



## DIVERSION PRACTICES IN JUVENILE TRAFFIC CRIME INVESTIGATIONS AS A SOCIAL ENGINEERING TOOL: A CASE IN NORTH MALUKU, INDONESIA

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### Abstract

*Diversion as an alternative to out-of-court settlement faced both theoretical and practical challenges. In the context of traffic offenses committed by minors, the practice of diversion encountered legal uncertainties about whether it could effectively address the core issues. The dilemma arose from the need to enforce the law while also protecting the rights of children as mandated by the Juvenile Justice System Law. This paper reviewed the practice of diversion in resolving traffic offenses by minors in North Maluku, aiming to assess its effectiveness and explore its role as a tool of social engineering. The research employed a doctrinal legal research model with a juridical-normative approach. Findings indicated that diversion practices in North Maluku, particularly for traffic offenses committed by minors, were ineffective due to several factors: regulatory deficiencies, lack of competence among enforcement personnel, and the prevailing legal paradigm within the community. From the perspective of law as a tool of social engineering, diversion alone was insufficient without subsequent measures to address traffic crimes committed by minors, necessitating the reconstruction of the legal culture and enhancement of public awareness to foster traffic order and safety.*

**Keywords:** criminal; diversion; juvenile justice; social engineering

### A. Introduction

Diversion as an alternative method of resolving criminal cases, including traffic offenses involving minors, remains a significant issue in the Republic of Indonesia. North Maluku, a province in Eastern Indonesia, exemplifies regions grappling with high instances of traffic violations by children.<sup>1</sup> These cases underscore ongoing challenges related to discipline and the community's understanding of traffic regulations, particularly concerning young individuals.

<sup>1</sup> Nurkholis Lamaau, "Teenage Driver of Hit-and-Run Car 3 Motorists in Ternate, 2 People Injured," *detikSulsel* (blog), accessed December 24, 2023, <https://www.detik.com/sulsel/hukum-dan-kriminal/d-7038290/remaja-pengemudi-mobil-tabrak-lari-3-pengendara-di-ternate-2-orang-luka>.

Notably, the region saw traffic violations rise from 130 cases in 2021 to 167 in 2022, marking a 28.46% increase.<sup>2</sup>

Traffic regulations in Indonesia are outlined in Law Number 22 of 2009 concerning Road Traffic and Transportation, which provides guidelines for maintaining public order and safety for road users and minimizing accident risks.<sup>3</sup> Despite these regulations, the prevalent issues include a significant number of underage drivers and a general lack of awareness and adherence to traffic laws, contributing to the high accident rates.

In addressing legal infractions by those considered legally immature, the law enforcement system adapts by employing diversion—a concept supported by the Juvenile Criminal Justice System under Law Number 11 of 2012. This law mandates a justice approach centered on rehabilitation and aims to safeguard the psychological development of minors involved in criminal activities. However, the practice of diversion presents several challenges. While it serves as an alternative means of resolving cases outside traditional court proceedings, it is heavily influenced by the prevailing legal paradigms, the competence of legal authorities, and the availability of adequate facilities. Moreover, there exists a notable disparity in how officials interpret and implement diversion, particularly in understanding the substance of existing laws, further complicating its application in handling juvenile criminal cases.<sup>4</sup>

The literature review highlights a significant challenge in the application of diversion for traffic offenses committed by minors<sup>5</sup>: a lack of cohesion between the Juvenile Criminal Justice System and other relevant laws. Moreover, deficiencies in law enforcement expertise and insufficient cross-sectoral coordination impede effective diversion practices. The implementation of diversion in the context of traffic offences by minors is still not running optimally, especially regarding the protection of children's identity as privacy that must be protected.<sup>6</sup> While diversion has seen success in some instances through agreements among victims, offenders, and relevant stakeholders, failures in these agreements lead back to traditional legal proceedings, fostering legal uncertainty.<sup>7</sup>

A specific case research in Balikpapan city illustrates diversion's application where a minor, responsible for a fatal traffic accident, underwent supervision with strict prohibitions against driving. Failure to comply with these conditions would escalate the case to conventional legal channels.<sup>8</sup> These issues underscore that traffic offenses by minors require meticulous scrutiny. While diversion offers a pathway for resolving such criminal cases, it does not address the fundamental causes of juvenile traffic offenses. This research aims to explore more concrete solutions that could reduce the incidence of these crimes. The importance of this research lies

2 Tobari, "Jumlah Lakalantas di Malut Meningkat, Polres Halsel Sumbang Laka Terbanyak," *Info Publik* (blog), diakses 24 Desember 2023, <https://www.infopublik.id/kategori/nusantara/665855/jumlah-lakalantas-di-malut-meningkat-polres-halsel-sumbang-laka-terbanyak>.

<sup>3</sup> Ruly Kurniawan and Agung Kurniawan, "Low Awareness of Orderly Traffic Becomes the Main Cause of Accidents," *Kompas* (blog), accessed December 24, 2023, <https://otomotif.kompas.com/read/2022/10/04/070200415/rendahnya-kesadaran-tertib-lalu-lintas-jadi-penyebab-utama-kecelakaan?page=all>.

<sup>4</sup> Erwinda Dekaria Agustiana Putri dan Pudji Astuti, "Faktor Penghambat Diversi Bagi Anak Yang Berkonflik Dengan Hukum di Pengadilan Negeri Blitar," *Novum: Jurnal Hukum* 7, no. 1 (2020).

<sup>5</sup> Achmad Haris Sanjaya, Adrianus Eliasta Meliala, dan Ni Made Martini Puteri, "The Paradox of Child's Diversion Policy in Conflict with the Law in the Indonesian Child Criminal Justice System," *Journal of Social and Political Sciences* 6, no. 4 (30 Desember 2023), <https://doi.org/10.31014/aior.1991.06.04.442>.

<sup>6</sup> Lafri Prasetyono Prasetyono, "The Problem of Diversion in Children Perpetrators of Traffic Violations in Indonesia," *Jambura Law Review* 4, no. 1 (30 Januari 2022): 38–51, <https://doi.org/10.33756/jlr.v4i1.11419>.

<sup>7</sup> Ina Heliany and Edison Hatogoan Manurung, "Responsibility of Children Who Commit Traffic Accidents and Result in the Loss of Other People's Lives in Case Decision Number 123/Pid.Sus/2014/PN. Jkt.Tim.," *Proceedings of the National Seminar of Experts*, April 10, 2020, <https://doi.org/10.25105/pakar.v0i0.6849>.

<sup>8</sup> Rivaldi Nugraha, Adista Nugroho, dan Metta Aprillia, "Penerapan Diversi Terhadap Kecelakaan Lalu Lintas Yang Pelakunya Anak Di Kota Balikpapan," *Jurnal De Jure* 15, no. 1 (2023).

in evaluating the effectiveness of diversion in handling minor traffic offenses and its role in social engineering through legal means.

The primary objective of this research is to identify the challenges of implementing diversion within the legal culture, particularly concerning traffic awareness in North Maluku Province. This research employs doctrinal legal research with a juridical-normative approach<sup>9</sup>, relying on secondary data sources including documentation, legal texts, journal articles, research findings, and other relevant literature. The methodological framework utilizes descriptive-qualitative analysis to elucidate the subject matter and interpret findings within the theoretical context established.<sup>10</sup>

## B. Discussion

### 1. The Effectiveness of Diversion on Traffic Crime Cases in North Maluku

The researchers have collected data on the implementation of solving traffic crime cases involving children as perpetrators at the investigation level from 9 (nine) jurisdictions of the North Maluku police; 1) Ternate Regional Police; 2) Tidore Regional Police; 3) South Halmahera Regional Police; 4) Central Halmahera Regional Police; 5) West Halmahera Regional Police; 6) East Halmahera Regional Police; 7) Morotai Island Regional Police; and 8) Sula Islands Regional Police.

#### 1) Ternate Regional Police

Year	Traffic Crimes	Involvement of Children as Perpetrators of Traffic Crimes	Matter Solutions*		
			Termination of Investigation (SP3)	Court (P21)	Diversion
2019	3	1	1	-	-
2020	3	1	-	-	1
2021	4	3	2	-	1
2022	2	1	-	-	1
2023	5	3	1	-	2

\* Data up to July, 2023.

#### 2) Tidore Regional Police

Year	Traffic Crimes	Involvement of Children as Perpetrators of Traffic Crimes	Matter Solutions		
			Termination of Investigation (SP3)	Court (P21)	Diversion
2019	35	14	1	-	13
2020	22	3	1	-	2
2021	28	4	1	-	3

#### 3) South Halmahera Regional Police

<sup>9</sup> Joanedi Efendi and Jhonny Ibrahim, *Normative and Empirical Legal Research Methods* (Jakarta: Kencana, 2016). h 130-133.

<sup>10</sup> Zainuddin Ali, *Legal Research Methods* (Jakarta: Sinar Grafika, 2019). H 105-106.

Year	Traffic Crimes	Involvement of Children as Perpetrators of Traffic Crimes	Matter Solutions*		
			Termination of Investigation (SP3)	Court (P21)	Diversion
2019	27	3	1	1	1
2020	9	3	-	-	3
2021	30	2	1	-	1
2022	25	-	-	-	-
2023*	13	1	-	-	1

\* Data up to July, 2023

#### 4) Central Halmahera Regional Police

Year	Traffic Crimes	Involvement of Children as Perpetrators of Traffic Crimes	Matter Solutions		
			Termination of Investigation (SP3)	Court (P21)	Diversion
2019	12	3	3	-	-
2020	9	-	-	-	-
2021	25	-	-	-	-
2022	39	1	1	-	-

#### 5) West Halmahera Regional Police

Year	Traffic Crimes	Involvement of Children as Perpetrators of Traffic Crimes	Matter Solutions		
			Termination of Investigation (SP3)	Court (P21)	Diversion
2019	4	2	1	-	1
2020	5	4	3	-	1
2021	9	6	6	-	-
2022	12	6	6	-	-

#### 6) East Halmahera Regional Police

Year	Traffic Crimes	Involvement of Children as Perpetrators of Traffic Crimes	Matter Solutions		
			Termination of Investigation (SP3)	Court (P21)	Diversion
2019	17	6	3	-	3
2020	10	2	-	-	3
2021	8	2	-	-	2
2022	11	5	1	-	4

**7) Morotai Island Regional Police**

Year	Traffic Crimes	Involvement of Children as Perpetrators of Traffic Crimes	Matter Solutions		
			Termination of Investigation (SP3)	Court (P21)	Diversion
2019	3	2	2	-	-
2020	3	1	-	-	-
2021	5	2	2	-	-
2022	5	2	1	-	1

**8) Sula Islands Regional Police**

Year	Traffic Crimes	Involvement of Children as Perpetrators of Traffic Crimes	Matter Solutions		
			Termination of Investigation (SP3)	Court (P21)	Diversion
2019	1	-	-	-	-
2020	6	4	1	-	3
2021	5	-	-	-	-
2022	6	5	5	-	-

The data gathered reveals three approaches to resolving traffic crime cases involving juvenile offenders: firstly, case termination by the police issuing a cease investigation warrant (SP3), indicating the end of investigations; secondly, diverting juvenile cases from the criminal justice process to alternative non-criminal solutions, referred to as diversion; and thirdly, continuing within the criminal justice system, which may result in a court conviction if diversion is unachievable.

The first approach raises concerns as police investigators halt investigations by issuing an SP3, a decision grounded in their legal authority under Article 109 paragraph (2) of the Code of Criminal Procedure. This termination may occur due to insufficient evidence, the determination that no crime occurred, or other legal interruptions. This practice introduces uncertainty in resolving juvenile traffic crime cases, as the common issuance of an SP3 may not align with the principles outlined in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which does not acknowledge familial or alternative dispute resolution (ADR) methods in juvenile cases.<sup>11</sup> Conversely, the diversion approach employs restorative justice processes, leading to court-reviewed resolutions that provide legal clarity and strength, aligning with the intended goals of Law Number 11 of 2012.

An analysis of the effectiveness of diversion, particularly concerning juvenile traffic offenses in the North Maluku region, should consider various factors identified by Soerjono Soekanto, including legal, enforcement, facilities, societal, and cultural aspects. Each factor plays a crucial role: the legal content, law enforcement's capabilities, the adequacy of facilities for enforcement, societal acceptance, and cultural influences that shape legal interpretation and application. The first factor is influenced by the content or substance of the law itself, the apparatus factor correlates with knowledge and ability in law enforcement, the means factor is

<sup>11</sup> Randy Pradityo, "Restorative Justice in the Juvenile Criminal Justice System," *Journal of Law and Justice* 5, no. 3 (November 30, 2016): 319, <https://doi.org/10.25216/jhp.5.3.2016.319-330>.

more focused on facilities related to law enforcement, the community factor is related to where the law is applied, and cultural factors as a result of work, creation and taste based on the karsa of living associations

The Juvenile Criminal Justice System Law, while providing a framework for addressing juvenile offenses, encounters several challenges, notably in the inconsistent application of diversion due to inadequate facilities and unclear technical regulations.<sup>12</sup> Furthermore, the effectiveness of diversion is often contingent on complex interpersonal factors, such as the victim's willingness to forgive and the perpetrator's capacity to provide agreed compensation. The roles of law enforcement officials, child community guides, and the broader community are crucial in facilitating dialogue and fostering reconciliation, thus ensuring both justice and certainty for all parties involved.<sup>13</sup>

Diversion, rooted in the restorative justice paradigm, aims to shift the focus of criminal law from mere retribution to a more balanced restoration involving the victim, the perpetrator, and the community.<sup>14</sup> Nonetheless, there are stringent restrictions on its application, particularly with juvenile offenders. Diversion is typically reserved for offenses carrying a maximum penalty of no more than seven years and must not involve repeat offenders.<sup>15</sup> Moreover, severe crimes such as terrorism, premeditated murder, rape, and drug trafficking are excluded from diversion, underscoring the need for a recalibration of the criteria to ensure that the application of diversion aligns with the principles of legal certainty, justice, and utility.<sup>16</sup>

This need for reformulation aims to harmonize conflicting provisions within the Juvenile Criminal Justice System Law. Article 5 paragraph (1) mandates a restorative justice approach for juvenile justice, while Article 7 paragraph (1) specifies that diversion efforts should be judicially overseen. Conversely, Article 7 paragraph (2) imposes limitations on the types of criminal acts eligible for diversion, impacting legal certainty, especially as Article 13 notes that the juvenile justice process must proceed if diversion fails to achieve or implement an agreement. In the specific context of traffic offenses by minors in North Maluku, the application of diversion necessitates a responsive evaluation of law enforcement practices and the broader diversion framework. Effective law enforcement should transcend punitive measures, emphasizing preventive strategies to minimize juvenile traffic offenses. This approach not only addresses immediate legal concerns but also contributes to broader societal safety and the wellbeing of the youth.

## **2. Diversion in Traffic Crime by Children: A Legal Perspective as a Social Engineering Tool**

The limited efficacy of diversion practices in resolving juvenile traffic offenses in North Maluku Province underscores the broader challenges facing holistic law enforcement. Legal theorist Roscoe Pound envisioned law as a tool of social engineering—a means to reform society to match societal expectations. This notion was expanded upon by Satjipto Raharjo, who argued for the importance of evaluating law's role in shaping society over time.<sup>17</sup> The law

<sup>12</sup> Fachrizal Afandi, "Problematisasi Pelaksanaan Diversi Dalam Penyidikan Pidana Dengan Pelaku Anak Di Kepolisian Resort Malang," *Arena Hukum* 8, no. 1 (1 April 2015): 19–34, <https://doi.org/10.21776/ub.arenahukum.2015.00801.2>.

<sup>13</sup> Reimon Supusepa dan Margie Gladies Sopacua, "The Success of Diversion For Children Who In Conflict With The Law On Investigation Level," *SASI* 29, no. 2 (1 Juni 2023): 399, <https://doi.org/10.47268/sasi.v29i2.1584>.

<sup>14</sup> Hariman Satria, "Restorative Justice: Paradigma Baru Peradilan Pidana," *Jurnal Media Hukum* 25, no. 1 (2018), <https://doi.org/10.18196/jmh.2018.0107.111-123>.

<sup>15</sup> Lihat Pasal 7 ayat (2), Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Anak.

<sup>16</sup> Lihat Pasal 7 ayat (2), Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Anak.

<sup>17</sup> Soetandyo Wignjosoebroto, *Pergeseran Paradigma dalam Kajian-Kajian Sosial dan Hukum*. (Malang: Setara Press, 2013). h 126.

of working into a means of change takes a long time through a chain effect.<sup>18</sup> Building on this, Lawrence M. Friedman's theory emphasizes that the success of the law in maintaining societal order is contingent upon three critical factors: legal substance, legal structure, and legal culture.<sup>19</sup>

A critical examination of these theoretical frameworks in relation to the practice of diversion in North Maluku reveals that the issues cannot be addressed solely through traditional law enforcement mechanisms. Instead, a more holistic approach is required—one that probes the root causes of juvenile involvement in traffic offenses. This approach necessitates moving beyond formal legal actions to embrace effective collaboration aimed at foundational change, thus utilizing law as a means of social control.<sup>20</sup>

Social control manifests in two forms: formal, through written laws and enforcement institutions, and informal, through unwritten but socially adhered rules.<sup>21</sup> Diversion, as a formal legal mechanism, entails a series of procedural steps and often incorporates a familial approach to resolve cases, focusing on restoring justice and certainty for all parties involved. However, solely relying on formal legal mechanisms is insufficient. There must also be robust support from informal social controls, such as community legal awareness about the significance of protecting children from premature driving responsibilities.<sup>22</sup>

Parental understanding and vigilance are crucial. Parents must be cautious about granting driving privileges to their children, recognizing the serious consequences of such decisions. While the legal responsibility for offenses might not be transferable, the accountability for allowing an underage child to drive is significant. According to the Juvenile Criminal Justice System Law, a child is defined as someone aged 12 but not yet 18, highlighting the necessity for parental guidance due to the child's lack of full legal competence.<sup>23</sup> In essence, while a child may not bear full culpability for their actions legally, it is imperative to understand the influences of their environment that lead to such offenses.

As Friedman noted, the effectiveness of a rule within a legal culture largely depends on legal awareness rather than mere obedience. Legal awareness focuses on the quality of each individual's understanding of the law<sup>24</sup>, whereas obedience alone does not necessarily indicate an awareness of the law. There is an urgent need to reshape society's perspective on vehicle permits for underage children, emphasizing parental supervision. The concept of law as a tool of social engineering should guide society towards order, functioning effectively as a preventive measure rather than solely as a means of enforcement.<sup>25</sup> This approach aims to prevent violations and mitigate the risk of traffic crimes committed by minors.

Strengthening legal education through competent officers is the foundation for cultivating a positive legal culture. Utilizing both electronic and non-electronic media is crucial to effectively communicate legal principles. Ultimately, fostering a positive legal culture

<sup>18</sup> Satjipto Raharjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2006). h 209.

<sup>19</sup> Lawrence M. Friedman, *Sistem Hukum : Perspektif Ilmu Sosial* (Bandung: Nusamedia, 2019). h 3-15.

<sup>20</sup> Salman Alfarisi and Muhammad Syaiful Hakim, "The Relationship Between the Sociology of Law and Society as Social Control," *Rechten Journal : Legal and Human Rights Research* 1, no. 2 (2019): 20–28, <https://doi.org/10.52005/rechten.v1i2.37>.

<sup>21</sup> Soerjono Soekanto, *Sociology An Introduction* (Jakarta: Rajawali Pers, 2019). h 180.

<sup>22</sup> Yoga Nugroho and Pujiyono Pujiyono, "Law Enforcement of Traffic Violations by Children: Certainty and Obstruction Analysis," *Indonesian Journal of Legal Development* 4, no. 1 (January 31, 2022): 49–60, <https://doi.org/10.14710/jphi.v4i1.49-60>.

<sup>23</sup> Widya Romasindah Aidy, "Children Facing the Law in terms of Legal Psychology," *Sasana 7 Law Journal*, no. 2 (December 9, 2021): 357–65, <https://doi.org/10.31599/sasana.v7i2.871>.

<sup>24</sup> Muhammad Arif and Ida Mursida, "Raising Public Legal Awareness in the Framework of Law Enforcement," *al-Qisthas: Journal of Law and Politics* 8, no. 2 (2017).

<sup>25</sup> Murlinus Murlinus, "Building Community Legal Awareness and Obedience from a Law Enforcement Perspective," *Qawwam : The Leader's Writing* 4, no. 1 (June 30, 2023): 60–69, <https://doi.org/10.32939/qawwam.v4i1.253>.

requires preparing community members to understand and implement rules properly.<sup>26</sup> Diversion efforts, and all associated procedures, should be viewed as a means to achieve recovery and improvement rather than merely as an alternative to court proceedings.<sup>27</sup>

Examining the numerous traffic crimes committed by children in North Maluku Province highlights the role of law as a social engineering tool. Legal instruments must promote awareness of traffic compliance, such as the requirement for legal driving age and the importance of parental supervision. This perspective ensures that the public does not perceive diversion practices as loopholes that allow minors to evade accountability for criminal offenses, particularly traffic crimes. The goal of law as a tool of social engineering is to build, direct, and maintain a well-ordered community life by minimizing the risk of violations.

### C. Conclusion

The practice of diversion in addressing traffic crime cases committed by children in the North Maluku region demonstrates a law enforcement approach that avoids causing trauma to minors. However, its effectiveness faces challenges related to regulations, enforcement personnel, facilities, and community culture. Diversion prioritizes resolving cases through a persuasive approach, engaging in dialogue between victims and perpetrators to reach an agreement focused on restoring the situation (restorative justice).

From the perspective of law as a tool of social engineering, diversion is not merely a means to resolve legal cases but a strategy to prevent or minimize the recurrence of criminal acts such as traffic violations by children, thereby achieving societal order. To realize this, legal reform and the promotion of a positive legal culture require detailed and concrete efforts both formally and informally.

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<sup>26</sup> Jawardi Jawardi, "Strategy of Law Culture Development," *De Jure 16 Journal of Legal Research*, no. 1 (August 26, 2016), <http://dx.doi.org/10.30641/dejure.2016.V16.1>.

<sup>27</sup> Abdul Manan, *Aspects of Law Changers* (Jakarta: Kencana, 2009). h 95.



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