

Challenges in Implementing Diversion for Child Offenders: A Case Study of the Malang Police Department

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Abstract

Diverting children from the formal criminal justice system is imperative to safeguard their future and well-being. Indonesia's Juvenile Criminal Justice System Act (UU SPPA) mandates diversion at every stage of the process for children in conflict with the law. However, diversion frequently fails due to legal conditions not being met, particularly the requirement of victim approval under Article 9(2). This empirical, socio-legal study examines the challenges of implementing diversion at the investigative stage in the Malang Police Department. Findings reveal that while the police adopt a restorative and child-friendly approach, diversion efforts often collapse due to disproportionate demands from victims' families, who can block the agreement entirely. Such power imbalance risks obstructing restorative justice and may subject children to unnecessary stigmatization and incarceration. The study highlights an urgent need for legislative reform to prevent the misuse of victim consent as an absolute condition. It proposes an amendment to Article 9 to empower investigators and social officers to assess the fairness of victims' demands relative to actual harm. This research contributes novel insight by exposing how legal rigidity enables the undermining of diversion's restorative aims and suggests a statutory safeguard to restore balance. These findings are critical to promoting equitable justice for all parties while ensuring the best interests of the child.

1. Introduction

Children differ significantly from adults and require special attention due to their still-developing physical and psychological maturity,¹ when a child commits

¹ I Ketut Arjuna Satya Prema, Masruchin Ruba'i, and Nurini Aprilianda, "Pembatasan Usia Pertanggungjawaban Pidana Anak dalam Peraturan Perundang-Undangan," *Jurnal Ilmiah Pendidikan*



a criminal offense, it is essential to recognize that the legal system treats children differently from adults.² Special treatment for children, particularly those who commit criminal offenses or are in conflict with the law, is applied from the stages of investigation, prosecution, to adjudication through the mandatory implementation of diversion, as stipulated in Law No. 11 of 2012 on the Juvenile Criminal Justice System (hereinafter referred to as the UU SPPA). The enactment of the UU SPPA is expected to ensure the fulfillment of children's rights in all aspects of life.³ The UU SPPA emphasizes child protection by resolving cases involving children in conflict with the law through non-judicial processes based on a restorative justice approach, primarily through diversion. Diversion serves as a key mechanism to safeguard children by steering them away from formal legal proceedings and the associated negative stigma,⁴ thereby enabling their reintegration into society without being labeled as former convicts.

As stipulated in Article 8 paragraph (1) of the UU SPPA, the diversion process is conducted through deliberation involving the child and their parents or guardians, the victim and/or their parents or guardians, social advisors, and professional social workers, all within a restorative justice framework. Shielding children from formal criminal proceedings is imperative, as it directly affects their future and best interests. Exposure to the judicial process can disrupt a child's development, given their psychological immaturity, and may result in trauma that negatively impacts their mental well-being.⁵ Children subjected to the justice system often experience a loss of self-confidence and a sense of alienation due to the persistent social stigma. Such labeling can hinder their emotional and social growth, ultimately affecting their long-term prospects. Diversion serves several essential purposes, including:

- a. Achieving reconciliation between the victim and the child;
- b. Resolving the child's case outside the formal judicial process;
- c. Preventing the deprivation of the child's liberty;
- d. Encouraging community participation; and
- e. Instilling a sense of responsibility in the child.⁶

Deprivation of liberty and criminal sentencing for children must be considered a last resort and should be avoided whenever alternative measures are available, in line with the principle of the best interests of the child. Although the UU SPPA clearly mandates restorative justice and the implementation of diversion for child offenders, practical challenges persist that often hinder the success of diversion

Pancasila dan Kewarganegaraan 4, no. 2 (January 6, 2020): 232, <https://doi.org/10.17977/um019v4i2p232-241>.

² Nabilah Seviana Citra and Ifahda Pratama Hapsari, "Alasan Pemaaf Yang Dijadikan Dasar Pertimbangan Hakim Dalam Menuntut Anak Sebagai Pelaku Kleptomania Di Indonesia," *UNES Law Review* 6, no. 1 (October 26, 2023): 2831–39, <https://doi.org/10.31933/unesrev.v6i1.1060>.

³ Mujiburrahman Mujiburrahman, "Diversi Dan Penjatuhan Sanksi Pidana Pada Sistem Peradilan Pidana Anak," *Lex Librum* 5, no. 1 (December 6, 2018): 801–18, <https://doi.org/10.46839/ljih.v5i1.119>.

⁴ Roger Smith, "Diversion, Rights and Social Justice," *Youth Justice* 21, no. 1 (April 1, 2021): 18–32, <https://doi.org/10.1177/1473225420902845>.

⁵ Gail S. Goodman et al., "Testifying in Criminal Court: Emotional Effects on Child Sexual Assault Victims," *Monographs of the Society for Research in Child Development* 57, no. 5 (1992): i–159, <https://doi.org/10.2307/1166127>.

⁶ Jeffrey Butts, "Critical Diversion," *Criminology and Public Policy* 15 (2016): 983.



efforts. One such example is the failed attempt to resolve an assault case involving a student at the An-Nur Islamic Boarding School in Bululawang, Malang Regency, through diversion.⁷

The failure of the diversion process presents a serious concern, as it forces psychologically immature children to undergo formal legal proceedings due to unsuccessful diversion efforts. This situation can have detrimental effects on the child's development, especially considering their long-term future. In light of this, the present study aims to examine the specific factors that contribute to the failure of diversion at the investigative stage, with a focus on the role of investigators in Malang Regency. This research is crucial to determine whether the implementation of diversion by law enforcement aligns with the principles of child protection and upholds the best interests of the child.

Given this background, a more in-depth analysis is necessary to identify the underlying causes of failed diversion at the investigation stage and to propose appropriate solutions that uphold children's rights. This study seeks to address two primary questions: How is diversion implemented for child offenders during the investigation phase? And what are the challenges faced in the implementation of diversion at the Women and Children Protection Unit (Unit PPA) of the Malang Police Department?

2. Method

This study employs an empirical legal research method, which focuses on analyzing the application of law in practice as it affects individuals, groups, and legal institutions. It adopts a socio-juridical approach, viewing law as a real and functional social institution within everyday life. This approach enables the researcher to examine the legal aspects of social interactions and serves as a tool to identify and clarify non-legal findings relevant to legal research and writing.⁸

The data were collected through focus group discussions (FGDs) with officers from the Malang Police Department, particularly the Women and Children Protection Unit (Unit PPA). In addition, document studies were conducted to gain a deeper understanding of the legal concepts, theories, and regulations related to diversion. The data were analyzed using a qualitative descriptive method to address the core issues of the study, namely the challenges in implementing diversion for child offenders.

Analysis or Discussion

3.1. Implementation of Diversion for Child Offenders at the Malang Police Department

Diversion is an integral component of restorative justice.⁹ Restorative justice is a form of resolution aimed at achieving justice for both parties, ensuring fairness

⁷ "Polisi Tetapkan Terduga Penganiaya Santri An-Nur 2 Bululawang sebagai Tersangka," January 10, 2023, <https://tugumalang.id/polisi-tetapkan-terduga-penganiaya-santri-an-nur-2-bululawang-sebagai-tersangka/>.

⁸ Uzoma Ihugba, *Introduction to Legal Research Method and Legal Writing* (Lagos: Malthouse Press Limited, 2020).

⁹ Diarmuid Griffin, "Restorative Justice, Diversion and Social Control: Potential Problems," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, March 9, 2012), <https://doi.org/10.2139/ssrn.2018850>.

and healing for both the offender and the victim of the crime.¹⁰ Diversion also serves as a form of protection for children's rights, which are fundamentally the responsibility of parents, families, communities, the state, and both central and local governments. Its purpose is to ensure that children can live, grow, and develop optimally in accordance with human dignity, while being safeguarded from violence and discrimination. Ultimately, diversion contributes to the realization of an Indonesian generation that is quality-driven, morally upright, and prosperous.¹¹ Unlike adult criminal proceedings, juvenile justice processes are conducted behind closed doors and, in some countries, are kept confidential to protect children from negative stigma and societal labeling.¹² Juvenile criminal law, particularly through the implementation of diversion, is fundamentally distinct from adult criminal law and for good reason. Children receive special treatment because they are not yet fully developed physically, mentally, or emotionally, making them more susceptible to external influences and less capable of fully understanding the consequences of their actions. As a vulnerable and dependent group, children require protection from any treatment that may hinder their growth and development as future contributors to the nation's progress.

Given that a child's future remains long and full of potential, imposing criminal penalties risks subjecting them to labeling and social stigma, which can severely impair their psychological and social development. Diversion aims not only to prevent this but also to restore relationships between the child, the victim, and the wider community. In this context, Indonesian law must be understood as more than a set of rules; it should function as a collective mechanism for peaceful conflict resolution, enabling mutual participation and restorative outcomes for all parties involved.¹³ As a nation committed to upholding the rule of law and human rights, the Indonesian government plays a vital role in ensuring the protection of the rights of every citizen.¹⁴ Diversion, rooted in the principles of restorative justice, aims to fulfill the rights and deliver justice to both parties, not only the offender but also the victim, thereby ensuring a balanced and inclusive sense of justice. This alternative approach to resolving juvenile offenses is mandated because punitive measures alone are not appropriate for children. Instead, responses must be oriented toward education, rehabilitation, and the child's overall development, with close attention to their individual needs and educational guidance.

The Beijing Rules underscore that a primary goal of juvenile justice is to

¹⁰ Article 1 paragraph (6) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System defines restorative justice as: "The settlement of criminal cases by involving the perpetrator, the victim, the families of both the perpetrator and the victim, and other relevant parties to collectively seek a fair resolution by emphasizing restoration to the original state rather than retribution."

¹¹ Mohammad Taufik Makarao, *Hukum Perlindungan Anak Dan Penghapusan Kekerasan Dalam Rumah Tangga* (Jakarta: Rineka Cipta, 2013). 108

¹² Christy K. Scott et al., "Juvenile Justice Systems of Care: Results of a National Survey of Community Supervision Agencies and Behavioral Health Providers on Services Provision and Cross-System Interactions," *Health & Justice* 7, no. 1 (June 14, 2019): 11, <https://doi.org/10.1186/s40352-019-0093-x>.

¹³ Zainuddin Ali, *Sosiologi Hukum* (Sinar Grafika, 2023). 76

¹⁴ Taufik H. Simatupang, "Dukungan Sub Sistem Peradilan Pidana Terhadap Perlindungan Saksi dan Korban (Eksistensi Lembaga Perlindungan Saksi dan Korban)," *Lex Jurnalica* 8, no. 1 (2010): 1–17, <https://doi.org/10.47007/lj.v8i1.318>.

promote the well-being of the child, to avoid sanctions that are purely punitive in nature, and to uphold the principle of proportionality. This reinforces the notion that any response to juvenile delinquency must be adapted to the child's age, circumstances, and developmental stage, focusing on reintegration rather than punishment.¹⁵ In juvenile justice proceedings, it is essential not only to involve specialized juvenile judges but also to uphold the rights of the child, adhere to the fundamental principles of juvenile justice, and recognize the unique characteristics that distinguish it from adult criminal proceedings.¹⁶ The imposition of sanctions on children in conflict with the law must reflect one of the core principles of the Convention on the Rights of the Child, namely *the best interests of the child*. This principle is articulated in Article 3, paragraph 1 of the Convention. The negative impact of the juvenile justice process may disrupt a child's psychological development; therefore, diversion is essential to prevent children from being subjected to stigma and labeling. In Malang Regency, the number of cases involving children in conflict with the law (CICL) has increased over the past three years.¹⁷ In 2022, there were 108 cases involving children in conflict with the law (CICL) in Malang Regency. This number increased to 136 cases in 2023, and as of June 2024, 73 cases have already been handled by the Women and Children Protection Unit (Unit PPA) of the Malang District Police. The most common CICL cases involve assault, particularly incidents occurring within educational institutions such as schools or Islamic boarding schools (*pesantren*). In addition to assault, theft and sexual violence also constitute a significant proportion of CICL cases in the region.

The implementation of diversion for child offenders at the Malang District Police is carried out through the Unit PPA, in accordance with Article 7(2) of the Juvenile Criminal Justice System Act (UU SPPA). Diversion is only applicable if the alleged offence carries a maximum sentence of less than seven years of imprisonment and is not a repeat offence. Therefore, when a child is involved in a criminal act punishable by more than seven years under the Indonesian Penal Code (KUHP), diversion cannot be applied, as the case does not meet the legal criteria set forth in the UU SPPA.

In the implementation of diversion, Unit PPA emphasizes a child-friendly and humane approach during investigation procedures, in line with the provisions of the UU SPPA. Child offenders are interviewed in a non-confrontational manner—for example, by sitting side by side with officers rather than face-to-face—to prevent psychological distress or feelings of intimidation. Legal assistance must also be provided, although there is no specific requirement for such legal counsel to specialize in child representation. Similarly, when interviewing child victims or child witnesses, Unit PPA upholds children's rights and ensures their comfort. For instance, child victims may be given paper and drawing tools to illustrate or describe scenes such as the crime scene, thus helping them feel more at ease during

¹⁵ Achmad Ratomi and Rismaya Mutiara Lestari, "Pidana Peringatan Dalam Sistem Peradilan Pidana Anak," *EGALITA* 15, no. 2 (December 24, 2020), <https://doi.org/10.18860/egalita.v15i2.10895>.

¹⁶ Shinta Ayu Purnamawati et al., "Child-Friendly Justice and Children's Rights from Criminal Cases; Islamic Law Notes," *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (March 28, 2024): 141–54, <https://doi.org/10.22219/ljih.v32i1.31681>.

¹⁷ Women and Children Protection Unit (PPA), Malang Resort Police, interview by the author during a Focus Group Discussion, Swiss-Belinn Malang, June 21, 2024.

the investigative process.

In handling CICL cases, Unit PPA also collaborates with various institutions, including the Correctional Center (*Balai Pemasyarakatan/Bapas*), clinical psychologists, the Department of Women's Empowerment and Child Protection (DP3A), and NGOs focusing on women's and children's advocacy.

To ensure the best interests of the child, Unit PPA prioritizes mediation before initiating the diversion process. Mediation is recognized as an alternative dispute resolution mechanism under Article 1(10) of Law No. 30 of 1999 on Alternative Dispute Resolution. Supreme Court Regulation (Perma) No. 1 of 2016 on Mediation Procedures in Court also affirms that mediation is an appropriate, effective, and equitable means of dispute resolution that allows the parties broader access to mutually satisfactory and just outcomes.¹⁸ *According to the Collins English Dictionary and Thesaurus, mediation is defined as an activity that serves to bridge or facilitate communication between two disputing parties in order to reach an agreement.*¹⁹ A successful mediation results in a Peace Agreement, a written document outlining the terms of dispute resolution, which is signed by both parties and the mediator.²⁰ The Peace Agreement is legally binding on both parties. In such cases, diversion is no longer necessary in resolving the child's case. The Women and Children Protection Unit (Unit PPA) of the Malang District Police prioritizes mediation before initiating the diversion process, with the aim of increasing the chances of keeping children out of the formal judicial system. Mediation is also considered more favorable for child offenders as it leaves no legal trace.

This consideration stems from Article 29(3) of the Juvenile Criminal Justice System Act (UU SPPA), which stipulates that if diversion is successful and results in an agreement, it must be formalized through a court determination. Such a determination may have unintended negative consequences for the child, including potential labeling, as the child's identity would be officially recorded in the court's decision. In light of this, and in an effort to protect children's rights and promote their best interests, the Unit PPA of the Malang District Police only proceeds with diversion at the investigation stage if the mediation process fails.

3.2. Challenges in Implementing Diversion at the Investigation Stage by the Malang District Police

The investigation of juvenile cases in Indonesia is governed by Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA). This process involves the collection of evidence and information by law enforcement officers or authorized agencies to assess whether a child is suspected of having committed an offense, and whether further legal action is warranted. Investigations involving children must be guided by specific principles that protect children's rights and prioritize a restorative justice approach.

The investigative process begins with the receipt of a report or initial information regarding an alleged offense involving a child. Such information may

¹⁸ The Considerations in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court

¹⁹ Dian Maris Rahmah, "Optimalisasi Penyelesaian Sengketa Melalui Mediasi Di Pengadilan," *Jurnal Bina Mulia Hukum* 4, no. 1 (September 13, 2019): 1–16.

²⁰ Article 1 point (9) of Supreme Court Regulation Number 1 of 2016 on Court Mediation Procedures

originate from victims, witnesses, social workers, or other sources. If preliminary evidence is found to be sufficient, law enforcement officers may summon the child, accompanied by a parent or guardian, for questioning. It is crucial to ensure that the child is interviewed in a safe and supportive environment that resembles a familial setting to make the child feel secure in providing statements. The UU SPPA also mandates that officials refrain from wearing uniforms or robes during interactions with children, including during investigations. Moreover, the questioning must be conducted in a designated child-friendly room.

In the next phase, the child is asked to provide a statement regarding the alleged incident. This process must take into account the child's age, level of understanding, and their right to be accompanied by a parent or guardian and a legal advisor or advocate. Following this, the investigator gathers relevant evidence, such as physical objects, documents, recordings, or other materials, that may support the investigation. This evidence is then used to determine the appropriate course of action.

After collecting the necessary evidence, the investigator evaluates whether there is sufficient support for the allegation that the child has committed a legal violation. This assessment also considers the child's age, level of involvement, and the best interests of the child. Based on the evaluation, the investigator may decide to proceed with legal action, pursue rehabilitative measures, or discontinue the case if the evidence is insufficient.

Throughout the investigation, it is essential to uphold the fundamental principles of children's rights, including the right to protection, participation, and expression. Investigators are required to pursue restorative justice through diversion whenever possible. Diversion allows the child offender to meet with the victim to understand the impact of their actions, offer apologies, and work toward restoring the relationship. Child protection, in this context, serves as a perspective that places the child's well-being as the highest priority in addressing all issues involving children.²¹ Investigations involving children must consistently prioritize the best interests and needs of the child, ensure the fulfillment of their rights, and emphasize a restorative justice approach. Juvenile cases are handled by Child Investigators (*Penyidik Anak*) who are appointed based on a decree issued by the Chief of the Indonesian National Police or another official designated by the Chief. These investigators must meet specific qualifications as stipulated in Article 26(3) of the Juvenile Criminal Justice System Act (UU SPPA), a Child Investigator must fulfill the following criteria:

1. Have prior experience as an investigator;
2. Demonstrate interest in, dedication to, and an understanding of child-related issues; and
3. Have completed specialized training in juvenile justice procedures.

Although children are granted special treatment under the Juvenile Criminal Justice System Act (UU SPPA), particularly through the opportunity to resolve cases via diversion, the implementation of this mechanism becomes challenging when the offense committed falls under the category of serious crimes, such as murder, rape, drug-related offenses, and terrorism, which carry a sentence of more than

²¹ M. Nasir Djamil, *Anak Bukan Untuk Dihukum* (Jakarta: Sinar Grafika, 31).

seven years. As stipulated in Article 7(2)(a) of the UU SPPA: *"Diversion as referred to in paragraph (1) shall be carried out in the case of criminal offenses punishable by imprisonment of under seven (7) years."* Furthermore, Article 9(1)(a) states that the eligibility for diversion also depends on the category of offense committed by the child. The elucidation of Article 9 explains that this provision serves as an indicator for judges in determining the application of diversion in juvenile cases, where the lower the threat of criminal sanction, the higher the priority given to diversion.²²

Moreover, the implementation of diversion is often hindered when the victim's family does not consent to the process due to various reasons. Efforts to prevent juvenile offenders from facing criminal sanctions cannot proceed because, under the Juvenile Criminal Justice System Act (UU SPPA), any diversion agreement must be approved by the victim. This lack of consent is typically motivated by a desire to impose a deterrent effect on the child offender to prevent future delinquent behavior.

Although the UU SPPA mandates the application of diversion at every stage of legal proceedings, including during police investigations at the Malang District Police (Polres Malang), in practice, such efforts do not always result in an agreement. According to AIPTU Erleha, S.H., Head of the Women and Children Protection Unit (Kanit PPA) at Polres Malang, there are several recurring factors that lead to the failure of diversion during the investigation stage. One significant obstacle arises from Article 9(2) of the UU SPPA, which stipulates that a diversion agreement requires the consent of the victim and/or the child victim's family. In the absence of such consent, diversion cannot be successfully implemented. In practice, victims or their families often make excessive demands during the diversion process, which contributes to its failure and necessitates that the juvenile offender continue through the formal legal process as prescribed by the UU SPPA.

AIPTU Erleha, S.H. further explained that several cases in Malang Regency illustrate how diversion efforts can collapse due to disagreements between the parties involved. For instance:

1. A case of assault involving both the perpetrator and victim as minors. During the diversion process, the victim's family demanded compensation amounting to IDR 50 million. However, the offender's family found the amount unreasonable, especially considering the victim only suffered minor injuries. As a result, the diversion failed during the investigation stage because the victim's family insisted that an agreement could only be reached if the full amount was paid, an amount unilaterally determined by the victim's side. According to the Head of the PPA Unit, this practice reveals a weakness in the UU SPPA, whereby victims exploit legal provisions to make excessive and unjustified demands.
2. A school-based assault case. In this instance, the victim's family demanded that the juvenile offender be expelled from school. However, the school, in accordance with its internal policy, only permitted suspension or other disciplinary measures, not expulsion. Consequently, the victim's family refused to consent to the diversion agreement, leading to the failure of the

²² Edward P. Mulvey and Anne-Marie R. Iselin, "Improving Professional Judgments of Risk and Amenability in Juvenile Justice," *The Future of Children / Center for the Future of Children, the David and Lucile Packard Foundation* 18, no. 2 (2008): 35-57.

process and requiring the offender to proceed with formal legal proceedings.

These examples demonstrate that failed diversion efforts during the investigation stage at the PPA Unit of Polres Malang result from a combination of factors. Beyond legal considerations, such as when the offense carries a sentence of more than seven years or involves repeat offenses, the role of the victim is particularly influential. Although the UU SPPA emphasizes the protection of children's rights, which law enforcement officials are obligated to uphold, successful implementation also requires greater public awareness, especially among victims and their families, of the importance of respecting and upholding the rights of all children, including those in conflict with the law. It is important to recognize that offenses committed by minors are often not driven by malicious intent. Therefore, the term "children in conflict with the law" is used deliberately to avoid stigmatizing them as criminals.²³

Law must develop in accordance with societal progress to effectively respond to the constantly shifting nature of social phenomena.²⁴ Accordingly, Indonesia has increasingly emphasized restorative justice as a framework that seeks to restore the victim's well-being while moving away from punitive approaches toward offenders.²⁵ As the party whose fundamental rights have been violated by the juvenile offender, the victim is indeed entitled to justice through the diversion process, which serves as a form of restorative justice centered on recovery. However, victims should refrain from acting excessively or vindictively in an attempt to instill a deterrent effect on the child. Such actions are inconsistent with the principles of child protection. Therefore, it is essential to encourage the active participation of the broader community, including crime victims, in realizing the best interests of the child. This involves fostering a sense of responsibility in the child by engaging them in the process of 'restoration' rather than retribution.

4. Conclusion

The implementation of diversion for child offenders at the investigation stage by the Malang Police is carried out in a humane manner and in accordance with the provisions of the Juvenile Criminal Justice System Law (UU SPPA), with the aim of upholding children's rights. Article 9 paragraph (2) of the UU SPPA stipulates that the outcome of a diversion agreement must be approved by the victim. Without the victim's consent, the diversion agreement cannot be finalized. According to the Head

²³ Ayu Darisah, Edi Darmawijaya, and Rispalman Rispalman, "The Reduction of Child Crime Cases According to Islamic Criminal Law in the Banda Aceh Police Department [Upaya Menekan Tingkat Kriminalitas Anak Ditinjau Menurut Fiqih Jinayah: Studi Kasus di Polresta Banda Aceh]," *Legitimasi: Jurnal Hukum Pidana dan Politik Hukum* 9, no. 1 (June 28, 2020): 110–32, <https://doi.org/10.22373/legitimasi.v9i1.7329>.

²⁴ Kuku Dwi Kurniawan, "Porn Videos as Evidence of Adultery: A Comparative Study of Indonesian Criminal Law and Islamic Law," *Legality: Jurnal Ilmiah Hukum* 30, no. 2 (September 11, 2022): 166–81, <https://doi.org/10.22219/ljih.v30i2.20808>; Ahmad Heru Romadhon et al., *Filsafat Hukum: Aliran, Pemuka Dan Pemikiran*, 1st ed. (Malang: Inara Publisher, 2024).

²⁵ Orin Gusta Andini, Nilasari Nilasari, and Andreas Avelino Eurian, "Restorative Justice in Indonesia Corruption Crime: A Utopia," *Legality: Jurnal Ilmiah Hukum* 31, no. 1 (April 13, 2023): 72–90, <https://doi.org/10.22219/ljih.v31i1.24247>.

of the Women and Children Protection Unit (Kanit PPA) of the Malang Police, in practice, victims' demands during the diversion process are often excessive and appear to exploit the situation. If these demands are not met, victims tend to withhold their consent for the diversion agreement. This raises concerns about potential arbitrariness if victims are granted absolute authority over the approval of diversion outcomes, which may hinder the process from achieving its intended restorative goals.

The author contends that the UU SPPA should include a specific provision regulating the victim's consent in the diversion agreement by adding a new paragraph (3) to Article 9 as follows:

Article 9

(3) In the event that the victim and/or the family of the child victim makes specific demands upon the child offender as a condition for granting their consent to the diversion agreement, the Investigator and the Social Advisor, as facilitator and co-facilitator respectively, shall be obligated to assess such demands based on the actual losses incurred as a result of the child's offense. If the victim's demands are deemed disproportionate to the losses caused, the diversion agreement may proceed without the consent of the victim and/or the victim's family, provided that the interests and rights of the victim are still duly considered and safeguarded.

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