

# Ultimum Remedium Principles: Realizing Restorative Justice for Children In Conflict With The Law

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**Abstract :** *This research analyzes the extent to which the concept of the Ultimum Remedium Principle becomes the principle basis for judges to keep children out of prison. This principle encourages problem-solving efforts involving perpetrators, victims and other parties. The provisions of Law No. 11/2012 are a form of certainty in providing clear guidelines for judges in making decisions that are optimal for the interests of children, in accordance with the principle of the Ultimum Remedium Principle. Nonetheless, some judges still tend to take action based on the theory of retaliation when determining responsibility for the wrongdoing committed by the child. This study aims to determine the extent to which this country has a legal umbrella in protecting children and to determine the optimization of the application of the ultimum remedium principle to crimes committed by children. This research is a normative juridical study. The results showed that the settlement of cases of children in conflict with the law according to Law No. 11/2012 is to prioritize alternative out-of-court settlements which are the basic principles in the legal system governing child protection. This approach is in line with the principles of human rights and the best interests of the child.*

**Keywords :** *Juvenile Justice; Restorative Justice; Ultimum Remedium*

**Abstrak :** Penelitian ini menganalisis sejauh mana konsep Prinsip Ultimum Remedium menjadi dasar utama bagi hakim untuk menghindarkan anak dari penjara. Prinsip ini mendorong upaya penyelesaian masalah yang melibatkan pelaku, korban, dan pihak-pihak lain. Ketentuan UU No. 11 Tahun 2012 merupakan bentuk kepastian dalam memberikan pedoman yang jelas bagi hakim dalam mengambil putusan yang optimal bagi kepentingan anak, sesuai dengan prinsip Asas Ultimum Remedium. Meskipun demikian, beberapa hakim masih cenderung mengambil tindakan berdasarkan teori pembalasan dalam menentukan pertanggungjawaban atas kesalahan yang dilakukan oleh anak. Penelitian ini bertujuan untuk mengetahui sejauh mana negara ini memiliki payung hukum dalam melindungi anak dan untuk mengetahui optimalisasi penerapan asas ultimum remedium terhadap tindak pidana yang dilakukan oleh anak. Penelitian ini merupakan penelitian yuridis normatif. Hasil penelitian menunjukkan bahwa penyelesaian perkara anak yang berhadapan dengan hukum menurut UU No. 11 Tahun 2012 adalah dengan mengedepankan alternatif penyelesaian di luar pengadilan yang merupakan prinsip dasar dalam sistem hukum yang mengatur tentang perlindungan anak. Pendekatan ini sejalan dengan prinsip-prinsip hak asasi manusia dan kepentingan terbaik bagi anak.

**Kata kunci :** Peradilan Anak; Restoratif Justice; Ultimum Remedium



## I. INTRODUCTION

Principles can be interpreted as principles that function as a basis or foundation, become a place to lean or refer, and become a foundation for explaining something (Atmadja, 2018). According to Purwanto, (2015), AR. Lacey in "A Dictionary of Philosophy" defines principle as a law that has a high position and is the basis for many other laws, which can be used as a foundation in explaining certain concepts or phenomena (Purwanto, 2015).

Legal values or principles are considered the core of a legal regulation, being the most common foundation for the formation of a legal regulation. This value or principle includes the fundamental reason why a law needs to be made or the ratio legis of the regulation. In other words, the power of legal principles will never run out because it is always the basis for the formation of new legal regulations, which will continue to exist to give birth to subsequent legal rules (Rahardjo, 2006).

Satjpto Rahardjo states that legal principles function as a means of encouraging the life, growth, and development of law. He also emphasized that law is not just a collection of regulations. Instead, the law has values and ethical demands that act as a bridge between social ideals and the ethical views of society (Rahardjo, 2006).

In this context, Satjpto Rahardjo describes legal principles as dynamic elements that give life to the legal system, beyond just a collection of formal legal rules. Legal principles, according to Satjpto Rahardjo's view, become the foundation that allows the law to develop over time and adapt to changes in society.

Furthermore, Satjpto Rahardjo implies that legal principles not only have a formal dimension, but also contain ethical values and norms. In other words, legal principles not only reflect the structure of legal rules, but also contain moral principles and ethical demands that shape them as integral elements in understanding and applying the law.

This understanding emphasizes that legal principles are not just a formal tool, but as a bridge that connects the law with community values and social ethics (Khoirunnisa & Jubaidi, 2023a). Hence, legal principles play a crucial role in shaping and upholding the viability and significance of the legal system amidst social transformation and shifting values, including the *ultimum remedium* principle.

The legal system acknowledges the *ultimum remedium* principle as one of the fundamental elements of Indonesian criminal law. The idea posits that punishment should be the ultimate recourse in the execution of criminal legislation. In other words, the *ultimum remedium* principle emphasizes the importance of making punishment the last solution after consideration of lighter or rehabilitative law enforcement alternatives has been recognized and carefully considered.

This principle reflects the spirit to minimize the use of punishment as an instrument of law enforcement, and instead, encourages a more progressive and rehabilitative approach in responding to criminal acts (Mertokusumo, 2007).

In line with the purpose of punishment, the concept of *Ultimum Remedium* illustrates that the provision of criminal sanctions should be the last step, and the sanctions must be given to the right individual. This concept is based on the belief that criminal offenders also have the opportunity to improve themselves and form a better future. Thus, the imposition of punishment should not only be a form of punishment, but also an effort to support rehabilitation and social reintegration, providing opportunities for offenders to

improve their behavior and contribute positively to society. The concept of *Ultimum Remedium* reflects a more humanist and rehabilitative approach in the criminal justice system (Zenno, 2017).

The *Ultimum Remedium* concept, akin to the preceding conclusion, is a tenet in criminal law that underscores the notion that punishment or criminal sanctions should be regarded as a final recourse or last option, rather than an immediate choice. This contrasts with the *ultimum premium* approach, in which law enforcement prioritizes the execution of criminal penalties that cause pain to persons, without taking into account lighter or rehabilitative alternatives (Subyakto, 2015). The concept of *Ultimum Remedium* underlines the importance of a more thoughtful, humanist, and rehabilitative approach in imposing criminal sanctions, by providing a last chance for individuals to improve themselves and avoid the imposition of severe punishment (Ahmad Sofian, 2020), although criminal acts can damage balance and harmony in society, a punishment approach that is oriented towards recovery and rehabilitation can be more effective in achieving sustainable justice.

By prioritizing healing, the justice system can give offenders the opportunity to improve themselves and understand the consequences of their actions. In addition, this approach also considers the wider impact on society, by prioritizing the restoration of damaged relationships and encouraging reconciliation.

This method aligns with the principle of restorative justice, which emphasizes not only punitive measures but also the process of healing and restoring. Therefore, a judicial system that prioritizes repair can have a beneficial impact on both the individuals concerned and society at large (Yasa et al., 2023).

The *Ultimum Remedium* principle in criminal law emphasizes the use of punishment as a last resort in law enforcement. This idea underscores the importance of contemplating and implementing criminal penalties only as a final option, subsequent to acknowledging and thoroughly evaluating less severe or rehabilitative law enforcement alternatives. The *Ultimum Remedium* principle underscores the importance of avoiding unnecessary punishment and seeking more meaningful solutions in responding to criminal offenses (Rahmi et al., 2017), in the case of juvenile offenders, the principle emphasizes that imprisonment should be the last resort or the last alternative.

Considering their extended life prospects, it is widely acknowledged that specialized services for children engaged in the criminal justice system are essential. Hence, it is crucial to prioritize the preservation of the child's development and growth. The inclusion of policy in the juvenile criminal justice system demonstrates the political system's ability to address the needs of victims and offenders with the aim of restoring them to their original state, in accordance with the philosophy of restorative justice.

Sudikno Mertokusumo (2007) highlights the law's function as a safeguard for human interests. In its application, it must prioritize three essential components: legal certainty (*Rechtssicherheit*), expediency (*Zweckmassigkeit*), and justice (*Gerechtigkeit*). Hence, when establishing criminal penalties in legislation, it is imperative to take into account these three key components of law, since they embody the very heart of the law's objective (Mertokusumo, 2007).

One of the main motivations for reforming the juvenile criminal justice system, from Law No. 3 of 1997 on Juvenile Courts to Law No. 11 of 2012 on the Juvenile Criminal Justice System, is the view that the achievement of the objectives of punishment is not as expected. Criminalization itself has objectives that include: (Lamintang, 2011)

1. Improve the character and behavior of offenders.
2. Make people afraid to commit crimes.
3. Making offenders incapable of re-offending, especially if they cannot be rehabilitated through other means.

From this perspective, it is important to consider disciplining children as a last resort. This aligns with the punitive approach within the framework of the Juvenile Criminal Justice System (SPPA), which should be distinct from the handling under the old Juvenile Court Law (Widodo, 2016). Furthermore, this approach recognizes that imprisonment should be considered as a last resort, emphasizing the importance of prioritizing educational alternatives for the child's future (Harahap, 2018).

The issue of addressing the challenges faced by youngsters engaged in criminal activities remains a significant area of concern on the political agenda of criminal justice policy. Various efforts have been made to ensure the involvement of law enforcement officials as executors of their duties, who are expected to pay wise and serious attention in handling the resolution of problems of children involved in crime.

Through a restorative justice approach, the juvenile criminal justice system seeks to restore the relationship between offender and victim, while providing protection to the child and ensuring that the legal process makes a positive contribution to the shaping of their future. As such, the responsiveness of the political legal system to the needs and interests of children is key in achieving sustainable justice and supporting the positive development of children involved in the justice system (Umi Supraptiningsih, 2018).

Within the framework of the Juvenile Criminal Justice System (SPPA), the utilization of diversion plays a vital role in the execution of this system. Diversion is a strategy that prioritizes alternative solutions that are not part of the official legal procedure. The principle of diversion aims to provide protection to children, consider their best interests, and achieve social recovery without having to involve conventional criminal proceedings.

The application of diversion makes it possible to respond to the actions of children in conflict with the law in a more rehabilitative and educative way. This approach includes a number of options, such as counseling, education, or rehabilitation programs specifically designed to meet the needs of the child.

Furthermore, diversionary measures can serve to shield children from societal labeling as delinquents, a circumstance that might have long-lasting repercussions on their prospects. This aligns with the tenets of restorative justice, which prioritize the process of healing and reconciliation over punitive measures. We want the juvenile justice system to create an environment that supports children's healthy growth, puts guidance first, and gives them chances to fix mistakes without threatening their rights and futures (Fuad et al., 2023), by using diversion. Children, as the future generation of the nation, possess inherent limits in comprehending and safeguarding themselves against the diverse effects of the prevailing system. Childhood is a very susceptible stage

where children are prone to engaging in specific behaviors due to their vulnerability to various goals and expectations for accomplishment or action (Rahmi et al., 2017).

Hence, it is crucial to provide sufficient safeguarding and advice to steer youngsters towards constructive and secure decisions. Within this framework, the juvenile criminal justice system plays a significant role in upholding the Law on Juvenile Justice System (SPPA) to guarantee that the handling of minors involved in illegal activities takes into account their best interests. The comprehension of the various constraints and susceptibilities of children enhances the significance of implementing the principles of restorative justice and diversion in the juvenile criminal justice system to promote favorable growth and safeguard the rights of children (Rahmi et al., 2017).

Furthermore, it is explained that the imposition of imprisonment for children will place children to live and live their lives in prison. As it is known that the lack of facilities and facilities in prisons or now more often called correctional institutions is very concerning (Andayani, 2018). Judges do have a central role in the justice system, and their function is very crucial in resolving each case. Judges are often referred to as core executors who functionally exercise judicial power.

The existence of judges is very influential in upholding the law and achieving justice through their decisions. Judges are responsible for listening to arguments from both sides, assessing the evidence presented, and making decisions based on applicable law. The integrity, fairness, and objectivity of judges are the main cornerstones in carrying out their duties.

By maintaining their independence and integrity, judges can ensure that their decisions reflect the principles of law and provide a sense of justice to all parties involved in the judicial process. Awareness of the moral and ethical responsibilities of judges is essential to maintain public trust in the justice system (M. Purwadi, 2018).

Judges, in making their decisions, must pay attention to all aspects, ranging from prudence, avoidance of inaccuracy, to technical proficiency in making which includes formal and material aspects. A judge's decision-making process is not only concerned with analyzing evidence and applying the law, but also includes ethical, moral and fairness considerations. Judges need to ensure that their decisions reflect the integrity of the law and provide a sense of justice to all parties involved in the case.

In addition, technical proficiency in decision-making involves the judge's ability to organize arguments logically, explain the reasons for the decision clearly, and ensure that every formal and material aspect has been carefully considered. Thus, the judge's decision becomes a strong and fair basis for resolving cases under the law.

The importance of social aspects and community acceptance in the judge's decision-making process. A judge, when making a decision, will indeed try to make his/her decision acceptable to the public as much as possible. Judges understand that trust and support from the community is a crucial factor in maintaining the integrity of the justice system. When a judge's decision can provide satisfaction to all parties involved in the case, with considerations that are in accordance with the values of truth and justice, this not only creates formal justice but also creates substantive justice that is felt by the community.

In this context, judges are not only law enforcers, but also moral leaders and public figures who play an important role in building and maintaining public trust in the justice

system. The success of judges in achieving public acceptance can create greater trust in the justice and integrity of the judiciary (Wigati Pujiningrum, 2020).

Service disparities in the achievement of justice, as described by Muhaiman in an article entitled "Restorative Justice in the Settlement of Minor Crimes" in the journal *De Jure*, No. 10 of 2019, clearly illustrates the concept on which his research is based in achieving the value of justice. This research highlights that case handling can move quickly and more sharply when it involves the problems of individuals who are less influential or do not have comparable interests to individuals who are influential or have high status (Muhaimin, 2019).

However, when it involves individuals who have linkages and power, it is seen that the law seems to become paralyzed and blunt. In this context, the law may not be able to have a significant impact under the pretext of a lack of evidence or the absence of a cognizable offense. This situation reflects a disparity in the handling of the law, where justice may be obstructed when it involves parties with great influence and power.

Based on the description and explanation, the author formulates the problem of how the regulation and application of the principle of "ultimum remedium" in Indonesian legislation related to the settlement of cases of children in conflict with the law.

## II. RESEARCH METHODS

The research employed a normative juridical methodology. Normative juridical research is a type of research that focuses on the analysis and interpretation of laws and regulations as primary sources of study (Khoirunnisa & Jubaidi, 2023b), defines normative juridical research as a type of legal research that involves analyzing library materials that pertain to established legal theories as well as laws and regulations that are relevant to the subject being studied (Soekanto & Mamudji, 2019).

Juridical-normative research involves the following steps:

1. Identification of Legal Regulations: The researcher identified and collected laws and regulations related to the research topic.
2. Legal Text Analysis: The legal text is analyzed in detail to understand the substance, context, and implications of the regulation.
3. Use of Legal Theories: The researcher used relevant legal theories to understand and interpret the existing legal regulations.
4. Drawing Conclusions: Based on the analysis of legal texts and theoretical approaches, the researcher draws conclusions or makes arguments about the research topic under study.

This method is often used in legal research to understand legal foundations, interpret existing legal regulations, or develop legal views on an issue. It is useful for understanding the existing legal framework, looking at legal developments, or identifying gaps or inconsistencies in existing legal regulations.

## III. PEMBAHASAN DISCUSSION

## 1. The Regulation Of 'Ultimum Remedium' Principle in the Handling of Juvenile Law in Indonesia

Van Bemmelen's opinion on "Ultimum Remedium" provides an interesting perspective. He argues that Ultimum Remedium is defined as an effort aimed at restoring a state of unrest in society, rather than simply as a means of redressing injustice or compensating for loss. This approach is taken to prevent vigilantism if no action is taken against the injustice (Lamintang & Franciscus Theo Junior Lamintang, 2016).

Sudikno Mertokusumo stated that the legal term "ultimum remedium" is generally used and interpreted as the last action in the application of criminal sanctions in the law enforcement process. This criminal sanction is considered as the ultimate or last action in an effort to enforce the law (Mertokusumo, 2007). In the policy references of the criminal law makers, there is no clear explanation of the actual definition of the term "criminal offense". The absence of an explicit definition ultimately opens up space for various doctrines and different views related to the actual interpretation of the concept of "criminal offense" (Lamintang, 2011).

In this context, the definition of criminal offense is subject to various interpretations and understandings. The absence of an explicit definition of criminal offense in the law opens room for various interpretations and views from various legal experts. This creates a diversity of doctrines and opinions regarding the true essence of acts considered as criminal offenses.

Thus, the understanding of the ultimum remedium as the application of the last criminal sanction becomes closely related to each interpretation of what is included in the category of criminal offense. This debate and diversity of views provide challenges in understanding and applying the concept of ultimum remedium in the context of law enforcement in Indonesia.

Andi Hamzah emphasized the understanding of the ultimum remedium as the last remedy by stating that its use should be limited. That is, if other parts of the legal system are not sufficient to uphold the norms recognized by the law, only then is criminal law applied (Lamintang, 2011).

Punishment is considered a form of punishment against the wrongdoer, but its purpose is ultimately to correct or provide awareness to the offender. In other words, when a child makes a mistake and is subject to forced educational measures, it is intended to correct his bad behavior (Andi Hamzah, 2008). The process of forced education directed at wrongdoers, especially children, aims to provide improvements to bad behavior. Thus, punishment is not only applied as a form of punishment, but also as an effort to guide and educate so that the offender can realize his mistakes and change the behavior for the better. This approach reflects the hope of achieving rehabilitation and social reintegration of the offender into society.

The concept of punishment emphasizes four main principles, namely Reformation, Restraint, Retribution, and Deterrence, which includes individual deterrence and general deterrence (Assaad, 2017). Reformation intends to correct or rehabilitate offenders so that they become good and useful individuals for society. With reform, the community is expected to benefit and no one suffers a loss if the offender

can turn into a good individual. Reform needs to be accompanied by other objectives such as deterrence, which involves increasing the intensity of prison training.

The four main principles have different implications and purposes: (Assaad, 2017)

1. Reformation:

- 1) Objective: To correct or rehabilitate offenders so that they can return to being good individuals who are beneficial to society.
- 2) Implementation: The rehabilitation process involves various educational programs, skills training, as well as psychological support to help offenders change their negative behaviors.

2. Restraint:

- 1) Objective: To prevent offenders from breaking the law again during their sentence.
- 2) Implementation: The use of physical sanctions or security controls to ensure that offenders cannot continue criminal activity during their sentence.

3. Retribution:

- 1) Objective: To impose punishment as a form of retribution for the wrong done by the offender.
- 2) Implementation: The imposition of punishment appropriate to the level of guilt, often in the form of criminal or other sanctions.

4. Deterrence:

- 1) Objective:
  - Individual Deterrence: Preventing certain offenders from reoffending after experiencing the consequences of punishment.
  - General Deterrence: Creating a deterrent effect on society in general so that others are not tempted to break the law.
- 2) Implementation: The use of punishment as an example to offenders and society as a whole, with the hope that the threat of punishment will deter criminal behavior.

The application of this concept may vary depending on the legal system and social values of the people in a country or region. This goal reflects an evolving understanding of how best to deal with lawlessness, with a balanced emphasis on community development and protection. This approach reflects a desire to achieve greater justice, reduce crime rates, and provide opportunities for improvement for those involved in the criminal justice system.

The main idea of safeguarding children's rights, as established in the Convention on the Rights of the Child (CRC), guides the juvenile justice system in Indonesia. Indonesia has officially acknowledged and ratified the CRC through Presidential Decree No. 36 of 1990. The state has a responsibility to safeguard the rights of children in diverse domains of life, encompassing religion, education, health, and social matters. By ratifying the Convention on the Rights of the Child, the state pledges to guarantee the realization of fundamental rights for children. The Convention on the Rights of the Child states that the State should only arrest, detain, or punish children as a last resort and with careful consideration of their future.

With the enactment of Law No. 11/2012 on the Juvenile Criminal Justice System, the resolution of juvenile cases is emphasized through the methods of Diversion and



Restorative Justice outside the formal justice process. Demands that emphasize justice in protecting children are more important than pursuing legal certainty, so that full awareness of law enforcement officials is needed to prioritize solutions outside the path of punishment or the concept of *ultimum remedium*.

In order to reduce conflicts between different interests, one can employ the principle of restorative justice and the practice of diversion in the juvenile criminal justice system. Satijipto (2000) explains that restorative justice is a method of resolving criminal cases that involves the collaboration of offenders, victims, and other relevant parties to find a fair solution by focusing on restoring the original state rather than seeking revenge (Article 1, point 6) (Rahadjo, 2000).

The Juvenile Justice System Law safeguards the rights of minors engaged in juvenile delinquency by implementing diversion measures. Diversion is a method used to settle disputes outside of court; however, it is only utilized when the punishment for the offense does not exceed 7 years and the offense is not a recurring one committed by the youngster (Mayasari, 2018). The primary focus should be on implementing a humanistic and proactive strategy for children engaged in the criminal justice system. Law No. 11/2012 on the Juvenile Criminal Justice System serves as a foundation for the application of diversion, which refers to resolving cases without involving the judicial system. Diversion is the primary recourse, particularly if the penalty does not exceed 7 years and the youngster is not a recidivist.

The importance of this approach refers to the principles of restorative justice, where case resolution involves perpetrators, victims and related parties to find a fair solution with an emphasis on restoring the original condition, not retaliation (Article 1 point 6 of the SPPA Law).

With diversion, children involved in criminal offenses have the opportunity to receive more educational treatment and further prevention of their delinquent behavior. The protection of children's rights, especially those belonging to the category of juvenile delinquency, is a priority in the context of Indonesia's juvenile criminal justice system.

Article 6 of Law No. 11/2012 is an important foundation in formulating the concept of an approach through the application of punishment against children. In this context, Diversion is used as a peace effort between victims and children involved in criminal offenses. This diversion process has the main objective, which is to prevent children from deprivation of independence by resolving children's cases outside the conventional judicial process.

Diversion, in addition to just evading punishment, also seeks to promote community engagement and foster a feeling of accountability in children who have committed illegal acts. Hence, diversion serves as a preventive measure against child abusers and also as a restorative approach that fosters peace between perpetrators and victims while including the community in the resolution process.

Law enforcement agencies, such as the police, prosecutors, and courts, have the authority to conduct diversion. They play a crucial role in determining whether a child's situation can be handled through diversion or not. Nevertheless, the participation of the community as a party to the conflict is also a crucial element in achieving peace.

Patterns of out-of-court settlement, such as Diversion and Restorative Justice, have a familiar history in the traditions of Indonesian society. These practices can include

customs and social norms that are constructive in dealing with cases in the community without necessarily involving formal justice institutions. In traditional Indonesian society, approaches such as deliberation, mediation, or social sanctions are often favored to resolve conflicts and restore relationships between the parties involved (Distia Aviandari, 2013).

## 2. Application of the *Ultimum Remedium* Principle in the Handling of Juvenile Law in Indonesia

Before criminal sanctions are imposed on a child, law enforcement is required to involve alternative efforts called diversion (Dita et al., 2023). This is mandated by Article 5 and Article 7 of Law No. 11/2012 on Juvenile Justice System. Diversion is one of the alternative efforts required by law before imposing punishment on children. Diversion is regulated in Law No. 11/2012 on the Juvenile Criminal Justice System. The following are details related to diversion in Law No. 11/2012: (Republic of Indonesia, 2012)

- a. Article 5 of Law No. 11/2012:
- b. Article 5 paragraph (1) states that law enforcement against children suspected of committing criminal offenses is carried out with due regard to human rights and special protection of children.
- c. Article 7 of Law No. 11/2012:
- d. Article 7 paragraph (1) states that law enforcers are obliged to conduct diversion as long as it fulfills the provisions stipulated in this law.
- e. Article 7 paragraph (2) of Law No. 11/2012:  
Article 7 paragraph (2) states that diversion is carried out with principles:
  - 1) Educating and nurturing children;
  - 2) Fostering children's responsibility for their actions;
  - 3) Cultivate legal awareness and norms in children;
  - 4) Providing an understanding to the child about the consequences of his/her actions on himself/herself and others; and
  - 5) Fosters a sense of justice in the child.

With these principles, diversion is expected to provide an alternative solution that prioritizes a coaching and rehabilitation approach for children involved in criminal acts, so as to avoid or minimize punishment and help children get back on the right track. If the diversion procedure successfully concludes with an agreement and achieves the desired goal, the kid does not need to proceed with the subsequent stage of the case, which involves a court ruling. Thus, if the diversion process fails to reach an agreement or if the diversion agreement is not carried out, as specified in Article 13, the juvenile criminal justice procedure will proceed against the kid.

Changes in Law No. 11/2012 on the Juvenile Justice System, particularly in relation to criminal provisions for children, show a more complete improvement compared to Law No. 3/1997 on Juvenile Courts. Chapter V of the law, which covers Articles 69 to 83, explicitly regulates punishment and actions against children (Koesno Adi, 2015).

At the beginning of Chapter V, Article 69 paragraph (1) clearly states that children can only be sentenced or subjected to actions based on the provisions in this Law. This means that the punishment or action against the child must be in accordance with the provisions stipulated in Law No. 11/2012.

In addition, there is a limitation on the age of children in criminalization regulated by Article 69 paragraph (2). This article states that children who are not yet 14 years old can only be subject to measures, not punishment. This shows special attention to the protection of younger children and emphasizes the importance of a rehabilitative approach rather than criminal punishment at a very early age (Koesno Adi, 2015).

According to Article 70, the severity of the act, the personal circumstances of the child, or the conditions at the time the act was committed or that occurred later can be taken into consideration by the judge. In this case, the judge can decide not to impose punishment or choose to impose other measures. These considerations are geared towards aspects of justice and humanity, demonstrating an awareness of treating children with full attention to the context and circumstances that may have influenced their actions.

This reflects a more holistic approach in the juvenile justice system, where judges consider factors such as the child's personal circumstances and the context of the incident to ensure that the decision made is in accordance with the principles of justice and humanity (Koesno Adi, 2015).

The Juvenile Criminal Justice System involves all relevant elements in dealing with cases of children involved with the law (ABH). This includes the roles of the police, prosecutors and courts, along with community supervisors or correctional centers, advocates or legal aid providers, the Child Special Development Institution (LPKA), the Temporary Child Placement Institution (LPAS), and the Social Welfare Institution (LPKS) (Alim et al., 2017). These institutions manage ABH, starting with the initial phase of the child's interaction with the justice system, where they decide whether to release the child or refer them to the juvenile court. Afterwards, the child can be placed in various settings, including release or a punitive institution that adopts a restorative justice approach. This statement aligns with numerous international declarations and congresses that acknowledge the significance of restorative justice principles in addressing criminal situations (Astuti, 2022). Some international documents that support this approach include: (Sugita, 2022)

1. The 2000 United Nations Declaration on the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters: This document provides guidance on the basic principles for the application of restorative justice programs in the context of criminal matters. This approach emphasizes the recovery and reintegration of offenders into society.
2. Vienna Declaration on Crime and Justice: "Meeting the Challenges of the Twenty-First Century") points 27-28 on Restorative Justice: The Vienna Declaration recognizes the need to meet the challenges of crime in the 21<sup>st</sup> century and highlights the importance of restorative justice as one way to respond to criminal problems.
3. The 2005 Eleventh United Nations Congress on Crime Prevention and Criminal Justice in Bangkok at item 32: Strategic Alliances in Crime Prevention and Criminal Justice (Synergies and Responses
4. Strategic Alliances in Crime Prevention and Criminal Justice): This statement shows support for strategic alliances in crime prevention and criminal justice, including restorative justice approaches as part of these efforts.

The importance of restorative justice and its principles contained in these international documents confirms the global commitment to create a more just, rehabilitative and recovery-oriented justice system, especially in the context of handling children involved with the law.

The Indonesian Supreme Court has responded to the Juvenile Justice System Law in a very progressive manner. The Chief Justice of the Supreme Court of Indonesia, Muhammad Hatta Ali, has signed Supreme Court Regulation (PERMA) No. 4/2014 on Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System even before the issuance of the Government Regulation which is a direct derivative of the SPPA Law (Darmini, 2019).

A crucial point in this PERMA is the obligation for Judges to resolve the problem of Children Against the Law (ABH) through the Diversion process. This is a very new legal procedure in Indonesia's criminal justice system and part of the country's criminal justice reform efforts.

Additionally, this PERMA outlines the protocols for adopting diversion, which acts as a comprehensive framework for judges to use in settling juvenile criminal cases. This is significant since there is a lack of legislation pertaining to the precise procedural law for diversion in the juvenile criminal justice system. Therefore, the PERMA encompasses a set of principles that serve as a basis for judges to utilize diversion as a means of settling juvenile cases, highlighting the Supreme Court's dedication to the successful execution of the Juvenile Justice System Law.

Diversion, in accordance with the provisions of the Child Criminal Justice System (SPPA) Law, can be interpreted as an action to transfer the settlement of juvenile cases from the realm of criminal justice to processes outside the criminal justice system. Further elaboration on each of the objectives of diversion in accordance with the Law on Juvenile Criminal Justice System (SPPA), are as follows: (BPHN, 2012)

1. Achieving Peace between Victim and Child: Diversion aims to facilitate the establishment of peace between the victim and the child. This approach reflects the principle of restorative justice which emphasizes the restoration of the relationship between the offender and the victim, not just the imposition of punishment.
2. Resolving Juvenile Cases Outside the Judicial Process: One of the main objectives of diversion is to resolve children's cases outside the formal justice process. This provides an opportunity for faster and more flexible resolution, with a focus on rehabilitation and development of the child.
3. Avoiding Deprivation of Liberty: Diversion is geared towards preventing children from experiencing deprivation of liberty through formal judicial action. Alternative solutions such as coaching and rehabilitation are the main focus to have a positive impact on the child.
4. Encouraging Community Participation: Diversion also aims to encourage community participation in the handling of juvenile cases. Involving the community in the resolution process can create a supportive environment for the child's reintegration into society.
5. Instilling a Sense of Responsibility in Children: By involving children in the diversion process, the aim is to instill in them a sense of responsibility. In this context, diversion

is not only an alternative solution, but also a means to provide positive learning and development to children.

The importance of diversion in the context of the Juvenile Justice System is to create a more rehabilitative approach, consider the needs of the child, and produce positive outcomes for the child, victim, and society as a whole.

As stated in PERMA No. 4/2014, a diversion conference is a forum where all parties involved, including the child and their parents or guardians, the victim and their parents or guardians, community counselors, professional social workers, representatives, and other relevant parties, engage in a discussion. The purpose of this discussion is to achieve consensus on diversion using a restorative justice framework. In this particular situation, the facilitator refers to a judge designated by the President of the Court to oversee the child's case (Mahkamah, 2014).

Diversion, under the framework of PERMA, refers to the redirection of the process of addressing juvenile matters away from the lengthy and inflexible criminal justice system. The diversion process incorporates mediation, dialogue, or debate as essential components in the pursuit of restorative justice. The restorative justice approach emphasizes reaching an agreement between the parties involved, which also includes elements such as active participation, restoration of relationships, and social responsibility (Mahkamah, 2014).

The sentencing of juvenile offenders may not always result in complete justice for victims. However, punishing the culprit may still leave a variety of issues unaddressed. In the framework of child protection, particularly the notion of prioritizing the best interests of children, it is critical to discover more comprehensive approaches to resolving children's problems. As a result, the process of settling children's problems outside of the criminal system, known as diversion, is essential (Posumah et al., 2023).

Utilizing punitive institutions as a means to address children's issues is suboptimal since it might result in infringements against children's rights. Opting for diversion is preferable since it promotes the adoption of a restorative justice approach. By using diversion, several stakeholders, including offenders, victims, and other relevant parties, can engage in the process of seeking resolutions that cater to the interests of everyone concerned.

The primary focus in dealing with issues involving children in conflict with the law should be safeguarding children's rights and upholding the notion of the best interests of the child. Therefore, diversion serves as a tool that promotes a rehabilitation-focused approach, facilitating the recovery and reintegration of children into society while ensuring their rights are not adversely affected.

Therefore, it is imperative to establish events and protocols within the judicial system that may effectively facilitate the resolution of cases. One suggested strategy to do this is the adoption of restorative justice. This entails a comprehensive overhaul of the criminal justice system, encompassing not just legal amendments but also the complete restructuring of the whole system. The purpose is to get all of the intended outcomes mandated by the legislation. Discourse, commonly referred to as “*musyawarah untuk mufakat*” in Indonesian society, achieves a sort of restorative justice system. Hence, diversion, particularly under the framework of restorative justice,

is a crucial factor to take into account when addressing criminal situations involving children.

If the diversion agreement is not fully executed by the parties, as indicated by the Community Supervisor of the Correctional Center, the judge will proceed to review the case in line with the Juvenile Criminal Justice Procedure Law. When making their judgment, the judge is required to take into account the incomplete execution of the diversion agreement.

PERMA No. 4/2014 explains that Diversion can be applied to children who have reached the age of 12 (twelve) years but have not reached the age of 18 (eighteen) years, or children who have reached the age of 12 (twelve) years even though they have been married, but have not reached the age of 18 (eighteen) years, and are suspected of committing a criminal offense (Article 2). This PERMA also regulates the stages of the diversion deliberation, where the facilitator appointed by the Chief Justice is obliged to provide an opportunity to: (Mahkamah, 2014)

1. Child to provide information regarding the charges against him.
2. Parents/guardians of the child to convey information related to the child's actions and provide advice on the expected form of settlement.
3. Victim/Victim's Child/Parent/Guardian to respond to the situation and provide input on the desired form of resolution.

Thus, this stage of the diversion deliberation includes the active participation of the various parties involved, including the child, parents/guardians, and the victim, to reach an agreement on the settlement of the case in accordance with the principles of restorative justice.

If required, the diversion facilitator has the power to call upon community leaders or other individuals who can offer information to assist in the resolution process. The facilitator has the option to organize a distinct meeting, referred to as a "Caucus", involving the diversion facilitator and one of the parties who is familiar with the other side. The purpose of the caucus is to enhance and deepen communication between the facilitator and a specific party while also striving to achieve mutually advantageous agreements during the diversion process (Ribunu, 2023).

#### IV. CONCLUSIONS

The regulation of the principle of "Ultimum Remedium" in the Indonesian legislative system related to the settlement of cases of children in conflict with the law is a basic principle to ensure the completion of handling children, prison is the last resort. For the certainty of space for law enforcement officials in achieving restorative justice, the diversion process is a guarantee that must be passed before entering the criminal procedure examination stage to find a fair solution to restore to the original condition.

The application of the principle of "Ultimum Remedium" in the settlement of criminal cases of children in conflict with the law concluded that the understanding of the principles of judges in each decision still has differences from one another. Not all judges who handle children's cases above base their decisions on the principle of the ultimum remedium principle, there are still judges in making decisions based on the theory of justification in concluding guilt against children.

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