



## PROGRESSIVE AND DIVERSION PROCESS: PROTECTION RULE AND ENFORCEMENT OF THE JUVENILE JUSTICE

Junimart Girsang, Ninne Zahara Silviani

Fakultas Hukum, Universitas Internasional Batam, Indonesia

E-mail: [junimart.girsang@uib.ac.id](mailto:junimart.girsang@uib.ac.id)

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### Abstract

*The implementation of juvenile justice with a progressive legal approach deserves to be used in child law enforcement because it prioritizes the interests of child protection. The relevance of progressive law enforcement to the juvenile justice system in Indonesia rests on the objectives of the juvenile justice system and the existence of rules for arrest, detention, and sentencing of crimes as an effort and form of sanctions against children, which can be in the form of treatment placed in the juvenile justice constitution. This research uses the juridical-normative method, namely legal analysis conducted by reviewing library materials or secondary data, and the data will be analysed through qualitative methods. This study aims to make law enforcers apply progressive law maximally in law enforcement of juvenile justice. The results of this study indicate that law enforcement for juvenile criminal justice in Indonesia is generally still far from the will of law enforcement with a progressive legal approach, and diversion is the right way to decide child criminal cases.*

### Abstrak

Pelaksanaan peradilan anak dengan pendekatan hukum progresif layak digunakan dalam penegakan hukum anak karena mengutamakan kepentingan perlindungan anak. Relevansi penegakan hukum

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**Corresponding Author:**  
*Junimart Girsang*

progresif dengan sistem peradilan anak di Indonesia bertumpu pada tujuan sistem peradilan anak dan adanya aturan penangkapan, penahanan, dan pemidanaan tindak pidana sebagai upaya dan bentuk sanksi terhadap anak, yang dapat berupa bentuk perlakuan yang ditempatkan dalam konstitusi peradilan anak. Penelitian ini menggunakan metode yuridis-normatif, yaitu analisis hukum yang dilakukan dengan mengkaji bahan pustaka atau data sekunder, dan data tersebut akan dianalisis melalui metode kualitatif. Penelitian ini bertujuan agar penegak hukum menerapkan hukum progresif secara maksimal dalam penegakan hukum peradilan anak. Hasil penelitian ini menunjukkan bahwa penegakan hukum bagi peradilan pidana anak di Indonesia pada umumnya masih jauh dari kehendak penegakan hukum dengan pendekatan hukum progresif, dan diversifikasi merupakan cara yang tepat untuk memutus perkara pidana anak.

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## INTRODUCTION

The problem of solving children's issues facing the law is still an interesting thing to study today, and the fact is that in Indonesia, cases against children reach 33% (Hambali, 2019). The development of criminal acts of children, including rape and murder by minors as happened in Jambi a few years ago. It shows that the level of crime committed by juveniles is increasing in Indonesia. Therefore, it is necessary to have a law that provides guidance and protection for child criminals.

The policy of administering the criminal justice system for children who commit crimes cannot be separated from the purpose of protecting and fostering the child concerned, which is more focused on the objectives of improving, rehabilitating, and fostering the welfare of the child offender. By focusing on the protection of children, as stated by Sudarto, the activities of examining criminal acts carried out by the police, prosecutors, judges, and other officials are based on principles for the benefit of the child without reducing attention to the interests of the community (Sudarto, 1980).

In the case of a child in conflict with the law (ABH), the term juvenile criminal justice system is known as a translation of the term The Juvenile Justice System, which is a term that represents a number of institutions incorporated in the court, which include the police, public prosecutors and legal advisors, supervisory agencies, child detention centre, and child development facilities. In the juvenile criminal justice system, there are activities for examining and deciding cases involving the interests of children; namely all activities carried out by the police,

prosecutors, judges, and other officials, must be based on a principle that is for the welfare of the child and the interests of the child (Wahyudi, 2009).

Children are part of citizens who must be protected because they are the nation's generation that, in the future, will continue the leadership of the Indonesian nation. Every child obliged to receive formal education such as school, moral education so that they can grow into useful figures for the nation and state. In accordance with the provisions of the Convention on the Rights of the Child which was ratified by The Indonesian government through Presidential Decree Number 36 of 1990, then also stated in Law Number 4 of 1979 concerning Child Welfare and Law Number 23 of 2002 concerning Child Protection and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. All of these regulations state the general principles of child protection, namely non-discrimination, the best interests of children, survival and growth and development, and respect for children's participation.

With the tendency of judges to impose imprisonment on children, it can be indicated that law enforcement in the juvenile criminal justice system still places more emphasis on formal juridical aspects and has not emphasized the purpose of protecting and protecting children. The number of cases of children who have been sentenced to prison at this time indicates that judges have not been able to effectively give sanction against children's actions. Juvenile criminal justice law enforcers are currently still dominant in emphasizing the juridical aspect (the aspect of looking at regulatory considerations only), so aspects of the interests of child protection tend to be ignored. Therefore, the verdict of imprisonment or confinement for naughty children always appears.

Under these conditions, law enforcers need to change how to look at the case when they resolve conflicts in Juvenile delinquent cases. Most law enforcers still think that "Humans are for the law," not "law for humans." Law for humans means that all legal provisions are used to serve human needs. So human needs are the main thing, not the main law. Law is only a tool to fulfil their needs. Law for humans means that all legal provisions are used to serve human needs. So, human needs are the main thing, not the main law. Law is only a tool to fulfil their needs. So, if the law does not meet the primary needs, of course, it will need some modifications, reforms, and interpretations to make the law. This latter point of view is referred to as the progressive law enforcement perspective. It is hoped that with law enforcement with a progressive approach to law enforcement at every stage of the juvenile criminal justice system, law enforcers will emphasize or not forget the interests of child protection.

The application of progressive legal thought is still tricky for law enforcers, especially judges because it is difficult to not follow the norm completely. The system that can be used so that progressive legal thinking can be applied optimally is by applying the diversion process. Diversion can also be described as a system in which the facilitator manages the process of resolving the conflicting parties to reach a satisfactory settlement as restorative justice. The tradition and mechanism for deliberation and consensus is a tangible manifestation of strengthening the law that has existed in society since the first. Thus, the essence of restorative justice is healing, moral learning, community participation and attention, dialogue, forgiveness, responsibility, and making change, all of which are guidelines for the

restoration process in a restorative justice perspective. Based on the above background, the formulation of the problem are: 1) How is the application of progressive legal thought in Indonesia's Juvenile criminal justice system?; and 2) Is diversion the right step in resolving child criminal cases? This study aims to make law enforcers apply progressive law maximally in law enforcement of juvenile justice. This is very necessary to provide child welfare. The interests of all parties must be considered. The application of the diversion process must also be maximized in order to increase the effectiveness of the application of progressive law in Indonesia.

## **RESEARCH METHOD**

This research uses the juridical-normative method, namely legal analysis conducted by reviewing library materials or secondary data, and the data will be analysed through qualitative methods. This normative legal research uses a statutory approach. This research will focus on the legal principles in the regulation of Law Number 11 of 2012 concerning the Juvenile Justice System and its application in juvenile justice cases in a review of progressive legal theory. This research was also analysed with Law Number 35 of 2014 concerning Child Protection and Supreme Court Regulation Number 4 of 2014 concerning Guidelines for Implementing Diversion. Legal differences with Malaysian regulation compared to the Childhood Act 2001 and the Children Act 2000.

## **DISCUSSION**

### **Law Enforcement in Progressive Legal Perspective and Its Implementation**

The progressive legal approach departs from the basic assumption that "law is for humans, not humans for the law". Departing from this basic assumption, then the presence of the law is not for the law itself but the one thing broader and more significant. For this reason, if there is a problem in the law, it is the law that must be reviewed and corrected, not humans who are forced to be included in the legal scheme (Rahardjo, 2005). For this reason, in law enforcement, the entire process of working law enforcement instruments must be returned to the question of whether justice has been realized, Does it reflect well-being, Is it oriented to the interests of the people.

In the concept of progressive law, humans are above the law, and the law is only a means to guarantee and maintain various human needs. Law is no longer seen as a final document and exists autonomously. Departing from this thought, in the context of law enforcement, Law enforcers should not be trapped in the co-optation of rules over consciences that speak the truth.

Progressive law, which is based on rules and behaviour, places humans not to be bound by the reins of absolute rules. When changes occur in society when legal texts experience delays in the values that develop in society, law enforcers must not only allow themselves to be shackled by the reins of these irrelevant rules but must look outward. See the changing social context in making legal decisions.

The progressive law rests on humans bringing the consequences of the importance of creativity. Creativity in the context of law enforcement, apart from and overcoming legal lags, overcoming legal inequalities, is also intended to make

legal breakthroughs. These legal breakthroughs can be expected to realize the goals of humanity through the operation of the law, to create human happiness. The creativity of law enforcement in interpreting the law will not stop at spelling out the law but use it consciously to achieve human goals. Using the law consciously to achieve humanitarian goals means being sensitive and responsive to social demands (Rahardjo, 2005). The view of the progressive legal approach is described in the following chart. A descriptive chart of the views of the progressive legal approach in law enforcement is shown below. (Kristiana, 2007).

**Table 1 Progressive Approach in Law Enforcement**

No.	Identification	A progressive approach to law enforcement
1.	Assumption	<ol style="list-style-type: none"> <li>1. Law for man, not man for law;</li> <li>2. Law is not an absolute and final institution but is always in the process (<i>law as a process, law in the making</i>)</li> </ol>
2.	Objective	Law enforcement for human welfare and happiness
3.	Spirit	<ol style="list-style-type: none"> <li>1. Liberation of the types, ways of thinking, principles, and theories that have been used in law enforcement;</li> <li>2. Liberation of the ruling culture of law enforcement (administration of justice) and deemed to have hampered the law in solving problems.</li> </ol>
4.	Progressivity	<ol style="list-style-type: none"> <li>1. Law enforcement aims to the welfare and the happiness of humans;</li> <li>2. Be sensitive to changes that occur in society both locally, nationally and globally;</li> <li>3. Rejecting the status quo when it creates decadence, a corporate atmosphere and is very detrimental to the interests of the people, resulting in resistance and rebellion that leads to a progressive interpretation of the law.</li> </ol>
5.	Character	<ol style="list-style-type: none"> <li>1. Progressive law tries to shift the focus of the study that initially used legal optics to behaviour;</li> <li>2. Progressive law consciously places its presence in a close relationship with humans and society (responsive law);</li> <li>3. Law is not viewed from the perspective of the law itself but is seen and assessed from the social goals to be achieved and the consequences arising from the operation of the law (progressive law shares its understanding with legal realism and sociological jurisprudence).</li> <li>4. Progressive law has a close relationship with natural law theory because it cares about meta-juridical matters and has a close relationship with critical legal studies but has a broader scope.</li> </ol>

Starting from the view of the progressive legal approach as described above, it is attempted to implement within the framework of law enforcement the juvenile criminal justice system:

1. Assumptions in the enforcement of the Criminal Justice System (SPP) for children. Law enforcement in juvenile criminal justice holds the view that law enforcement in juvenile criminal justice emphasizes the interests of children, not solely for the interests of juvenile justice law. The laws and regulations of the juvenile criminal justice system are not absolute and final laws but are always in the process of becoming (law as a process, law in the making).
2. The purpose of law enforcement of the juvenile criminal justice system with a progressive approach is aimed at the welfare and happiness of children.
3. Spirit in SPPA enforcement, SPPA law enforcement is carried out with the spirit or spirit of liberation against the types, ways of thinking, principles, and theories that have been used (dominant) in the implementation and application of the Juvenile Court Law so far.
4. Progressivity in the enforcement of SPPA in the form of looking at the SPPA legislation is always in the process of becoming (law in the making), towards the goal of human/child welfare and happiness. Progressive enforcement of child tuition fees is carried out because in the law enforcement process one must be sensitive to developments and changes that occur in local, national and global communities regarding child protection issues. The progress of the enforcement of child tuition fees is also shown by rejecting the status quo when it causes harm to children and is very detrimental to the interests of naughty children.
5. The character of SPPA enforcement is trying to shift the focus of the study from using legal optics to behaviour. Therefore, the enforcement of SPPA focuses on law enforcement actions that are more focused on protecting the interests of children. Progressive law enforcement characters are aware of placing their presence in close relationships with humans and society. Therefore, when implementing the SPPA, law enforcers cannot be released (respond) to the interests or needs of children. The character of progressive law enforcement views the law not from the perspective of the law itself, but from the social goals to be achieved and the consequences arising from the operation of the law. Therefore, in implementing the SPPA, law enforcers see the objectives to be achieved in the SPPA.

### **Application of Diversion in the Juvenile Criminal Justice System**

Children as perpetrators of criminal acts in Law No. 35 of 2014 concerning Child Protection and Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) amendments to Law no. 3 of 1997 concerning Juvenile Court, it is stated that a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a crime (Hidaya, 2019).

With the provisions regarding children as perpetrators of criminal acts, then in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, it is known that there are diversion efforts. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU-SPPA). The concept of diversion is a new regulation

regarding children which is expected to protect, foster, and guide children who are perpetrators of crimes so that they do not damage the mental and psychological development of children who are perpetrators of crimes (Pramukti & Primaharsya, 2015). In principle, minors who commit crimes have rights that are guaranteed and protected in investigations, investigations to courts (Child, 2012). Diversion is an effort to avoid the negative effects of the criminal justice process on children as proclaimed in the United Nations Minimum Standards Rules for the Administration of Juvenile Justice. Diversion is the transfer of settlement of children's cases from the criminal justice process to processes outside of criminal justice. Diversion efforts must be carried out at the level of Investigation, Prosecution, and Examination of children's cases in the District Court. The implementation of diversion at each level of examination is still constrained because the concept of diversion is a new concept in Indonesia and at each level of examination there is no provision, what action is appropriate in implementing the diversion effort against children as perpetrators of criminal acts.

Diversion as a child's privilege when dealing with the law in handling legal cases, cannot always or easily be carried out until there is an agreement between the two parties, namely the victim and the child in conflict with the law, and the privilege in question is a restricted privilege. by the requirements of Article 7 paragraphs (2a) and (2b) of the SPPA Law, namely that Diversion can only be carried out in the event that the criminal act committed is punishable by imprisonment of less than 7 (seven) years; and is not a repetition of a crime. This means that if it does not meet the requirements of Article 7 paragraph (2a) and (2b) of the SPPA Law, Diversion cannot be carried out, even though both parties agree to do Diversion (Johari & Muhammad, 2021).

Another thing that can happen is as regulated in Article 3 of the Regulation of the Supreme Court Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in Article 3 which states that child judges are obliged to seek diversion in the event that a child is accused of committing a crime punishable by imprisonment under 7 (seven) years. ) years and also charged with a criminal offense punishable by imprisonment of 7 (seven) years or more in the form of a subsidiary, alternative, cumulative, or combined (combined) indictment. For example, primar subsidiary charges: Article 354 paragraph (1) of the Criminal Code (8 years imprisonment), Subsidiary: Article 351 paragraph (2) of the Criminal Code (5 years imprisonment), More subsidiary: Article 351 paragraph (1) of the Criminal Code (2 years imprisonment). 8 months). With the above limitations, ABH who are threatened with imprisonment for under 7 (seven) years still have to go through the long road of SPPA.

In the provisions of Article 8 paragraph (1) of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, the Diversion Process is carried out through deliberation involving the Child and his/her parents/guardians, victims and/or their/her parents/guardians, Community Counsellors, and Professional Social Workers based on a Restorative Justice approach. Article 1 paragraph (6) of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, Restorative Justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration back to its original state, and not retaliation.

Although it has been determined that the implementation of diversion is carried out by deliberation based on a Restorative Justice approach, this does not provide a clear picture of actions for law enforcement officers in each examination process and the parties involved still need to jointly seek a fair solution by emphasizing the restoration to its original state, and not retaliation, as stated in Article 1 paragraph (6) of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System. So it is necessary to take appropriate action based on Restorative Justice for the settlement of criminal acts committed by children. One of the actions that can be applied in the implementation of diversion is deliberation carried out with the Mediation approach. Mediation is a dispute resolution process with the involvement of a third party as a neutral and impartial party.

Restorative Justice is regulated in Article 5 of the SPPA Law, which states that the Juvenile Criminal Justice System must prioritize a restorative justice approach including: 1. Criminal investigations and prosecutions of children are carried out in accordance with the legislation, unless otherwise stipulated in this law; 2. Child trial conducted by the court in the general court environment; and 3. Guidance, supervision, and/or assistance during the process of carrying out a crime or action and after undergoing a crime or action. Given the characteristics and characteristics that are unique to children and for the protection of children, discussing cases of children in conflict with the law must see that children's actions have certain motivations and characteristics that are clearly different from those of adult perpetrators.

Diversion, if it meets the legal requirements, can be attempted from the level of the Child Investigator in the Police, or at the level of the Child Prosecutor at the District Attorney's Office, as well as at the level of examination in the District Court by the Juvenile Judge. However, even though the requirements and efforts have been made by law enforcement, not all cases of children dealing with the law can end up through diversion. Many factors and problems become obstacles in pursuing Diversion. Barriers to the implementation of diversion usually occur because of the attitude of the victim's family that does not accept the implementation of diversion and considers diversion not to represent accountability for children who commit criminal acts and compensation commensurate with the circumstances caused. Another weakness is the provision of Diversion requirements regarding the limitation of criminal penalties under 7 years in Article 7 of the SPPA Law which is based on the application of the article during investigation and prosecution, allowing subjective views to occur.

Diversion should not be limited by the terms of the length of the sentence. Protection of children must be prioritized because if children are in conflict with the law, they must be separated from their parents/family and must be in a rehabilitation centre/LPKA, it is feared that it will make them more daring to commit other criminal acts. It must be realized by all parties, that the stigma of having been imprisoned will not only make ex-convicts worse off but can also make their children face even more evil laws.

### **Comparison of the law of the juvenile justice system in Indonesia and Malaysia**

Regarding criminal cases, of course, the principles of criminal law that apply as a form of protection for human rights must be considered. Considering that criminal law is the science of criminal sanctions which basically reduces the human rights of other people, its application must be carried out carefully and carefully.

Regulations both in Indonesia and in Malaysia both provide a definition of the meaning of the word "child". The issue of children's rights in Malaysia has been regulated in the Childhood Act 2001 (Akta 611), which is a deed to unify several laws relating to the maintenance of protection and recovery of children and to be allocated to cases related to children's rights. with children (Jauhari, 2013: 620).

Judging from the age limit of the child according to the Children Act 2000 (act 611) states that a child is someone who is under the age of 18 (eighteen) years. In the Juvenile Court Act 1947 mentions a child is a person who is less than 18 (eighteen) years old. At that time a juvenile was divided into two, namely a "child" under the age of 14, and between 14 to less than 18 years old was called a "young person". The Child Protection Act 1991 (Act 468) states that a child is a person who is under the age of 18 (eighteen) years. While in the Women and Girls Protection Act covers the age of 21 (twenty one) years. However, with the children's act 2001, women between the ages of 18 to 21 should be protected under the penal code (Majid, 2003).

Thus, the age limit for children in Malaysia is between 14 and 18 years, and those under 7 years of age are called slaves, neither children nor young people. For the Indonesian state that the definition and age limit of children are explicit, Article 1 point 1 of Law Number 23 of 2002 concerning Child Protection as amended into Law Number 35 of 2014 is as follows: "Child is someone who is not yet 18 (eighteen) years old, including children who are still in the belly".

In determining the age limit for children associated with or committing certain legal acts, in the guidelines for initial reports used by the United Nations Committee on the Rights of the Child, state parties are asked to provide relevant information regarding Article 1 Convention on the Rights of the Child. That is, participating countries are required to provide legal provisions that determine the minimum age limit for certain legal purposes or actions, including but not limited to obtaining legal and medical consultation without parental consent (legal of medical counselling without parental consent), hazardous work ( hazardous employment), part-time employment, full time employment, married/marriage, sexual consent, voluntary enlistment into the armed forces, voluntarily giving testimony in court), criminal responsibility (criminal liability), deprivation of liberty (deprivation of liberty), sentencing, and the use of alcohol (Majid, 2003). In Malaysia the children protected under the 2001 Act consist of: (a) children who need care and protection, (b) children who need protection and recovery, (c) trafficking and flight of children, (d) children who commit crimes, (e) children who are not escorted.

The child protection legal system in Indonesia and in Malaysia there are many similarities, among others regulated in family law as well as in Indonesia regulated in marriage law. Then the obligations and responsibilities of the state, government, society, family and parents, position of children, custody, guardianship, custody and adoption of children, religion of children, abandoned children and special protection, all these are regulated in the Children Act 2001, (Act 611). Such

as maintenance, rehabilitation, child custody, child protection, examination and care of children or exploitation, economic, sexual, educational or school and special protection from child abuse, disability, and abuse. The difference is in Malaysia that in the Children Act 2001 (Act 611) 4 acts have been combined into one Act 2001 (611) such as the Juvenile Courts Act 1947 (Act 90), Child Protection Act 1991 (Act 468), Protection Act Women and Girls 1973 (Act 106), and the Child Care Centre Act 1984, Except those that still stand on their own, namely the Adult Age Act 1971 (Act 21), Renewal Act Marriage and Divorce Law 1976, Domestic Violence Act 1994, and Islamic Family Law Enactment 1990. Meanwhile, for Indonesia, child law is still divided, namely Law Number 4 of 1979 on Social Welfare, Law Number 23 of 2002 on Child Protection as amended into Law Number 35 of 2014, Law Number 3 of 1997 on Children's Courts as amended in Law No. 11 of 2012 concerning the Juvenile Justice System, Law Number 12 of 1995 on Imprisonment, and Law Number 39 of 1999 on Human Rights and finally the Law on the Elimination of Domestic Violence. All of these laws regulating the issue of child protection of these laws stand respectively and still apply, as well as interconnectedness. Except for Law No. 1 of 1974 on Marriage and Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law also related to the protection of children's rights, but specifically for Muslims. Child Protection Law in Malaysia has been consolidated in the Children Act 2001, (Act 611).

Diversion or as called restorative justice is a response to offending which focuses on repairing the harm caused by the offence and affecting reconciliation between victim and offender. Looking back to our concern, to the child offender, the reconciliation with the victim is a way of educating them that human relationship damaged by a wrongful act can be forgiven (Lynch, N, 2010).

Malaysia has three categories of criminal immunity that is full immunity for child below the age of ten, partial immunity for child between the age of ten to twelve years and full criminal responsibility for child between twelve to eighteen years of age (Mousavi, S., Nordin, R, 2012). Malaysia still practicing the formal adjudication against the child offender in the Juvenile court. The conventional litigation process is considered as there are increasing number of child committing criminal offences. The restorative justice to be introduced into Malaysian Juvenile Justice System. AS an alternative to reduce direct contact of the child with the formal court adjudication, and stigmatization, reducing reoffending and shorter process of disposal of the case (Mustaffa, A, 2016).

Meanwhile, in Indonesia, it is still separate from the Child Protection Act. Then in Indonesia for the implementation of all child laws into the reality of society there has been no real action, because there are no implementing regulations such as government regulations, presidential decrees, ministerial decisions, and regional regulations. Even though the existing ones, such as Presidential Decree No. 77 of 2003 concerning the Indonesian Child Protection Commission, have been amended into Presidential Decree No. 61 of 2016 concerning the Child Protection Commission. However, all of that is still far from what is desired in the fulfilment of children's rights, even in Indonesia there are still many shortcomings when compared to the legal system that already exists in Malaysia. It means that in Malaysia there are no buskers, beggars, homeless people who are abandoned on the

streets, but all of that there is legal action from the government in a definite and orderly manner that social and children's homes really function as places of care, care, child care, and also as a place for mentality development, general education and religion.

## **CLOSURE**

### **Conclusion**

1. The implications of law enforcement on juvenile criminal justice in Indonesia are generally still far from the will of law enforcement with a progressive legal approach, where this is known by the dominance of imposing imprisonment/confinement on children, because law enforcers still focus on or see evil deeds committed by children solely, so that the child does not impose sanctions on the child.
2. Based on the results of the analysis and discussion, we can conclude that diversion is the right way in deciding child criminal cases, but the provisions regarding the limitation of the threat of articles with criminal under 7 years as a condition of diversion in the juvenile criminal justice system, is a weakness that can hinder the occurrence of diversion and limit the perpetrators and victims to be able to do diversion, thus diversion should not be limited on the basis of criminal threats, but as a right and freedom between victims and perpetrators to diversify or reject it, as a solution to the weakness of the diversion requirement.
3. The conclusion that can be drawn from the differences in the legal systems of child protection and juvenile justice between Malaysia and Indonesia is that the child protection system in Malaysia has one law that covers several matters such as child custody, guardianship rights to the right to recovery. While in Indonesia one law such as Law no. 35 of 2014 focuses on child protection only. The SPPA Law also only focuses on how to carry out the process when a criminal act is committed by children.

### **Suggestion**

1. Judges should make more efforts to examine the law according to their conscience and not only be fixated by existing norms.
2. Diversion must be prioritized when the judge settles a child's case because it is to ensure the peace of the child in dealing with legal cases.
3. The law in Indonesia and Malaysia should focus on one thing only. If there are more technical matters, it can be regulated in a derivative regulation of the regulation.

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