁵⁶ PRATIWI, D.N. Balancing The Interests of Child Offenders and Child Victims through Diversion in Child-on-Child Crime: Evaluation through The International Children's Rights Legal Framework: In The Context of Indonesia Juvenile Justice System. 2018. *Ibid*.

¹⁵⁷ GIACOMELLO, C. Integrating Gender and Children's Rights in Services for Families Affected by Drug Use: Practical Guide. Council of Europe, 2024. Available at: <https://book.coe.int/en/drugs-and-addictions/12052-integrating-gender-and-childrens-rights-in-services-for-families-affected-by-drug-use-practical-guide.html> (accessed on 24 June 2025).

¹⁵⁸ MUNISAMY, Y., ELZE, D.E. Trauma-Informed Social Work Practice with Children and Youth. En OW, R., POON, A.W.C. eds. *Mental Health and Social Work*. Singapore: Springer Singapore, 2020. DOI: 10.1007/978-981-13-6975-9_10

¹⁵⁹ NOVIANA, I. Kekerasan Seksual Terhadap Anak: Dampak Dan Penanganannya. En *Sosio Informa*. 2015, vol. 1, n° 1. DOI: 10.33007/inf.v1i1.87

motivated to employ competent professionals, such as forensic psychologists and restorative mediators, who adopt a non-victimisation approach towards victims. These experts are not yet fully integrated into the framework of juvenile justice services in Indonesia, despite their essential role in sustaining the equilibrium of the restorative justice process. Furthermore, these institutions may function as autonomous overseers of the diversion process, guaranteeing that it addresses legal disputes and rehabilitates all involved parties' social and psychological well-being. Diversion should transcend a formal process by law enforcement officers and engage the community as the primary agent in restoring social relations.¹⁶⁰ In restorative justice theory, community involvement enhances social accountability and facilitates the rehabilitation of relationships among perpetrators, victims, and the community.^{161,162,163,164} Implementing community-based restorative justice has been effectively executed in nations like New Zealand and Canada, positioning the community as a facilitator in establishing more contextual and meaningful rehabilitation agreements.

Table 1. Diversion models comparison.

Country	Key legal instrument	Primary model	Community's role	Key outcomes
Indonesia	Law No. 11 of 2012 (The Juvenile Criminal Justice System Law)	Diversion	Passive observer or service recipient	Case closure rate
New Zealand	Children, Young Persons & Their Families Act 1989	Family Group Conference (FGC)	Central. Family (whānau), victim, and community jointly design the plan	Lower re-offending; higher victim satisfaction
Canada	Youth Criminal Justice Act	Community Justice Committees (CJC)	Active facilitator. Trained local committees guide restorative circles	Strong offender accountability; repaired community harm

Source: Results of the researcher's analysis.

The Family Group Conference (FGC) in New Zealand has been the primary method for addressing juvenile offences since enacting the Children and Youth Justice Act 1989. FGCs convene the juvenile offender, the victim, their respective families, and community representatives in a dialogue forum to examine the offence's repercussions and formulate a collaborative recovery plan. This procedure

¹⁶⁰ WILSON, D.B., BRENNAN, I., OLAGHERE, A. Police-Initiated Diversion for Youth to Prevent Future Delinquent Behavior: A Systematic Review. En *Campbell Systematic Reviews*. 2018, vol. 14, n° 1. DOI: 10.4073/csr.2018.5

¹⁶¹ BAZEMORE, G., ERBE, C. Reintegration and Restorative Justice: Towards a Theory and Practice of Informal Social Control and Support. En *After crime and punishment*. Willan, 2013. Available at: <https://www.taylorfrancis.com/chapters/edit/10.4324/9781843924203-3/reintegration-restorative-justice-gordon-bazemore-carsten-erbe> (accessed on 24 June 2025).

¹⁶² GAL, T. 'The Conflict Is Ours': Community Involvement in Restorative Justice. En *Contemporary Justice Review*. 2016, vol. 19, n° 3. DOI: 10.1080/10282580.2016.1185950

¹⁶³ BAZEMORE, G., STINCHCOMB, J. A Civic Engagement Model of Reentry: Involving Community Through Service and Restorative Justice. En *Federal Probation*. 2004, vol. 68, n° 2. Available at: <https://psycnet.apa.org/record/2004-20646-003> (accessed on 24 June 2025).

¹⁶⁴ ROSENBLATT, F. *The Role of Community in Restorative Justice*. Routledge, 2015. Available at: <https://www.routledge.com/The-Role-of-Community-in-Restorative-Justice/Rosenblatt/p/book/9781138288706> (accessed on 24 June 2025).

ensures equitable participation for both victims and offenders while empowering the community to develop solutions aligned with local values and the genuine needs of the concerned parties. The assessment of this approach revealed a reduction in recidivism rates and an enhancement in victim satisfaction with the justice system.^{165,166,167,168,169} The Community Justice Committees (CJC) model is extensively employed in Indigenous communities and rural regions in Canada. These committees consist of local individuals educated to mediate instances involving mild to moderate offences, including child sexual abuse. CJsCs operate on the premise of the restorative circle, wherein the offender is held accountable before the victim and the community, and a form of restitution is formulated that aligns with the community's values. The system's efficacy is rooted in its capacity to incorporate local cultural values and enhance social cohesiveness, addressing conflicts and averting social fragmentation.^{170,171,172,173} These examples demonstrate that when communities are systematically equipped with training, authority, and resource access, they can become pivotal agents in formulating restorative justice. These techniques serve as crucial references for the design of community-based diversion systems in Indonesia, particularly in regions characterised by robust local wisdom and dynamic communal social structures. Analogous models can be established in conjunction with formal organisations, customary institutions, community leaders, and trained child protection volunteers in Indonesia. Community engagement is not only culturally significant but also enhances opportunities for alternative conflict resolution that is more expedient, economical, and has a lasting effect on developing community legal knowledge. The rehabilitation of child offenders and victims cannot be accomplished solely by a single institution. Coordinated collaboration among the legal, social, health, education, and civil society sectors is essential to facilitate a thorough reintegration

¹⁶⁵ LEVINE, M. The Family Group Conference in the New Zealand Children, Young Persons, and Their Families Act of 1989 (CYP&F): Review and Evaluation. En *Behavioral Sciences & the Law*. 2000, vol. 18, nº 4. DOI: 10.1002/1099-0798(2000)18:4%3C517::AID-BSL402%3E3.0.CO;2-E

¹⁶⁶ MACRAE, A. *Little Book of Family Group Conferences New Zealand Style: A Hopeful Approach When Youth Cause Harm*. Simon and Schuster, 2004. Available at: https://books.google.co.id/books/about/Little_Book_of_Family_Group_Conferences.html?id=vl6CDwAAQBAJ&redir_esc=y (accessed on 24 June 2025).

¹⁶⁷ MERKEL-HOLGUIN, L. et al. The New Zealand Family Group Conference Confidentiality Protections: Lessons Learned and an Application in U.S. Child Welfare Systems. En *Family Court Review*. 2020, vol. 58, nº 1. DOI: 10.1111/fcre.12458

¹⁶⁸ MORRIS, A. Youth Justice in New Zealand. En *Crime and Justice*. 2004, vol. 31. DOI: 10.1086/655340

¹⁶⁹ MUNCIE, J. et al. Demythologising Youth Justice in Aotearoa/New Zealand. En *PAGES 79-95, PAGES 79-95 Comparative Youth Justice: Critical Issues*. SAGE Publications, 2006. DOI: 10.4135/9781446212608.n7

¹⁷⁰ BARTKOWIAK, I., JACCOUD, M. New Directions in Canadian Justice: From State Workers to Community 'Representatives'. En *Justice, Community and Civil Society*. Willan, 2013. Available at: <https://www.taylorfrancis.com/chapters/edit/10.4324/9781843925521-10/new-directions-canadian-justice-isabelle-bartkowiak-myl%C3%A8ne-jaccoud> (accessed on 24 June 2025).

¹⁷¹ RODRIGUEZ, N. Restorative Justice, Communities, and Delinquency: Whom Do We Reintegrate? En *Criminology & Public Policy*. 2005, vol. 4, nº 1. DOI: 10.1111/j.1745-9133.2005.00010.x

¹⁷² SMANDYCH, R.C., CORRADO, R.R. « Too Bad, So Sad»: Observations on Key Outstanding Policy Challenges of Twenty Years of Youth Justice Reform in Canada, 1995-2015. En *Manitoba Law Journal*. 2018, vol. 41, nº 3. DOI: 10.29173/mlj1010

¹⁷³ WRONG, N.A. *Justice Committees in Aboriginal Communities: A Study of Community Capacities*. University of Ottawa (Canada), 2007. Available at: <https://ruor.uottawa.ca/items/5a373127-6b0c-4363-abf1-d35b75414606> (accessed on 24 June 2025).

and healing process. Adopting the multi-agency collaboration model advocated by UNCRC General Comment No. 10 (2007) regarding children's rights in the juvenile justice system is essential.^{174,175,176,177} In the Indonesian context, collaboration among the Regional Technical Implementation Unit for the Protection of Women and Children, social services, child protection NGOs, and educational institutions can be formalised through a joint working protocol that governs the processes of recovery, rehabilitation, and post-diversion monitoring. The objective is not solely to resolve the case, but to disrupt the cycle of violence and foster resilience in both child perpetrators and victims.

The recent approach to diversion necessitates a paradigm shift: from simply alleviating the effects of criminal incidents to fostering social transformation that precludes the recurrence of sexual assault. Diversion should be regarded as a catalyst for profound intervention into the structural factors that contribute to children's aberrant behaviour, including familial abuse, poverty, restricted access to sexual education, and detrimental media consumption. This intervention can occur solely if the juvenile justice system transitions from a reactive strategy to a preventive-transformational approach. Consequently, legislative and institutional reform is imperative. The government must formulate a national policy on diversion in instances of sexual abuse perpetrated by minors against children, prioritising the holistic protection of children while safeguarding the rights of victims. The law must engage with societal moral norms, reconcile the protection of offenders with the rehabilitation of victims, and establish a framework of justice that is both legal and ethically transformative.

5. Conclusion

This study illustrates that diversion presents significant potential as a restorative mechanism in Indonesia's juvenile justice system. Nonetheless, the existing implementation in instances of child-on-child sexual abuse frequently exhibits significant shortcomings. This often results in a system of procedural justice that inadequately addresses the needs of victims and misses significant chances for the rehabilitation of offenders. The identified shortcomings underscore the critical need for reform in the diversion process, particularly in sensitive cases.

For progress to occur, Indonesia needs to adopt a significant shift from the conventional, case-closure legalistic approach to a more comprehensive, healing-focused process. The transition can be realised through the implementation of a hybrid governance model that integrates explicit, state-directed guidelines with strengthened community-based facilitation. By utilising insights from global best practices, adapted to Indonesia's specific context, this strategy can effectively promote victim recovery and offender rehabilitation within the justice system while also contributing to the restoration of societal harmony.

This study presents a prioritised set of policy recommendations to facilitate actionable reforms. Nonetheless, a notable limitation of this study is its reliance on

¹⁷⁴ FORDE, L. Welfare, Justice, and Diverse Models of Youth Justice: A Children's Rights Analysis. En *The International Journal of Children's Rights*. 2021, vol. 29, n° 4. DOI: 10.1163/15718182-29040005

¹⁷⁵ GOLDSON, B., MUNCIE, J. Towards a Global 'Child Friendly' Juvenile Justice? En *International Journal of Law, Crime and Justice*. 2012, vol. 40, n° 1. DOI: 10.1016/j.ijlcj.2011.09.004

¹⁷⁶ LIEFAARD, T. Juvenile Justice from an International Children's Rights Perspective. En *Routledge International Handbook of Children's Rights Studies*. Routledge, 2015. Available at: <https://www.taylorfrancis.com/chapters/edit/10.4324/9781315769530-16/juvenile-justice-international-children-rights-perspective-ton-liefaard> (accessed on 24 June 2025).

¹⁷⁷ SMITH, R. Children's Rights and Youth Justice: 20 Years of No Progress. En *Child Care in Practice*. 2010, vol. 16, n° 1. DOI: 10.1080/13575270903369301

secondary case data and documentary analysis, which may not fully capture the varied perspectives at play. Consequently, it is essential for future research to implement longitudinal designs to monitor the outcomes of diversion programs, employ quasi-experimental methods to assess the effects of new guidelines, and, crucially, incorporate participatory action research to capture the perspectives and experiences of both child victims and offenders. This comprehensive approach is crucial for developing a system that emphasises the rights and welfare of all children, particularly those engaged in the juvenile justice system. This study's findings emphasise the need to align diversion strategies with restorative justice principles while maintaining a central focus on the child's best interests. Indonesia's legal framework, particularly Law No. 11 of 2012 on the Juvenile Justice System and Supreme Court Regulation No. 4 of 2014, provides a basis for diversion; however, its implementation encounters considerable obstacles. The challenges arise from an absence of precise technical guidelines, discrepancies in the practices of law enforcement officials, and the system's inadequacy in addressing the psychosocial recovery needs of victims, alongside the trauma-informed rehabilitation of offenders.

The current diversion practices present a significant concern, particularly regarding the potential for legal and ethical challenges. The occurrence of these issues arises when there is an inadequate consideration of the violence's intensity, the child's psychological context, and the victim's involvement. Diversion can effectively reduce the negative impacts of retribution and facilitate the social reintegration of child offenders. Nonetheless, the absence of clearly established restitution mechanisms and victim support services complicates the process of restoring victims' dignity, thereby undermining substantive justice. Furthermore, the limitations imposed on judicial discretion regarding the severity of criminal penalties fail to account for the distinct attributes of individual cases, particularly in instances of sexual violence, where customised, context-sensitive strategies are essential. Community-based restorative justice practices in countries such as New Zealand and Canada offer significant insights that can inform future approaches. The effectiveness of these models is evident in their ability to engage local communities as facilitators, mitigate the risk of recidivism, and improve victim satisfaction. By tailoring these practices to the Indonesian context and utilising the interplay between formal institutions and community networks, including customary institutions and child protection volunteers, Indonesia has the potential to establish a diversion process that is both contextually relevant and sustainable. This hybrid model has the potential to connect formal legal structures with community-based restorative justice practices, presenting a more comprehensive and effective strategy for juvenile justice.

This study presents a set of strategic recommendations to address deficiencies in Indonesia's juvenile justice system. The initial recommendation involves developing national technical guidelines that include detailed standards for risk and needs assessment, incorporate a trauma-informed approach, establish restitution mechanisms, outline compensation processes, and define post-mortem procedures. Secondly, it advocates for expanding judicial discretion to include socio-cultural and psychological factors, facilitating more adaptable and personalised approaches to justice. It is essential to enhance the participation of restorative mediators and forensic psychologists, as their specialised knowledge is vital to manage complex cases effectively. The study emphasises the need to implement rigorous training programs and maintain regular oversight of law enforcement officials. Additionally, it highlights the need to enhance independent monitoring and evaluation systems to guarantee accountability and foster continuous improvement. Fourth, it promotes the creation of organised collaboration among the legal, social, health, and education sectors, as indicated in UNCRC General Comment No. 10. Ultimately, it underscores the necessity for preventive and transformational interventions to

integrate educational policies, enhance sexuality literacy, and prioritise family violence prevention within a comprehensive, long-term strategy.

This research, while offering valuable insights, is constrained by its dependence on legal document reviews and comparative law studies, potentially overlooking the full complexity of the issue. Future studies should integrate quantitative field data to deepen the analysis. Evaluating the effectiveness of the proposed technical guidelines through longitudinal studies across various provinces will be essential in assessing the impact of diversion programs on juvenile crime. The reform of the legal framework, the creation of precise technical guidelines, the strengthening of institutional capacities, and the empowerment of communities are critical measures for establishing diversion as a viable restorative justice mechanism in Indonesia. This approach integrates the rehabilitation of offenders, the recovery of victims, and the safeguarding of community interests. By committing to reform, Indonesia's juvenile justice system has the potential to disrupt the cycle of violence, foster healing, and safeguard the rights of children, thereby ensuring a fair future for all parties involved.

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