

Legal Basis for the Involvement of Counselors in the Diversion Process Literature Review Based on the Juvenile Criminal Justice System Law and Counseling Practice

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The phenomenon of juvenile delinquency that develops within society reflects a complex issue involving individual, family, and social environmental factors. Children in conflict with the law require a more humanistic legal approach that emphasizes recovery rather than mere punishment. In Indonesia, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (JCJS Law) introduces the diversion mechanism as an implementation of restorative justice, aiming to shift the settlement of juvenile cases from formal judicial proceedings to non-penal measures. This paper aims to examine the legal basis for the involvement of counselors in the diversion process by employing a normative juridical research method through statutory and literature approaches. The findings indicate that, although the role of counselors is not explicitly stated in the Juvenile Criminal Justice System Law, the inclusive legal provisions within Indonesia's Law No. 11 of 2012, Government Regulation No. 65 of 2015, and Supreme Court Regulation No. 4 of 2014 provide opportunities for counselors to participate as professional actors in the diversion process. Counselors hold a strategic role in facilitating the psychological and social recovery of both juvenile offenders and victims through guidance and counseling services that focus on emotional regulation, trauma healing, and moral responsibility development.

Keywords: Diversion, Counselor, Restorative Justice, Guidance and Counseling.

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1. Introduction

In many cases, children may engage in behaviors that exceed the limits of adult control, and such behaviors often occur beyond the reach of parental or societal supervision, consciously or unconsciously leading to violations of legal norms. Therefore, it is important to understand that many instances of juvenile delinquency tend to progress into criminal acts. Field observations show that a significant number of minors are exposed to risky behaviors such as smoking, drug abuse, promiscuity, and involvement in various forms of criminal activity. (Adha, Armanda, et al., 2025)

Juvenile delinquency that deviates from legal norms certainly does not occur naturally. Therefore, it is necessary to understand several factors that drive the occurrence of these acts, including personal factors, family factors, and social factors. 1) Personal factors: Children sometimes have a specific personality that can be a source of deviant behavior. This happens because the child is unable to adapt to the environment or even their family due to excessive demands. (Wijaya et al., 2023) 2) Family factors: The presence of criminal, alcoholic, or emotional family members, lack of supervision, excessive power dynamics, and family failure in education can lead to a tendency for the child to become delinquent. 3) Social factors: Criminal

behavior is actually learned through groups whose members violate community norms, which encourages rationalization for engaging in anti-social acts.(Prakoso, 2013)

Family factors: The presence of criminal, alcoholic, or emotional family members, lack of supervision, excessive power dynamics, and family failure in education can lead to a tendency for the child to become delinquent. 3) Social factors: Criminal behavior is actually learned through groups whose members violate community norms, which encourages rationalization for engaging in anti-social acts.(Adha, Armanda, et al., 2025) Hence, the resolution of juvenile cases should emphasize more humanistic approaches, ensuring that children are not further marginalized by social stigma or drawn into environments that hinder behavioral reform.(Triwati et al., 2021)

The enactment of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System represents a national commitment to protect children from punitive suffering by adopting a more humane approach through diversion, which prioritizes restorative justice. Diversion serves as a mechanism to shift case resolution from the formal legal process to non-penal alternatives. Nevertheless, the practical implementation of diversion in Indonesia remains relatively new and faces various challenges, including public misunderstanding of diversion, limited policy frameworks, and low societal trust in the process.(Marlina, 2009)

The success rate of diversion in Indonesia is still very far from the ideal, even though diversion must be attempted at all stages of the law enforcement process involving children as perpetrators, from investigation and inquiry at the police level, prosecution at the prosecutor's office, to trial in court. Data taken from various sources such as the Roadmap for Strengthening the Indonesian Juvenile Criminal Justice System 2023-2027 (Kementerian PPN/Bappenas, 2023) and articles published in the Kompas media, (Damayanti, 2023) show that the success rate of diversion is still below 50%. This means it can be concluded that the success of diversion in criminal cases involving children as perpetrators is still very low. This is certainly not separate from several factors. The factors that may cause a diversion agreement to fail are as follows:

a. Community Factors

Negative public perceptions of delinquent children, who are often labeled as criminals, hinder reintegration and social rehabilitation. Furthermore, societal stigmatization and exclusion persist even after children complete their sentences or rehabilitation.(Setyorini et al., 2020)

b. Psychological Factors of the Child Offender and Victim

Children in conflict with the law, whether as offenders or victims, often experience trauma, social pressure, and complex family problems. In practice, diversion processes frequently face resistance from victims or their families, who believe that offenders even minors must still be punished as a deterrent. This perception poses a major obstacle to achieving successful diversion outcomes.(Triwati et al., 2021)

Under these conditions, diversion processes should not solely rely on law enforcement, offenders, victims, and families. The involvement of additional competent actors is crucial to support, guide, and stimulate the psychological and emotional well-being of all parties involved.(Witasari et al., 2019) Individuals or community members with relevant expertise can play an essential role in understanding the needs and aspirations of children, identifying root problems, developing collaborative action plans, and empowering them to overcome difficulties effectively.(Zastrow, 2012)

One such actor is the counselor, who can apply expertise in guidance and counseling to support children in conflict with the law. Counselors help address trauma or stress arising from adverse experiences, as well as foster life and social skills necessary for reintegration as responsible members of society. Through targeted counseling interventions, children can develop self-competence, experience psychological

recovery, and plan for a better future. The ultimate goal is not merely to prevent recidivism, but to nurture productive and well-adjusted individuals.(Saba, 2024)

Counselors also play a distinctive role during and after the diversion process. Counseling provides structured and fundamental psychological assistance based on the unique needs of children in conflict with the law. For victims, it facilitates recovery from trauma, while for offenders, it helps manage emotions, develop self-control strategies, and strengthen social functioning in daily life.

Nevertheless, the real issue is the necessity for a legal basis to involve counselors in the diversion and post-diversion stages. This ensures coordination between counselors and law enforcement, preventing overlap in duties and responsibilities. Therefore, it is essential to examine the legal provisions that support counselor participation in diversion and post-diversion stages in legal cases involving children.

This study aims to examine the legal basis and to strengthen the involvement of counselors in the diversion and post-diversion processes, which will be reviewed from the perspective of statutory regulations and guidance and counseling practices. This is intended to provide a more intensive overview of the legality of counselor involvement in participating and playing an active role in the recovery from trauma and problems faced by children in conflict with the law through guidance and counseling.

It is expected that the active involvement of counselors in the diversion process will enhance the likelihood of achieving diversion agreements. Moreover, their participation ensures that the restorative justice principle embodied in diversion is not limited merely to the “diversion of punishment for children in conflict with the law.” Instead, diversion should create a significant restorative impact by reconstructing adverse conditions and restoring the ideal state for both victims and offenders, fostering healing, reconciliation, and reintegration.

2. Research Methodology

This study employs a normative juridical method, which examines the legal foundations governing the involvement of counselors in the diversion process by analyzing norms, rules, and principles contained within statutory regulations (statute approach). This approach is intended to address concrete and factual legal issues by conducting a comprehensive review of all relevant laws and regulations associated with the matter under study.(Efendi et al., 2018) This paper examines the legal foundations that support the involvement of counselors in the implementation of diversion deliberation procedures, as well as the effectiveness of such involvement in restoring relationships between perpetrators, victims, and the community.

The data used in this study are secondary data, which are obtained from existing sources by referring to legal principles, legal theories, statutory regulations, and previously conducted research findings.(Butarbutar, 2018) The analysis method used employs a qualitative approach, which involves exploring meanings, collecting and utilizing information and issues to address the scientific inquiry into the legal foundation for counselor involvement in the diversion process, both at the theoretical and practical implementation levels—allowing the research object to be examined comprehensively. The nature of this research is descriptive analysis, which is research that describes and explains how the law can provide legitimacy for the involvement of counselors through the guidance and counseling process in the diversion process.(Soekanto, 2006)

3. Discussion

The Role of the Counselor

Every individual faces various challenges in life that should not be left unresolved or allowed to accumulate mentally. These issues need to be addressed by seeking help, whether from friends, family, or a professional counselor. A counselor possesses the professional competence to assist individuals in overcoming their difficulties through the counseling process. In general, counseling is an interactive process between a counselor and a counselee. The relationship in guidance and counseling involves both parties, either individually or in groups, with the primary goal of identifying problems and finding appropriate solutions to address them. The client seeks help from a counselor to obtain advice, guidance, or consultation. Meanwhile, the crucial role of the counselor in providing assistance lies in the neutral position they hold, which guarantees that the suggestions and alternative solutions offered are objective and free from personal interests. This service falls within a helping relationship that functions as an intervention technique to change individual behavior in a more positive direction.(Saputra et al., 2020)

The Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 111 of 2014 concerning Guidance and Counseling outlines strategies for implementing guidance and counseling services through four program components: (1) basic services, (2) responsive services, (3) individual planning, and (4) system support, which includes (a) program management and (b) organizational personnel. Therefore, the service strategy in guidance and counseling aimed at addressing the adversity intelligence problems of juvenile inmates in correctional institutions falls under the category of responsive guidance and counseling services. This effort falls under that program because improving the adversity intelligence of juvenile inmates in correctional institutions aligns with the definition of responsive guidance and counseling services. Such services provide assistance to counselees who are facing urgent needs and problems that require immediate support; without timely intervention, these issues could disrupt the process of achieving developmental tasks. The activities are conducted systematically through classical, group, and individual formats as part of a remedial effort. Furthermore, initiatives to enhance the adversity intelligence of juvenile inmates in correctional facilities can also be classified within the guidance and counseling program, as they are consistent with the overall objectives of the program's implementation.(Saba, 2024)

Philosophically, guidance and counseling are activities that originate from humans, are carried out by humans, and are intended for humans. This perspective emphasizes that guidance and counseling services are not merely a set of techniques or procedures aimed at achieving specific goals, but rather a process that places the human being at the center of attention, recognizing and valuing the totality of the individual, namely:(Saputra et al., 2020)

a. From Humans

The foundation of "from humans" emphasizes that the entire framework and implementation of guidance and counseling must be grounded in the essence of individual existence. This means counseling should acknowledge and understand human beings in all their complex dimensions—physical, psychological, social, and spiritual. Such services are conducted with a full awareness that every person possesses unique potentials, limitations, and profound needs. In other words, guidance and counseling do not operate on superficial assumptions but delve deeply into the uniqueness, dignity, and existence of the human being as the foundation of the service.

b. For Humans

The phrase "for humans" reflects the noble purpose of counseling, which is essentially aimed at advancing the individual's life toward positive, meaningful, and constructive goals. The primary aim is to assist human beings in achieving maturity and wholeness. Its objectives are consistently

centered on developing optimal potential, including emotional maturity, responsible decision-making, and the ability to adapt dynamically to life's challenges.

c. By Humans

The principle "by human beings" emphasizes the importance of the role of individuals involved in this process. The implementation of guidance and counseling activities is entirely carried out by individuals who each have their own degree, dignity, and uniqueness. This requires equal and mutually respectful interaction, where no party is demeaned, so the success of this process depends heavily on the quality of the interpersonal relationships formed, which respect the autonomy and uniqueness of each participant as active subjects, not passive objects.

Overall, the process of guidance and counseling is an interaction that encompasses the totality of humanity. It touches upon all aspects of the self, including latent potential, behavioral tendencies, life development trajectories, psychological dynamics, and the various problems faced by individuals. Counseling serves as an arena where all these elements interact, fostering deeper self-understanding and promoting continuous personal growth.

The areas of development within guidance and counseling constitute the main focus of service implementation by counselors toward the individuals they assist. In educational settings, guidance and counseling activities are oriented toward four primary areas of development: personal guidance, social guidance, learning guidance, and career guidance.(Febrini, 2011) Meanwhile, in the broader societal context, the scope of guidance and counseling development is more diverse. In addition to the four areas applied in schools, guidance and counseling services within the community also encompass development in various aspects of life, including family life, the world of work, religious life, as well as individuals' roles in social and civic life.(Syukur et al., 2019).

Diversion Process

Diversion in law enforcement represents an authority vested in law enforcement officials to determine whether a criminal case should proceed or be terminated based on specific considerations and policies. This discretion allows law enforcement officials to determine whether a case should proceed through the judicial process or be resolved outside the court system. If the case continues, it will enter the criminal justice system and ultimately result in the imposition of sanctions. However, if it is decided not to proceed, the investigation may be terminated early in the interest and well-being of all parties involved. This approach aligns with efforts to restore relationships disrupted by unlawful actions and focuses on the mutual benefit of both parties in the future. The primary goal of implementing diversion is to minimize the negative impacts that may arise from a child's or adolescent's involvement in formal legal proceedings. Diversion constitutes a core element of the restorative justice concept, which emphasizes recovery and social responsibility, prioritizing the child's future and well-being over punitive legal resolutions.(Saba, 2024)

The diversion process, as regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, is carried out through several main stages:(Sigit Pramukti et al., 2018)

a. Diversion at the investigation stage

At this stage, the investigator receives a report concerning an alleged criminal act, which is then followed by an inquiry and investigation process. During its implementation, the investigator collaborates with the Correctional Center (Balai Pemasyarakatan or Bapas), which is responsible for preparing a community research report. Based on the report's findings, Bapas provides recommendations to the investigator regarding the possibility of conducting diversion. If diversion is recommended, the investigator is responsible for facilitating the process by involving all relevant and interested parties to ensure its smooth implementation, which may include the participation of a counselor.

b. Diversion at the prosecution stage

At this stage, the public prosecutor has an obligation to seek the implementation of diversion within a maximum period of 7 (seven) days after receiving the case file from the investigator. The diversion deliberation process must be completed within a maximum period of 30 (thirty) days. The parties involved in this process include the child as the perpetrator and victim, parents or guardians from both parties, witnesses, community guidance, and professional social workers who in this case can be assisted by a counselor.

c. Diversion at the trial stage

At this stage, the chief judge of the district court assigns a judge or a panel of judges to handle the juvenile case within three (3) days after receiving the case file from the public prosecutor. The appointed judge is required to initiate the diversion process no later than seven (7) days after the assignment.

The implementation of diversion involves the participation of various relevant parties. Those involved in the process include the offender and their family, the victim and their family, the community supervisor, professional social workers, as well as community leaders such as the neighborhood or village head where the offender or victim resides. If the offender is still a student, school representatives, such as the principal and the guidance and counseling teacher, are also invited to participate in the diversion process to provide support and considerations from the educational perspective. (Balla, 2022)

In principle, the implementation of diversion for children in conflict with the law is an obligation that must be pursued by law enforcement at every level of examination. This is stipulated in Article 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. *At the investigation, prosecution, and court examination levels, diversion must be attempted for children's cases.*

The fundamental purpose of diversion is to achieve what is known as restorative justice. Diversion is no longer merely a tool for diverting punishment; it ensures that both the offender and the victim receive appropriate solutions in resolving criminal cases. The offender remains responsible for all forms of wrongdoing as a consequence of their actions, while the victim, who has suffered material or immaterial losses due to the crime, continues to receive the justice they are entitled to within the framework of law enforcement. (Adha & Akuntari, 2025)

Legal Basis for the Involvement of Counselors in the Diversion Process

Law Number 11 of 2012 concerning the Child Criminal Justice System does not explicitly stipulate the involvement of counselors in the diversion process. Nevertheless, this does not mean that counselors cannot participate in diversion. Referring to Article 8, paragraphs (1) and (2) of Law Number 11 of 2012 concerning the Child Criminal Justice System, the deliberation process in diversion must involve multiple parties, The intention behind involving various parties is that the diversion process should not be limited to the perpetrator and the victim, but also requires the inclusion of other relevant parties who can support the smoothness and success of the diversion. The said articles can be viewed as follows:

Article 8 paragraph (1)

The diversion process is carried out through deliberation involving the child and their parent or guardian, the victim and/or their parent or guardian, the Probation Officer, and the Professional Social Worker based on a Restorative Justice approach.

Article 8 paragraph (2)

If necessary, the deliberation as referred to in paragraph (1) may involve Social Welfare Workers and/or the community.

The formulation of the above articles illustrates that a counselor can indeed be involved in the deliberation process of diversion, as the counselor's role intersects with various other professions such as Professional Social Workers and Social Welfare Workers. In the diversion deliberation, a counselor can contribute by providing mental health therapy, building mental resilience, managing stress, and resolving conflicts. Beyond these functions, counselors can also serve as a direct community involvement in the deliberation process.

In addition to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, guidelines regarding the implementation of the diversion process are comprehensively regulated in Government Regulation No. 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (Twelve) Years of Age. Several articles in this regulation elaborate on community involvement, specifying that the community can be directly engaged in diversion deliberations at the stages of investigation, prosecution, and trial. The relevant article is as follows:

Article 15 paragraph (4)

states that, where desired by the Child and/or their parents/Guardian, the execution of the Diversion deliberation may involve the community, consisting of: a. religious leaders; b. teachers; c. community leaders; d. Companions (Pendamping); and/or e. Advocates or Legal Aid Providers.

This article indicates that the community can indeed assume a distinct role in the diversion stages. Highly qualified and competent members of the community, such as counselors, are very likely to be directly involved, given the broad scope of their role in reconstructing the mental issues of both the child perpetrator and the victim, addressing concerns such as anxiety, depression, trauma, and life adjustment. Nevertheless, in practice, the involvement of the counselor must still be subject to the prior consent and desire of the parties involved.

Another regulation that can be referenced is the Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System during the trial process. This regulation outlines the parties who can be directly involved in the diversion process, including: (Mahkama Agung RI, 2014)

- a. The child and their parent/guardian or accompanying representative;
- b. The victim and/or their parent/guardian;
- c. The community guidance officer;
- d. Professional social workers;
- e. Community representatives; and
- f. Other relevant parties deemed necessary to be involved in the diversion deliberation.

This regulation outlines several parties who may be involved in the diversion process, including community representatives and other relevant parties deemed necessary. These two subjects naturally refer to anyone considered capable of assisting in the process and success of the diversion. However, given this highly central role, the counselor cannot be disregarded in the diversion process, as the specific competencies possessed by the counselor offer a significant opportunity for the achievement of a diversion agreement.

4. Conclusion

The success rate of diversion in cases involving children remains very low, even falling below 50%. This low success rate demands the involvement of various parties, such as the community and professional personnel like counselors, in the diversion process. In this context, the counselor has a strategic role as a psychological and social companion for both the child offender and the victim. Counselors can help restore mental condition, manage emotions, and foster responsibility and moral awareness in children through focused guidance and counseling to encourage diversion agreements. While several existing Indonesian

statutory regulations do not explicitly mention the involvement of counselors in the diversion process, the legal foundation remains flexible and inclusive. Various articles in the Juvenile Criminal Justice System Law (UU SPPA), Government Regulation No. 65 of 2015, and Supreme Court Regulation No. 4 of 2014, allow for the involvement of professional personnel such as counselors under the umbrella of professional social workers, social welfare personnel, or as a part of the competent community. This interpretation can serve as the legitimate basis for counselors to participate in both the diversion process and the post-diversion phase.

Based on the findings of this study concerning the legality and urgency of counselor involvement in the diversion process, several strategic recommendations are proposed to strengthen the substantive implementation of restorative justice: First, Strengthening Legal Legitimacy. Although the inclusion of counselors can currently be broadly interpreted through phrases such as “other relevant parties” and “community representatives,” this does not provide sufficient legal certainty. Therefore, it is recommended that the role of counselors be explicitly adopted and formalized in higher level and implementing regulations. Second, The Principle of Openness and Collaboration among Law Enforcement Officials. Law enforcement officers from investigators and prosecutors to judges, should adopt an open and collaborative mindset toward non-penal interventions, particularly those involving counseling professionals, to ensure that restorative justice is implemented holistically.. Third, Providing Optimal Space for Counseling Intervention. Counselors must be granted adequate and legitimate space to carry out their duties, both during diversion deliberations and in post-diversion phases. Counselor assessments and recommendations regarding a child’s mental condition and psychosocial needs should serve as key considerations in determining the form and outcome of diversion agreements.

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