

# The Problem of Diversion in Children Perpetrators of Traffic Violations in Indonesia

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## Abstract

*Children as perpetrators of traffic accidents that cause fatalities, this is one of the classic problems related to the application of the legal system and its functionalization by law enforcement officials in Indonesia. How is the protection of children in the juvenile criminal justice system related to the analytic Problems in Children Traffic Violators in Indonesia? Regarding the Criminal Code and Article 310 paragraph (4) of Law Number 22 of 2009 concerning Road Traffic and Transportation and Law Number 11 of 2012 concerning the Juvenile Justice System as regulated in Article 1 paragraph (7), Article 12, Article 52 verse 5. The results of the research found that there are still disparities (differences) in the law enforcement process in Indonesia for children as traffic offenders and other findings related to diversion techniques are found in the Indonesian Police Criminal Investigation Unit No. Pol.: TR/1124/XI/2006 which provides instructions and rules that can refer to the completion of diversion efforts. Diversion efforts at the level of investigation related to Law no. 11 of 2012 concerning the Criminal Justice System, the prosecution and examination of children's cases in district courts have not been implemented optimally so it is recommended that at the level of investigation, prosecution, and examination of children's cases in district courts it is advisable to make diversion efforts.*

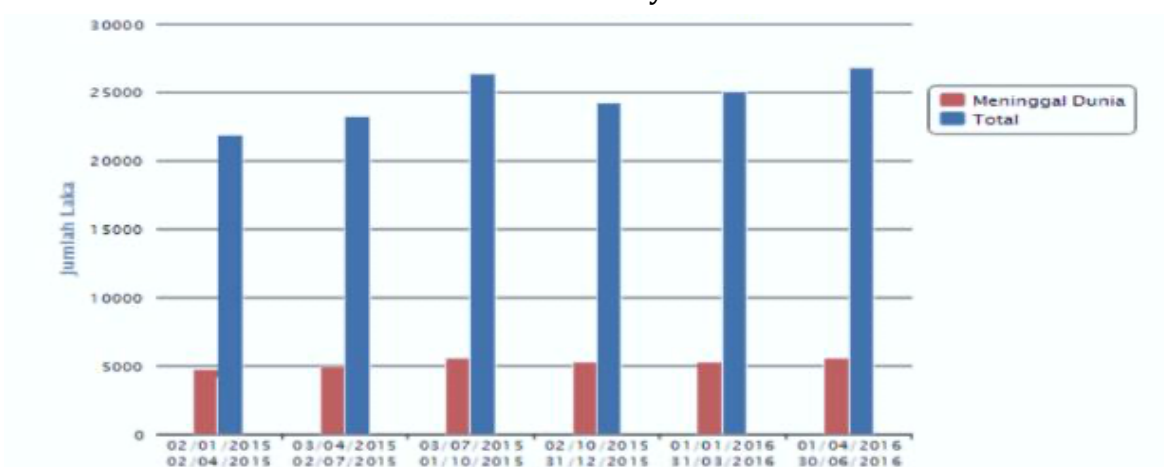
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## 1. Introduction

Children are the cause of violations when driving transportation, in Indonesia during the COVID-19 pandemic, the government advises the public to use private vehicles related to the transmission of the virus through the air very quickly. People follow government policies and feel more comfortable using private vehicles, this is the reason why private transportation is widely used in cities and villages. The negative

and positive impact on society by using privately owned transportation is very prone to accidents, as currently, many school children are driving private transportation without a driver's license. Traffic violations caused by children as perpetrators of traffic violations to the cause of traffic accidents. Traffic accidents involving children as the perpetrators create a new problem. Problems arise when expectations are not following reality, something whose essence does not match the ideal (*das solen*) with what is happening (*das Sein*), between the ideals (*idea*) of law and reality, between theory and its implementation (*legal gap*) between views of one society to another. Indonesia for traffic accident cases has increased from 2015 to 2016. It can be seen in the table below.<sup>1</sup> In 2017 the number reached 138,995 incidents. From 2018 to October, accidents involving high school students have reached 132,423 incidents.<sup>4</sup> Then in the city of Jambi, in 2017 there were 6,528 traffic violations committed by students. In 2018, 6,585 traffic violations were recorded. Victims among students also reached 409 people, and 155 people were the perpetrators of accidents for 2017. Meanwhile, in 2018, accident victims from students amounted to 208 people. Then the students who became the perpetrators of the accident were 124 people. Children as perpetrators of traffic violations can be retrieved based on data obtained from the number of violations committed by students (children) that result in traffic accidents from year to year quite significantly, the average death toll is 26,000-29,000/year (Education of the majority of high school students).

Accident Fatality Chart<sup>2</sup>



<sup>1</sup> World Health Organization. *Road Traffic Injuries*. Retrieved from [http://www.who.int/topics/injuries\\_traffic/en/](http://www.who.int/topics/injuries_traffic/en/), (Accessed on 20 July 2020)

<sup>2</sup> Source: KORLANTAS POLRI. Retrieved from <http://korlantas.polri.go.id/statistik-2>, Accessed on 30 November 2020

The solution to the problem is by researching to produce findings, a proposal so that it can be applied that is a solution. The law in the case of traffic crimes by children should be present to bring proportional justice both from the side of the perpetrator and the victim. Regarding the perpetrator, the future concerned is an important factor to consider. From the victim's point of view, the recovery of material and immaterial losses is something that must be considered.

Traffic regulations and laws that apply as a reference and are implemented in Indonesia are as follows: Law Number 22 of 2009 concerning Road Traffic and Transportation; Child Protection Law; Juvenile Justice System Law; Criminal Code and Law Number 11 of 2012 concerning the Juvenile Justice System.<sup>3</sup> When an accident is carried out by a child as the culprit, the decision taken by the government is still disparity (difference) to the law enforcement process in Indonesia for children as traffic offenders and other findings related to diversion techniques are found in the Police Criminal Investigation Unit No. Pol.: TR/1124/XI/2006 which provides instructions and rules that can refer to the completion of diversion efforts. Law enforcement efforts through the criminal justice system against traffic accident perpetrators are steps that are often taken by law enforcement officials who carry out functions in the traffic sector, especially against traffic accidents that cause fatalities so that traffic accident perpetrators will be processed until a judge's decision is made. which imposes a guilty sentence against the perpetrator and provides imprisonment for the perpetrator. The legal process through the criminal justice system is essential to seek material truth (substantial truth) in the form of fulfilling objective requirements in the form of a person's behavior (handling), the consequences that are an absolute requirement for offenses, elements of unlawful nature formulated formally, elements that determine the nature of the act (*voorwarded die de strap bathed befallen*), an element against the law that is aggravating the crime, an additional element of a criminal act (*big commander voorwaarden van het straf barheid*).<sup>4</sup> On the other hand, the purpose of the criminal justice system according to

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<sup>3</sup> Article 1 paragraph 7, Article 12, Article 52 paragraph 5, Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System

<sup>4</sup> Suharto. (2002). *Hukum Pidana Materiil*. Jakarta: Sinar Grafika. Pg. 10.

Mardjono Reksodiputro, namely: First, preventing people from becoming victims of crime. Second, solving the crime cases that occurred.

The problem of diversion for children who are traffic offenders is that diversion from the formal criminal process is the best alternative when handling children in conflict with the law. The restorative model that prioritizes the implementation of diversion as mandated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) is an expensive criminal justice system due to the large number of new infrastructures that must be prepared by the state to ensure the justice system. The phenomenon of the increasing number of children committing traffic violations does not seem to be directly proportional to the age of the perpetrators. Various prevention and control efforts are not in line with the current COVID-19 pandemic. Related to this, the government through the juvenile justice administration needs to take actions, among others, to conduct preventive education for children and parents so that minors who do not have a driving license are prohibited from driving; child traffic violators are tried through the implementation of the juvenile justice system following the child's condition following Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). The purpose of implementing the juvenile justice system is not solely aimed at imposing criminal sanctions for children who have committed criminal acts but is more focused on the premise that the imposition of sanctions is a means of supporting the welfare of children who have committed crimes.

The formulation of the problem in research related to the process of child protection in the juvenile criminal justice system is related to the problem of diversion in children who commit traffic violations in Indonesia.

## **2. Problem Statement**

Children as perpetrators of traffic accidents that cause fatalities, this is one of the classic problems related to the application of the legal system and its functionalization by law enforcement officials in Indonesia. How is child protection in the juvenile justice system related to the Diversion Problems of Child Traffic Violators in Indonesia? Regarding the Criminal Code and Article 310 paragraph (4) of Law Number 22 of 2009 concerning Road Traffic and Transportation and Law Number 11

of 2012 concerning the Juvenile Justice System as regulated in Article 1 paragraph (7), Article 12, Article 52 verse 5

### **3. Methods**

The method in this study uses a qualitative research method with a juridical-normative approach, the law is conceptualized as a norm, rule, principle, or dogma. A normative juridical approach is a doctrinal approach to normative legal research. The juridical-normative research stage, through literature study, interview (interview). Juridical-normative approach to legal history and comparative law, as well as legal philosophy.

This study uses data collection techniques by taking written literature (library) by classifying, recording in detail, systematically, and directed about documents/libraries. The data were analyzed qualitatively-normatively, examined using the researcher's interpretation, and constructing the statements contained in the legal documents.<sup>5</sup> Furthermore, the judicial process on the legal protection of children's crimes as perpetrators of traffic violations associated with Law no. 35 of 2014 concerning Child Protection related to the Road Traffic and Transportation Law; The Criminal Code as well as Article 310 paragraph (4) of Law Number 22 the Year 2009 concerning Road Traffic and Transportation; Law Number 11 of 2012 concerning the Juvenile Justice System as regulated in Article 1 paragraph (7), Article 12, Article 52 paragraph 5.

### **4. Discussion**

#### **4.1. Children as Perpetrators of Law Violations**

The concept of Restorative Justice has emerged more than twenty years ago as an alternative to solving juvenile criminal cases. The United Nations (UN) Juvenile Justice Working Group defines restorative justice as a process by which all parties related to a particular crime sit together to solve problems and how to deal with the consequences in the future. This process is carried out through discretion (policy) and diversion, namely the arrangement of court proceedings outside the formal process to be resolved by deliberation. Settlement through deliberation is not a new

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<sup>5</sup> Soerjono and Rahman, A. (2003). *Metode Penelitian Hukum*. Jakarta: Rineka Cipta. Pg. 23

thing for Indonesia, even customary law in Indonesia does not distinguish between criminal and civil cases, all cases can be resolved through deliberation to get a balance or restoration of the situation

Children as perpetrators of traffic violations to traffic accidents, in this study the focus is on the study of investigating cases of accidents with child offenders contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which provides preferential treatment to children in conflict with the law since investigative process. This special attention and treatment are intended so that children do not become victims of the application of rigid and formal legal procedures that are feared to cause mental, physical, and social suffering for children. Regarding children as perpetrators of traffic violations, causing accidents and resulting in criminal reporting.

The SPPA Law (Child Criminal Justice System) of the Republic of Indonesia Number 11 of 2021 has also prepared law enforcement officials specifically, through investigators who handle cases of children as traffic offenders. The SPPA Law in paragraph 1 point 8 of the PPA stipulates that only child special investigators appointed based on the Decree of the Head of the State Police of the Republic of Indonesia or other officials appointed by the Head of the State Police of the Republic of Indonesia may conduct investigations against children suspected of committing certain criminal acts.<sup>6</sup> The requirements to be appointed as Child Investigators are regulated in the SPPA.<sup>7</sup> Where child investigators must be experienced as investigators, have interest, concern, dedication, and understand children's problems; and has attended technical training on juvenile justice. In carrying out the investigation process, child investigators must sympathetically create a family atmosphere so that the examination runs smoothly without any fear from the child being processed so that it is easy for the child to reveal true and clear information. Investigators are prohibited from using official attributes during the investigation, this is intended so that children do not feel forced and intimidated so that children

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<sup>6</sup> Article 1 Number 8 Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System

<sup>7</sup> Article 26 Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System

are not expected to experience trauma after the investigation process. Investigators in investigating a child who is reported or reported to have committed a criminal act must apologize to the victim.

#### **4.2. Traffic regulations**

Traffic Regulations in Indonesia when solving traffic accidents through diversion in children as traffic offenders use the provisions of Law No. 11 of 2012 concerning the Criminal Justice System which aims to achieve justice and protection for child criminal cases. by diverting the case from the criminal justice process to being outside the criminal justice process through reaching an agreement, if a Diversion agreement is found, it will then be submitted along with the Diversion report by the direct supervisor of the Investigator, namely the Chief of Police to the Head of the District Court for determination and after receiving the determination of the Head of the District Court, the investigator issue a determination to terminate the investigation. Barriers to the settlement of traffic accidents through diversion against child offenders in Indonesia come from internal and external sources, including the lack of optimal commonality of perceptions and views between investigators handling traffic accident crimes, public prosecutors, and judges regarding the application of the diversion process the settlement. traffic accident criminal cases out of court. This is one of the causes of the disparity in handling traffic accidents through diversion. In addition, there is a view (image) of some people that the application of the diversion process in the settlement of traffic accidents will provide opportunities for deviation by investigators for personal interests so that the community or victims become resistant and afraid of the implementation of diversion.

#### **4.3. Diversion Problems**

Diversion in the criminal justice system is an attempt by law enforcement officials to shift a case from a formal process to an informal process. Diversion is carried out to obtain a form of settlement that protects children. The power to transfer a case from a formal to an informal process is called a discretionary right. The implementation of diversion is based on the principle of “the best interest of the child”. This concept is a framework of thinking to find a way out in deciding actions following the conditions and development of children who are perpetrators of crimes.

Diversion is handling cases of children who have committed criminal acts from a formal process with or without conditions. The diversion approach can be applied to resolve cases of children in conflict with the law. The integrated juvenile justice system places more emphasis on the first (resocialization and rehabilitation) and third (social welfare) efforts. However, other efforts outside the criminal or judicial mechanism can be carried out with several methods including Diversion and Restorative Justice. The objectives of the diversion effort are:

- 1) to prevent children from being excluded;
- 2) to avoid labeling children as criminals;
- 3) to prevent crimes committed by children;
- 4) hold children accountable for their actions;
- 5) to carry out the necessary interventions for victims and children without having to go through a formal process;
- 6) avoiding children from participating in the judicial system process;
- 7) the influence of children from the influence and negative of the judicial process.

The concept of diversion aims to create humane justice that brings victims and perpetrators (suspects) together to solve problems that occur “conceptually the restorative paradigm begins with the nations that crime is an act against people and a violation of relationship as well as a breaking of the law. Restorative has become a framework for thinking about ways of humanizing justice, of bringing victims and offenders together in ways to provides the opportunity for victims to receive explanation and reparation and for the offender to be accountable to the victim and the community, and for involving community members meaningfully in helping repair the wrong done to their neighborhoods”.<sup>8</sup>

The problem of diversion in the interests of children who are perpetrators of traffic violations in the implementation of law enforcement in Indonesia. Nature (ontologies) of the application of diversion against children as perpetrators of

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<sup>8</sup> Marlina. (2006). *Pengembangan Konsep Diversi dan Restorative Justice dalam Sistem Peradilan Pidana Anak di Indonesia (Suatu Studi di Kota Medan)*. Disertasi Sekolah Pascasarjana Universitas Sumatera Utara. Pg. 25



criminal acts is based on considerations, among others: First, the length of the judicial process that children undergo as perpetrators, from the investigation process in the Police to the completion of serving a sentence in a correctional institution is a picture of a child's sadness. Incidents during the judicial process will be a separate experience for the child's life that is difficult to forget. Such practice will imprint on them. Second, another dilemma faced by child prisoners is the existence of community assessment (stigmatization). There are still people who judge that child who have gone through the criminal justice system (committed a crime) will usually be involved in other criminal acts in the future. This stigmatization is very difficult to remove from the public's view. Third, the sentencing carried out by the judge is not wrong, but on the contrary, the judge reconsiders whether the sentence that has been handed down has protected children and provided benefits. This question arises because after the child has finished serving his sentence, can the child be a good person and not commit a crime again. Fourth, child correctional institutions as a place of development child prisoners. The institution is expected to provide a good coaching process, so that children can become a good member of the community after completing the coaching, seeing the condition of the correctional institution that has excess occupants, limited facilities and infrastructure as well as the limited number of coaches and skills of course not yet effective in providing a good coaching process.<sup>9</sup>

Diversion is carried out with the reason to provide an opportunity for lawbreakers to become good people again through non-formal channels by involving community resources. Diversion seeks to provide justice for cases of children who have already committed crimes to law enforcement officers as law enforcement parties. Justice is presented through a study of the circumstances and situations to obtain appropriate sanctions or actions (appropriate treatment). The three types of implementations of the diversion program are: 1) Implementation of social control (social control orientation); 2) Social services by the community to the perpetrators (social service orientation); 3) Towards a process of restorative justice or negotiation (balanced or restorative justice orientate. The implementation of diversion in the criminal justice system has weaknesses which, according to Beniharmoni Harefa, are described as

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<sup>9</sup> *Ibid*, Pg. 23-24

follows Stage of the Diversion process, At the stage of the Diversion process by way of deliberation as a form of Diversion that involves several parties, the Diversion stage fails, the method of deliberation does not always succeed so that Diversion that fails will return the child to the juvenile criminal justice process, the child's confession (suspect) should not be used in subsequent criminal justice processes (formal criminal justice processes); The diversion stage is successful, the method of deliberation is reached and results in an agreement and the child does not carry out a formal criminal justice process.<sup>10</sup>

The implementation of diversion is motivated by the desire to avoid the negative effects on the soul and development of children by their involvement with the criminal justice system. The implementation of diversion by law enforcement officers is based on the authority of law enforcement officers who called discretion or in Indonesian discretion. With the application of the concept of diversion, the existing form of formal justice has prioritized efforts to protect children from imprisonment. In addition, it can be seen that child protection with a diversion policy can be carried out at all levels of justice, starting from the community before the occurrence of a crime by taking preventive measures. After that, if a child commits a violation, there is no need to proceed to the police.

Children who commit violations have already been arrested by the police in every judicial examination to be able to carry out a diversion in the form of stopping the examination for the protection of child offenders. Then, if the child's case has reached the court, the judge can implement the idea of diversion in the interests of the child perpetrator following the procedure and preferably the child can be released from prison. For children who are already in prison, prison officials can make diversion policies against children so that children can be delegated to social institutions or alternative sanctions that are useful for the development and future of children but a diversion to remove them from the justice system. One of the main things of this form is the precautionary attitude of the police, where young people who have been handled by the police are only given verbal and written warnings, after that the child

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<sup>10</sup> Harefa, B. (2016). *Kapita Selekta Perlindungan Hukum Bagi Anak. Cetakan ke-1*. Yogyakarta: Penerbit Deepublish. Pg. 351

will be released and is the end of the problem unless the child commits a further violation (repeat) it will be further process is carried out. The act of diversion with the restorative model mandated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) is a criminal justice system with a more pro-child approach.<sup>11</sup> Indonesia has ratified various international rules such as the Convention on the Rights of the Child in 1990, Beijing Rules, dated November 29, 1985, The Tokyo Rules, dated December 14, 1990, Riyadh Guidelines, December 14, 1990, and Havana Rules, date 14 December 1990.<sup>12</sup> The SPPA Law is considered good, especially the concept of diversion which prevents children from litigation, it is hoped that the concept of restorative justice can be implemented effectively.<sup>13</sup>

Diversion can be implemented in several forms. Broadly speaking, there are three forms of diversion, namely: Diversion of warnings to the police on minor offenses, the perpetrator will apologize to the victim; Informal diversion where it is deemed inappropriate to merely warn the perpetrators requires a more comprehensive intervention plan; Formal diversion is carried out by court intervention, the formal diversion process is carried out by perpetrators and victims face to face with "Restorative Justice". The current juridical problem is related to the absence of government regulations as mandated by the SPPA Law which regulates the implementation of diversion.<sup>14</sup>

Conceptually, the idea of diversion would be more appropriate in taking action and imposing sanctions on naughty children within the framework of child protection related to stigma (bad label) when a child violates the law. Crime against children as perpetrators of traffic violations based on Law no. 35 of 2014 concerning Child Protection whose application must be distinguished from sanctions against adults. Implementation of the diversion idea in the current Indonesian juvenile criminal

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<sup>11</sup> Goldson, B. and Muncie, J. (2006). "Rethinking Youth Justice: Comparative Analysis. International Human Rights and Research Evidence". *Youth Justice*, Vol. 6 No. 2, 91-106

<sup>12</sup> Pinim, S. and Napitupulu, E. (2013). *Studi atas Praktik-praktik Peradilan Anak di Jakarta*. Jakarta: Institute for Criminal Justice Reform. Pg. 72.

<sup>13</sup> Yunus, Y. (2013). "Analisa Konsep Restorative Justice Melalui Sistem Diversi dalam Sistem Peradilan Pidana Anak di Indonesia". *Jurnal Rechtsvinding*, Vol. 2 No. 2, Agustus 2013

<sup>14</sup> Sinar Harapan. *Pemerintah Dinilai Abaikan Kepentingan Anak*. Retrieved from <http://sinarharapan.co/news/read/140616047/Pemerintah-Dinilai-Abaikan-Kepentingan-Anak>, (Accessed on 20 September 2020)

justice system. These factors are:16. 1. Internal barriers faced by juvenile justice related to the increasing needs; different understanding; lack of cooperation of the apparatus; ethical problems and bureaucratic barriers; coordination between the apparatus is still stalled due to ego; there is no common perception; limited facilities and infrastructure for handling children; lack of policy formulation to carry out the rehabilitation process; lack of child protection; The view of law enforcement is still based on the purpose of retaliation for the evil deeds of child perpetrators by children law enforcement officers (police, prosecutors, judges, advocates, prisons, detention centers, prisons). 2. External barriers to the implementation of the legal umbrella with restorative justice; victims and society; many parties do not understand article 16 paragraph (3) of the law that does not provide sufficient space for the implementation of the diversion idea; inconsistency in the application of regulations in the field affects law enforcement officers making inconsistent decisions; lack of support and cooperation between institutions. Problems in enforcing the law, including the handling of children among legal professionals seeking second-class justice are not necessarily unsuccessful because the judge is the one who can mediate the child's case; People's views on the idea of diversion still tend to take revenge on children as traffic offenders.

## 5. Conclusion

Research simulation that process of protecting children in the juvenile criminal justice system related to the Problem of Diversion in Children Perpetrators of Traffic Violations in Indonesia in this study it can be concluded that there is still disparity (differences) in the law enforcement process in Indonesia for children as traffic offenders and diversion techniques are found in the Kabareskrim Police No. Pol.: TR/1124/XI/2006 which provides instructions and rules that can refer to the completion of diversion efforts. Diversion efforts at the level of investigation related to Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), the prosecution and examination of children's cases in district courts have not been implemented optimally. The child's identity is still publicly available.

Researchers suggest through this research that investigators when carrying out the process at the level of investigation, prosecution, and examination of children's cases

in district courts, it is advisable to make mandatory Diversion efforts to keep the identity of the child secret both from news in print media and in electronic media. This is related to the principle of the of innocence and also to avoid the impact of the stigmatization process of society on children. The problem of diversion in the form of disparities in the behavior of children as traffic offenders through the application of diversion, it is necessary to formulate criminal law policies in Indonesia, which should be preceded by making rules in the form of omnibus law or at least the existence of jurisprudence. The regulation in the form of an omnibus law is based on the consideration that the implementation of Diversion is motivated by the desire to avoid negative effects on the soul and development of children by their involvement with the criminal justice system.

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