



# Journal of Social and Political Sciences

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**Sanjaya, A. H., Meliala, A. E., & Puteri, N. M. M. (2023). 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(4), 17-34.**

ISSN 2615-3718

DOI: 10.31014/aior.1991.06.04.442

The online version of this article can be found at:  
<https://www.asianinstituteofresearch.org/>

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Published by:  
The Asian Institute of Research

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# The Paradox of Child's Diversion Policy in Conflict with the Law in the Indonesian Child Criminal Justice System

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## Abstract

This research aims to examine the paradox of implementing the diversion policy for children in conflict with the law in student brawl cases in DKI Jakarta. The research uses a qualitative approach with a case study method. Case analysis uses forecasting analysis framework by William Dunn (2003) and Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis by Chermack and Kasshanna (2007). There are three conclusions from this research. First, the problems of the diversion policy for children in conflict with the law are generally not caused by primordial factors but are caused by law enforcement investigators who often do not follow the mandate of the Law on The Child Criminal Justice System to determine child diversion. This is because the police apply criminal offenses based on the perpetrator's actions and can consider the recommendations of the Community Counselor of the Correctional Center. Second, there is a paradox in the implementation of the diversion policy for children in conflict with the law, starting from the high use of the Emergency Law in the Indonesian Legal System, the low competence of law enforcement officers in implementing the diversion policy for children in conflict with the law, terminating investigations without involving Community Counselor of the Correctional Center, to carrying out detention in correctional centers that are not child-friendly. Third, based on forecasting and SWOT analysis, it is necessary to transform juvenile justice legal policies in the future, especially increasing competency of the law enforcement officers, ensuring the availability of child-friendly infrastructure, supporting the child in conflict with the law advocacy and extensifying community-based policing.

**Keywords:** Child in Conflict with the Law, Forecasting Analysis, SWOT Analysis, Diversion, The Paradox of Diversion Implementation

## 1. Introduction

The paradox of implementing the diversion policy for children in conflict with the law is still a crucial issue in the Child Criminal Justice System in Indonesia. Children in conflict with the law who are under 18 years old are detained and imprisoned like adults. However, imprisonment can have a negative impact on children's growth and development, and children in conflict with the law should be considered "delinquency" or juvenile delinquency (IPU & UNICEF, 2004), not as criminals--as punishment is a torture which results the possibility of ill-treatment on the children. Punishment is seen as inappropriate in re-socializing violated values in society or legal norms (Mustofa, 2007).

The importance of protecting children has long been a concern of many countries. This is reflected in the United Nations Convention on the Rights of the Child (UN-CRC) (1989) which outlines the basic rights of children, including the right to be protected from economic exploitation and hazardous work, from all forms of sexual exploitation and abuse, and from physical or mental violence, and ensure that children are not separated from their families. These rights are enhanced by two Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, as well as the involvement of children in armed conflict (UNICEF, 2006).

The best interest of the child is the principle that underlies every policy related to children (Child Welfare Information Gateway, 2012). This principle emphasizes that all actions taken by the government, society, legislative bodies, and judicial bodies must be in the best interests of children. Indicators of the best interests of the child generally consider factors such as the child and the situation of the parents, or the caregiver and the capacity of the parents.

The basic spirit formulated by The Law on the Child Criminal Justice System is the principle of keeping children away from punishment. This principle underlies the juvenile criminal justice policy that applies in Indonesia through Law Number 11 of 2012 concerning the Child Criminal Justice System. This law replaces Law Number 3 of 1997 concerning Children's Courts. If the 1997 Law only regulates court processes, The Law on the Child Criminal Justice System regulates justice processes from the police to correctional institutions (prisons). Article 2 of The Law on the Child Criminal Justice System confirms that it is implemented based on the principle of the best interests of the child; child survival and growth and development; and deprivation of liberty and punishment as a last resort.

However, the implementation of children in conflict with the law handling in Indonesia is not yet in accordance with the mandate of The Law on the Child Criminal Justice System. Research by the Institute for Criminal Justice Reform (ICJR, 2014) and the Center for Study and Advocacy on Child Protection and Quality of Life found that there are children aged 13 years were in correctional institutions, and children aged 12-13 years were being processed in court. The Youth Correctional Center that is being studied shows the same conditions, where most children in correctional facilities are 17 years old (ICJR, 2014; PUSKAPA 2020). Similar conditions also occurred in the Special Capital Region (DKI) Jakarta. This is reflected in the diversion decision data in the 2018-2020 period. Data from the Directorate General of Corrections (Ditjenpas) shows that most children involved in criminal acts are sentenced to prison.

Table 1: Number of Diversion, Non-Prison and Prison Decisions in DKI Jakarta

<i>Region (Year)</i>	<i>Diversion to Parents</i>	<i>Diversion to Orphanage</i>	<i>Verdict to Parents</i>	<i>Verdict to Orphanage</i>	<i>Conditional Criminal Verdict</i>	<i>Prison Verdict</i>
<i>West Jakarta (2018)</i>	29	1	6	6	0	47
<i>West Jakarta (2019)</i>	86	21	0	8	0	73
<i>West Jakarta</i>	1	0	0	7	0	25

(2020)

<b>Total</b>	<b>116</b>	<b>22</b>	<b>6</b>	<b>21</b>	<b>0</b>	<b>145</b>
<i>Central Jakarta (2018)</i>	10	2	0	0	0	31
<i>Central Jakarta (2019)</i>	70	10	12	2	1	17
<i>Central Jakarta (2020)</i>	17	0	0	0	0	2
<b>Total</b>	<b>97</b>	<b>10</b>	<b>12</b>	<b>2</b>	<b>1</b>	<b>50</b>
<i>South Jakarta (2018)</i>	23	4	0	2	0	56
<i>South Jakarta (2019)</i>	18	1	0	0	12	21
<i>South Jakarta (2020)</i>	2	0	0	0	1	1
<b>Total</b>	<b>43</b>	<b>5</b>	<b>0</b>	<b>2</b>	<b>13</b>	<b>78</b>
<i>North &amp; East Jakarta (2018)</i>	4	4	0	3	0	7
<i>North &amp; East Jakarta (2019)</i>	8	3	0	4	0	2
<i>North &amp; East Jakarta (2020)</i>	0	0	0	0	3	3
<b>Total</b>	<b>12</b>	<b>7</b>	<b>0</b>	<b>7</b>	<b>3</b>	<b>12</b>

Source: Correctional Database System (Processed by researcher, 2021)

The data above shows the unequal implementation of diversion policies in each region in DKI Jakarta. For example, West Jakarta and South Jakarta are the two areas with the highest crime rates. In contrast, Central Jakarta and North & East Jakarta have a better understanding of diversion.

The high number of criminal decisions against the child in conflict with the law in Jakarta is triggered by no other reason than the high number of student brawl cases. In the 2020 Criminal Statistics published by the Central Statistics Agency it is stated that DKI Jakarta Province occupies the top position in terms of the number of student brawls. Cases of violence generally involve children with a high fatality rate. Law enforcers have even seen student brawls not as juvenile delinquency, but as a criminal act. In many cases, the police tend to ignore the age limit for children, where children aged 12-14 years are not detained and those aged 14-18 years are diverted. This disregard for the age limit could be due to complex reasons so that the police do not use their discretionary authority to take legal policies, both in the context of diversion and restorative justice (Marshall, 1999).

The high case fatality results in the determination of the case offense. Perpetrators can be dragged and subject to several criminal threats, for example violating the Emergency Law, beatings, serious assault, and even murder. This obstructs the attempt for diversion (PUSKAPA, 2020). In cases where children have a significant role in crime, the police will tend to ignore diversion. Diversion efforts are carried out if and only if there is consideration of recommendations from the Research of the Correctional Institution on Diversion.

The police are not very consistent in implementing child diversion policies. On the one hand, the police accelerate diversion just because they want to resolve cases outside of court, but on the other hand, they often ignore the recommendations from the Community Counselor of the Correctional Center in making diversion decisions. Of course, there are many causal factors, one of which is limited competence and resources. This hypothesis is strengthened by research results which show the diversity of understanding of law enforcement officers' skills in managing diversion (Zebua, 2014; Ariani, 2014), as well as problems in law enforcement officers in understanding the meaning of the best interests of the child (PUSKAPA, 2020). The inconsistent diversion policy is also related to Government Regulation Number 65 of 2015 as the implementing regulation of the Law on The Child Criminal Justice System. Research by Mufidah & Khasanah (2019) states that the Government Regulation has not been able to clarify the types and nature of cases that can be pursued for diversion. As a result, each law enforcement institution relies on internal procedures. In addition, the general public believes that every crime must be retributive (retributive justice) (Adiguna et al., 2015).

This research departs from the paradoxical reality in the implementing the diversion policy for children in conflict with the law. According to the 2019 Institute for Criminal Justice Reform (ICJR) report, this paradoxical reality can be in the form of high rates of detention and imprisonment of children. Then there is the problem with the provisions on criminal limits for diversion to be carried out because most cases carry a sentence of 7 years or more. This restriction is considered to cause problems with children's access to justice. ICJR also found weak fulfilment of fair trial rights, such as the right to legal assistance, the right to be detained not arbitrarily, the right to a competent, independent, and impartial judiciary with reasoned decisions based on societal research.

Robson & Davies' (2016) study explicitly states that Indonesia lacks political will, is hostage to poverty, spatial distance and cultural diversity which hinders diversion. Therefore, a solution is needed to overcome the paradoxical problem of implementing the diversion policy for children in conflict with the law. In this regard, this research conducted a forecasting policy study in mapping the paradoxical problem between The Law on the Child Criminal Justice System and its implementation. Researchers also use SWOT analysis to sharpen forecasting analysis to find new diversion policy strategies.

## **2. Theoretical Study**

### *2.1. Diversion*

The committee of The Convention on the Rights of the Child (2007) sees diversion as an action to deal with children who violate criminal law without going through the judicial process. Through point 40 (3b), the Convention on the Rights of the Child requires countries to develop procedures that allow children to be handled without going through courts and tribunals as a last resort (Hamilton et al., 2011). UNICEF (2005) also emphasized that diversion refers to the channelling of children from the formal justice system to alternative procedures and programs.

As an international instrument, the Tokyo Rules (1993) also specifically discuss the diversion clause in The Law on the Child Criminal Justice System. Point 5 (1) emphasizes that institutions related to criminal cases handling must be empowered to release perpetrators if they consider that the case in question does not need to be continued with the aim of protecting society, preventing crime, or encouraging compliance with the law and the rights of victims.

In the same vein, Roberts (2004) considers that the main aim of diversion is to provide an alternative to child detention through a structured community-based solution. Thus, children who commit minor offenses (petty offenders) and status offenses are not exposed to the bad influence of some serious offenders in detention centers.

In Indonesia, diversion clauses are regulated in The Law on the Child Criminal Justice System. Article 7 emphasizes the obligation of law enforcement officials to seek diversion in children's cases at all levels of examination. The main conditions for diversion are the threat of imprisonment for no more than seven years and

not being a repeat criminal offense. In the event that law enforcement cannot carry out diversion, the Community Counselor of the Correctional Center can mediate the effort. This is regulated in Government Regulation no. 65 of 2015 concerning Guidelines for Implementing Diversion and Handling Children Under 2 Years Old. Children can still be held responsible through determining actions obtained from the results of deliberations between both parties involving the community.

## 2.2. The Paradox of Juvenile Criminal Justice

In general, the juvenile criminal justice system in Indonesia is still a paradox between the principles of child protection and the formalization of legal policy. In the law, the diversion policy is limited only for cases of offenses for children under 7 years and not for repeat crimes. Smith et al (2017) define paradox as a condition of simultaneous opposites, which is associated with conditions of contradiction, irony, inconsistency, and phrases with contradictory meanings. The paradox of implementing the diversion policy for children in conflict with the law can be seen in the following table:

Table 2: Identification of the Diversion Paradox in The Law on the Child Criminal Justice System

Article	Clause	Paradox
Article 5 (1)	The Law on the Child Criminal Justice System is obliged to prioritize a restorative justice approach	The meaning of "obliged" means mandatory, but in other clauses it is found to be limitative
Article 6	Purposeful diversion; peace for children and victims; settling cases outside of court; avoid deprivation of liberty; encourage community participation; instill responsibility in children	<ul style="list-style-type: none"> <li>- In peace between the child and the victim, the victim's position is very important to make decisions</li> <li>- Because it is limitative, some children who fall outside the criteria do not receive diversion, so their independence is taken away</li> <li>- The role of law enforcement is more decisive than community participation</li> </ul>
Article 7 (1)	Diversion must be pursued at every level of the judicial process (investigation, prosecution, court)	<ul style="list-style-type: none"> <li>- This clause is limited by the clauses of Article 7 (2), only for cases that are punishable by imprisonment under 7 years and not repeat criminal acts.</li> <li>- Proportional considerations should look at the context/situation, etiology and best interests of the child</li> </ul>
Article 8 (3) huruf (a)	Diversion must pay attention to the interests of victims	The victim's position is a determinant in diversion, as it is also emphasized in Article 9 (2), namely obtaining the victim's consent.
Article 9 (1)	Diversion must be considered, one of which is Community Research at the Correctional Center	<ul style="list-style-type: none"> <li>- The implementation of the Community Research at the Correctional Center on diversion only took 3 days</li> <li>- There are still problems in the context of the quantity and quality of human resources as well as the instrumentation of Correctional Centers in Diversion</li> </ul>
Article 14 (2)	Obligations of community counsellors in guiding, mentoring and supervision	Relating to the capacity/ability of the Correctional Center

Source: Author's Data Processing (2021)

### 2.3. Children in Conflict with The Law

A child is under 18 years old, including children who are still in the womb (Article 1 paragraph (1) of The Law on the Child Criminal Justice System). In the Indonesian criminal justice system, the age limit for children who can be brought to trial is 12 years. This means that children who have not reached the age of 12 are considered unable to take responsibility for their actions. This is in line with the decision of the Monitoring Council for the Convention on the Rights of the Child which asked countries to consider raising the minimum age for criminal capacity to 12 years or more.

The Law on the Child Criminal Justice System stipulates that children in conflict with the law are children who are 12 years old but have not yet reached 18 years of age. Article 20 of The Law on the Child Criminal Justice System explains that if children (under 18 years old) commits a criminal act, then they will be brought to court after being over 18 years old but under 21 years old, then they are brought before the juvenile court. In practice, there are many violations of children's rights in The Indonesian Law on the Child Criminal Justice System. At the investigation stage, children are not accompanied by legal advisors, parents, or family. In many cases, when they were about to be detained, the family did not receive a copy of the letter (Children's Rights Advocacy Institute, 2004). Research by Hutabarat et al. (2012) also highlighted the torture experienced by Children in Conflict with The Law at every stage (LBH, 2020). When arrested, the police often do not show a letter of assignment and there is no official notification to parents regarding their child's arrest.

Research by UNICEF and the Center for Criminology Studies, FISIP UI (Purnianti et al., 2007) also found that detention conditions in Indonesia are generally very unsuitable for children. There are no special rooms for them and they are held with adults. Even the detention room only had one ventilation so it was dark. This research departs from an effort to provide a new perspective on justice policies that are friendly and pro-child.

### 3. Research Method

This research uses a qualitative approach with a case study method (Moleong, 2018; Rahardjo, 2017). Considering that the research topic is very dynamic, the researchers set limits on the unit of analysis for data on student brawl cases in DKI Jakarta that occurred in the 2018-2020. Data was collected using interviews and documentation from various literature to produce descriptive data. In-depth interviews were conducted with five the Community Counselor of the Correctional Center and a senior female police officer in the field of child investigations. This research was carried out for 6 months, starting from July to December 2021 in the DKI Jakarta area. Researchers chose DKI Jakarta as the research locus because there are complex problems in implementing the diversion policy in the student brawl cases that occurred in DKI Jakarta. The following table is brief data from research informants:

Table 3: Research Informant Profile

No.	Informant (Initial)	Position	Institution	Time of Interview
1.	Endang Sri Lestari (ESL)	Kanit PPA (Head of The Services for Women and Children Unit)	Polda Metro Jaya	5 <sup>th</sup> of April, 2022
2.	R. Khifti Yukanta (RKY)	the Community Counselor of the Correctional Center	Bapas Jakarta Pusat (Central Jakarta Correctional Center)	16 <sup>th</sup> of May, 2022
3.	Indra Rahmawati (IR)	the Community Counselor of the Correctional Center	Bapas Jakarta Pusat (Central Jakarta Correctional Center)	10 <sup>th</sup> of May, 2022
4.	Iyan Supenli (IS)	the Community Counselor of the Correctional Center	Bapas Jakarta Utara - Timur (North & East Jakarta Correctional Center)	18 <sup>th</sup> of May, 2022

5.	Dewi Widyawati (DW)	the Community Counselor of the Correctional Center	Bapas Jakarta Barat (West Jakarta Correctional Center)	12 <sup>th</sup> of May, 2022
6.	Yuniarti (Y)	the Community Counselor of the Correctional Center	Bapas Jakarta Selatan (South Jakarta Correctional Center)	13 <sup>th</sup> of May, 2022

Source: Author's Data Processing (2023)

The data collected was analyzed using inductive techniques. To analyze the data, researchers used two analytical tools, namely forecasting analysis and SWOT analysis. Forecasting analysis is a procedure for generating factual information about future social situations on the basis of existing information. The purpose of forecasting is to provide information about future policy changes and their consequences (Dunn, 2003). According to Dunn, there are three main forms of forecasting: (1) projection, (2) prediction, and (3) estimation. Projections are predictions based on extrapolation of past and present trends into the future. Projections make firm statements based on arguments obtained from certain methods and parallel cases, or similarities in cases to strengthen a statement. A projection can be strengthened by arguments from authorities (expert opinion) and causal logic (for example economic theory).

Predictions are forecasts that are based on firm theoretical assumptions. The most important characteristic of a prediction is that it details the generative forces (causes) and consequences (effects) or parallel (analogous) processes or relationships that are believed to underlie a relationship. Predictions can be supplemented by arguments from authorities (e.g. informative assessments) and methods (e.g. econometric models). Forecasts are predictions based on informative judgments or expert judgments about the future situation of society. This assessment can take the form of an intuitive assessment, where it is assumed that there is inner and creative strength from intellectuals, or hidden knowledge from policy actors.

Forecast Analysis is used to estimate three types of future social situations, namely potential futures, plausible futures, and normative futures. Potential futures (often called alternative futures) is a future social situation that may occur, which is different from the social situation that does occur. A plausible future is a future situation based on assumptions about the relationship between the environment and society, believed to exist if policymakers do not intervene to change the course of events. In contrast, the normative future is a potential or plausible future that is consistent with the analyst's concept of value needs and opportunities that exist in the future. The image below shows the relations of forecasting based on past, present and future conditions which are associated with three types of future.

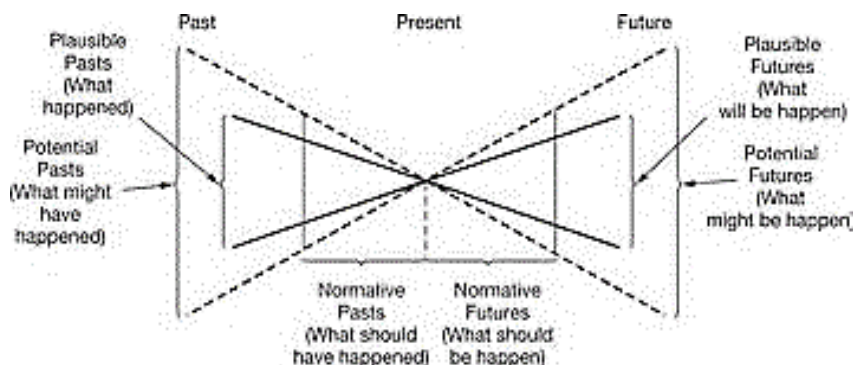


Figure 1: Three types of future social situations: *potential, plausible, and normative*

Based on the explanation and description of the image above, I will identify and map various paradoxical problems related to the implementation of The Law on the Child Criminal Justice System in the implementing of the diversion policy for children in conflict with the law in DKI Jakarta. Identification and mapping were carried out from the time The Law on the Child Criminal Justice System was declared effective (2014-2021) until the



time the research was carried out (2021-2022), and then forecasting diversion policies into the future (2022-2029). Thus, the forecasting policy analysis matrix can be described in the following table:

Table 4: Identification and Forecasting Analysis Mapping of Diversion Policy

	<b>Past (2014-2021)</b>	<b>Present (2021-2022)</b>	<b>Future (2022-2029)</b>
<b>Plausible</b>	What has happened is related to the problem of implementing the diversion policy for children in conflict with the law in DKI Jakarta.		What will happen regarding the implementation of the diversion policy regarding the possible development of student brawl cases involving children in DKI Jakarta.
<b>Potential</b>	What might happen is related to the problem of implementing the diversion policy for children in conflict with the law in DKI Jakarta, if certain intervention policies are not implemented.		What can happen regarding the problem of implementing the diversion policy in the logical development of student brawl cases involving children in DKI Jakarta.
<b>Normative</b>	What must happen, in the form of a combination of plausible and potential past conditions and situations.	What should happen, a combination of plausible and potential futures with certain targets.	

Source: Author's Data Processing (2023)

To sharpen the forecasting analysis, researchers used the SWOT analysis tool. The SWOT method includes four matrices, namely strength, weakness, opportunity, threat. Of the four matrices, there are two main dimensions of SWOT analysis, namely internal dimensions and external dimensions. The internal dimension includes a matrix of strengths and weaknesses while opportunities and threats are external factors (Gürel and Tat, 2017). Chermack and Kasshanna (2007) call SWOT analysis the term two-by-two matrix (Gürel and Tat, 2017: 1003).

Table 5: Analysis Scheme of Two-by-Two Matrix:

	<b>Strengths</b>	<b>Weakness</b>
<b>Opportunities</b>	<i>Achieve opportunities that greatly match the organization's strengths.</i>	<i>Overcome weakness to attain opportunities</i>
<b>Threats</b>	<i>Use strengths to reduce the organization's vulnerability to threats</i>	<i>Prevent weakness to avoid making the organization more susceptible to threats</i>

Source: Chermack and Kasshanna (2007:387)

## 4. Findings and Discussion

### 4.1. Implementation of the Diversion Policy for Children in Conflict with the Law

Cases of student brawls in DKI Jakarta continue to increase every year. This reality shows that Jakarta is not a friendly place for children. Modernization and the growth of urban culture often trigger conflicts between groups of children in Jakarta. It was acknowledged by research informants that Jakarta is prone to violence, especially cases of student brawls. The informants admitted that the harsh demands of life made people fight for space and even kill each other. "[...] There are many thugs in Jakarta." (Interview with DW, Informant, May 12 2022).

There are various motives for student brawls in DKI Jakarta. One of them is revenge. This act of revenge is hereditary and creates a chain of historical conflict. This mutual grudge is what makes children fight over territory to "prey" on others, as said by IS, one of the informants (18 May 2022).

Apart from the motive of revenge, the student brawl was triggered by the presence of a gang. To show the existence of the group, the gang was involved in a brawl. Informants revealed that it often happens that student gang invite brawls through social media. Used to be, student brawled directly right on the streets, now they bully

each other on social media and then invite brawls on the streets. This shift in modus operandi is very worrying because technological developments make children easily provoked.

The diversion policy is indeed a rational choice in developing the children who are involved in cases of violence. Informants mentioned several factors that allowed diversion to occur at an initial level. First, there is a recommendation from the Community Counselor of the Correctional Center. This institution carries out community research (in Bahasa Indonesia: litmas) regarding children in conflict with the law which covers both internal and external aspects. If the perpetrator repeatedly commits criminal acts and the threat is more than seven years, it is difficult for investigators to carry out diversion. However, the Community Counselor of the Correctional Center, who is the off taker of the Law on the Child Criminal Justice System, will continue to mediate so that diversion can be carried out at every phase of the trial. According to two informants, RKY (16 May 2022) and IR (10 May 2022), even though there is mediation and compensation agreements, for example, the court process is still ongoing. During the judicial process, the results of the mediation are submitted, that is to return the child to the parents as agreed.

Another consideration is the willingness of the victim to reconcile with the perpetrator. If the victim and his family accept the perpetrator's actions and reach an agreement, diversion can be carried out so that it does not proceed to the prosecution stage. However, if the victim or perpetrator cannot reach an agreement, including material compensation, then at the court level, the Community Counselor of the Correctional Center will ask the judge to hand down the lightest possible verdict. "This is a matter for the judge to consider." (Interview with Y, Informant, 13 May 2022).

Another thing that forms the basis for the decision of diversion for children in conflict with the law is the psychological condition of the perpetrator. According to informant, RKY (16 May 2022), indications of psychological instability or mental disorders of the perpetrator were taken into consideration by investigators and the Community Counselor of the Correctional Center when carrying out diversion. These internal indications of the perpetrator are usually found when carrying out community research.

So far, diversion efforts have not been without obstacles. During the mediation process, the police often encounter difficulties when dealing with victims who are reluctant to resolve problems through diversion, including regarding compensation that cannot be met by the perpetrator, so the victim insists on asking for the case to continue.

#### *4.2. The Paradox of the Diversion Policy in Indonesia*

The high rate of imprisonment in student brawl cases in DKI Jakarta proves that there is still a paradox between the ideals of restorative justice and its implementation in the field. Investigators do not fully understand the mandate of The Law on the Child Criminal Justice System which encourages the justice system to be the last resort in resolving juvenile crimes. This cannot be separated from the very minimal competence and human resources in the field of children specialist. It was stated by the ESL, one of the informants, that of the existing investigators, not all of them had child investigator certificates. "In Polda Metro Jaya, there is only one child investigator certification, only me" (Interview with ESL, 5 April 2022).

At the investigative level, there is a tendency to use the Emergency Law to ensnare children who use sharp weapons in brawls. Especially in cases that cause death, the determination of serious articles is non-negotiable. ESL admitted that efforts to restore justice in accordance with The Law on the Child Criminal Justice System are almost impossible to carry out for serious crimes. In these cases, it is almost impossible for investigators to determine a diversion decision when the sentence for the child is more than seven years.

Investigators are also paying attention to the fatality rate of student brawl cases due to the increasingly open use of sharp weapons in public spaces. The criminal consequences of student brawl cases are often not singular. The perpetrator can be dragged away and subject to several criminal threats. Another consideration is the interests of the victim as regulated in Article 8 letter (a) of The Law on the Child Criminal Justice System. The victim's

position is a determinant in diversion. If the victim is resistant then diversion is difficult to achieve (Wachtel, 2013).

However, in several cases, there were findings that investigators had made detentions since the perpetrator was arrested. Even though the average age of brawlers is in the range of 12-18 years. This is certainly problematic because within the framework of The Law on the Child Criminal Justice System efforts are made to ensure that children are not detained, especially for long periods of time, for children aged between 12-14 years. Limited detention space in Indonesia is certainly worrying for the model of coaching children who are psychologically vulnerable to pressure. Not to mention that the conditions in detention rooms are unclean, crowded, and they are in a room with adults, which has the potential to create new opportunities for crime. This research informant said that sometimes in detention, children are exposed to the influence of drugs by adult inmates, which worsens the child's mental state.

"So, the ceremony—or welcoming reception—is [that they are given] methamphetamine [by the adult prisoners], this is fatal. If they don't receive it, they will be beaten." (Interview with DW, 12<sup>th</sup> of May, 2022)

This research informant admitted that there were cases where investigators detained them in police detention centers due to the absence of detention places such as Social Welfare Organizing Institutions (LPKS), Child Development Institutions (LPKA), and Temporary Child Care Institutions (LPAS). According to the informant, the absence of LPAS or LPKS in every region in DKI Jakarta is contradictory to the existence of correctional centres in these five regions. The reason is that the existence of correctional centers functions to guide and develop children in conflict with the law in accordance with The Law on the Child Criminal Justice System.

The limitations of child development institutions mean that investigators have to entrust children to social institutions. Child care is not without obstacles. There are cases where social institutions refuse because there is no room. In DKI Jakarta there is only one social institution which is usually used as a child care centre, namely the Handayani orphanage in Bambu Apus, East Jakarta. Government support in providing care and coaching for Children in Conflict with The Law places is not yet significant even though The Law on the Child Criminal Justice System has been applied since 2012 and cases of student brawls in DKI Jakarta are rife every year. This confirmation was conveyed by one of the informants, Y (13<sup>th</sup> of May, 2022), while saying, "Even though it has been 20 years since 2012."

The informant acknowledged that there is a public perception that criminal acts that result in loss of life must be met with appropriate punishment. The victim's parents or family even demanded that the perpetrator be punished as severely as possible. In cases involving institutions, there is also intervention from the leadership of the victim's institution to ensnare the perpetrator through heavy criminal penalties. Community resistance is growing because systemic distrust of the justice system or law enforcement is still high. The community, said IS (18<sup>th</sup> of May, 2022), wants the perpetrators to be deterred and therefore must be sentenced to prison.

### *4.3. Forecast Analysis: Seven-Year Prediction*

#### *4.3.1. Projection*

The escalation of student brawl cases in DKI Jakarta continues to grow. This is of course driven by the fluidity of digital technology which allows children to instill hatred and revenge through social media. The acceleration of social media use among children is exacerbated by the increasingly bad quality of brawls. Whereas previously children generally used physical force to attack each other on the streets, now many children dare to take up sharp weapons. It cannot be denied that the behavior of children today in criminal acts has become the same as that of adults (Hariyanto & Swardhana, 2021). DW, one of the informants, also admitted that in the future the quality of brawls will get worse and tend to increase because they are facilitated through social media.

"In the future, hopefully in Jakarta there will be no more brawls via Instagram, via WhatsApp, that is said if they have the courage to bleed, they are great children." (Interview with DW, 12<sup>th</sup> of May, 2022)

Seeing this trend, informants projected that the implementation of child diversion would not show significant improvements in the future. Both in DKI Jakarta, and especially in the regions, the tendency to criminalize Children in Conflict with The Law is still quite high. This is in line with the increasingly high case fatality rate due to the use of sharp weapons. This phenomenon certainly makes the implementation of diversion hampered from the investigation level. Informants emphasized that improvements to the diversion implementation model could occur if the government had strong political and legal will, such as issuing implementing regulations for The Law on the Child Criminal Justice System which are still not available. When, said IS (18<sup>th</sup> of May, 2022), the implementing regulations of the law has already been made, perhaps there will be changes.

In line with these changes, informants are still optimistic that the implementation of the diversion policy in DKI Jakarta for the next seven years will get better. This is because more and more law enforcers and related work partners have specifications in the field of handling children. More and more training is being conducted for law enforcers and related institutions so that understanding of The Law on the Child Criminal Justice System becomes better. Informants believe that legal modernization in Indonesia will help accelerate the pace of change in the juvenile criminal justice model, as experienced by South Korea 10 years ago. "So, we're 20 years behind." [Interview with ESL, 5<sup>th</sup> of April, 2022]

#### 4.3.2. Prediction

It is predicted that student brawl cases in DKI Jakarta will continue to be massive. The quality of brawls is getting worse, triggered by social media and the use of sharp weapons. One of the things that triggers criminal acts of brawling is the existence of gangs. Often these gangs go around looking for their opponents from one place to another. They also often carry out motorbike convoys to find and attack opponents.

Sociologically, gangs are a subculture that refers to all ways of life that make the world understandable to its members. Subcultures are often seen as spaces for deviant cultures. In the school environment, gang formation is very likely to occur due to closeness and interaction.

According to IS, the student brawl phenomenon in DKI Jakarta is deviant behavior driven by history, traditions, and labels that have long been attached to a school or group of gangs. This was then indoctrinated from senior students to juniors from generation to generation. In this tradition, hostile values are reproduced from seniors to juniors (Awalokita, 2017). Therefore, they will celebrate violence communally without considering public order. Several studies have found that the use of social media has increased the potential for violence. A site that discusses psychological studies, All Psych, contains a study on the psychological effects of media violence on children entitled The Psychological Effects of Violent Media on Children (KPAI, 2018). Children who are exposed to violence in the media are more likely to experience increased feelings of hostility, decreased emotional responses to depictions of violence which leads to violent behavior through the process of imitation. Research evidence has accumulated over the past half century that exposure to violence in television, movies, and more recently in video games increases the risk of violent behaviour of viewers.

Therefore, it is important to activate community participation in controlling children's behavior. Marlina (2012) said that diversion in the US is known as an environmental program designed with the aim of reducing child delinquency by providing mental counselling activities, health measures, work opportunities, and recreation. The involvement of community resources can give naughty children the opportunity to become good people.

#### 4.3.3. Estimation

Amid the escalation of student brawl cases that occurred in DKI Jakarta, the implementation of diversion in the future seems increasingly challenged. Strong efforts are needed from all parties to truly find a solution to student brawl cases. The courage of children to use sharp weapons driven by the fluidity of social media is one of the toughest challenges facing law enforcement in the future. In summary, it can be said that the escalation in the use

of sharp weapons and social media is commensurate with the high number of prison sentences issued by the courts.

Not only at the crime level, the implementation of diversion in the future is also hampered by inadequate understanding of law enforcement officers and related institutions in implementing diversion policies. Informants stated that law enforcement officers still had misunderstandings regarding diversion. Even society gave negative response towards diversion.

In the future, ESL, one of the informants, recommend that investigators and law enforcement officers in general as well as related institutions must be able to differentiate the role of children in student brawl cases because not all children have the same role. In this case, law enforcement officers must have special competence and expertise in handling children's cases. In the future, the issue of strengthening competence through certification of law enforcement officers specifically for children and related institutions in juvenile justice needs to receive serious attention.

DW, one of the informants, also recommended that the government have a high commitment to the fulfilment of diversion facilities and infrastructure. As mandated by The Law on the Child Criminal Justice System, every region should have LPKS, LPAS or LPKA. The lack of diversion infrastructure often results in children being together in the same cell with adult prisoners, thus they are contaminated with bad behavior. For example, the habit of consuming narcotics has so far been found in many prisons.

#### 4.4. Forecasting Analysis Matrix

Based on the discussion above, the forecasting analysis matrix as described above can be explained as follows:

Table 6: Forecasting Analysis Based on Future Social Situations

<b>Description</b>	<b>Past (2014-2020)</b>	<b>Present (2021-2022)</b>	<b>Future (2023-2029)</b>
<i>Plausible</i>	<ol style="list-style-type: none"> <li>1. Detention of children under 14 years old</li> <li>2. Diversion without going through a court decision</li> <li>3. The police are less competent in handling children</li> <li>4. Lack of child investigators</li> <li>5. Lack of child-friendly examination and detention rooms</li> <li>6. The victim's reluctance to forgive the perpetrator</li> <li>7. High case fatality</li> <li>8. Weak coordination between investigators and the Community Counselor of the Correctional Center</li> <li>9. Use of Emergency Law</li> </ol>		<ol style="list-style-type: none"> <li>1. Use of Emergency Law</li> <li>2. Fatalities remain high due to the use of sharp weapons</li> <li>3. Fulfilling child-friendly infrastructure needs</li> <li>4. Availability of child investigators along with training and certification</li> <li>5. Changes in public perception of the "eye for an eye" principle</li> <li>6. Coordination between stakeholders is getting better</li> <li>7. Accuracy in determining articles based on the child's role</li> <li>8. Integration of child case databases to prevent recidivism</li> </ol>
<i>Potential</i>	<ol style="list-style-type: none"> <li>1. Placement of Children in Conflict with The Law in detention centers that are not child friendly</li> <li>2. Lack of children's rehabilitation places</li> <li>3. Miscommunication between child diversion stakeholders</li> <li>4. Policy makers are not committed to child diversion</li> </ol>		<ol style="list-style-type: none"> <li>1. Changes in police organizational culture to become more humane, empathetic and communicative</li> <li>2. Law enforcement officers competency is getting better</li> <li>3. Availability of investigators, prosecutors and juvenile judges</li> <li>4. Supporting infrastructure is starting to become plentiful and evenly distributed</li> </ol>

<i>Normative</i>	<ol style="list-style-type: none"> <li>1. Increasing investigator competency</li> <li>2. Availability of child investigators</li> <li>3. Child-friendly examination and detention rooms</li> <li>4. Intensify security and social security and cyber patrols to prevent potential cases</li> <li>5. Make immediate arrests when you see children carrying sharp weapons and then convoy using motorbikes</li> <li>6. Deployment of police in conflict-prone locations so that they respond immediately</li> <li>7. Determination of articles based on role</li> <li>8. Legal assistance to ABH since the investigation</li> <li>9. May not use the Emergency Law</li> <li>10. Investigators must follow diversion provisions in the justice system</li> <li>11. Diversion is determined through the court so that it has binding legal force</li> </ol>	<ol style="list-style-type: none"> <li>1. Investigators should pay attention to the recommendations of the Community Counselor of the Correctional Center</li> <li>2. Use of technology to monitor and analyze maps of potential conflict locations to prevent student brawls</li> <li>3. More integrative coordination between law enforcement agencies ranging from investigators to judges</li> <li>4. The use of the Emergency Law should not apply to children</li> <li>5. Acceleration of the issuance of derivative regulations of The Law on the Child Criminal Justice System which have not yet been realized</li> <li>6. Strengthening character education to form a crime-free generation</li> <li>7. The active role of the police and stakeholders to promote universal human values in schools</li> <li>8. Ensure that supporting facilities and advocacy support function well to guarantee the rights of Children in Conflict with The Law</li> </ol>
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*Source: Author's Data Processing (2023)*

#### 4.5. SWOT Analysis Matrix

##### 4.5.1. Strength

There are at least three main forces that support the implementation of diversion in Children in Conflict with The Law cases, namely (1) police human resources; (2) accuracy in the use of criminal offenses in the case; and (3) the existence of Correctional Centers. First, student brawl mapping resources. The police have the technology to map potential points of student brawl cases in DKI Jakarta. From the results of this identification, the police then carried out social control efforts to suppress and minimize the potential for criminal acts to occur.

Second, the careful use of criminal offenses. When student brawls are no longer seen as a form of juvenile delinquency, the police must be careful and thorough in applying criminal offenses to every child involved in student brawl cases. This accuracy requires a high level of case analysis based on the role of each actor. Usually, case analysis is assisted by the Community Counsellor of the Correctional Center who is assigned in investigating the perpetrator's data. The results of Community Research at the Correctional Center are used by the police to determine whether the perpetrator is worthy of diversion or not according to their actions.

Third, the existence of the Community Counsellor of the Correctional Center. The important role of the Community Counsellor of the Correctional Center is to carry out community research which can be used as a consideration for law enforcers in making decisions. It is true that not all cases are successfully diverted, however, accurate, and correct community research results can at least be a basis for consideration. In the future, the role and competence of the Community Counsellor of the Correctional Center needs to continue to be strengthened so that this institution can carry out its duties and functions to help control and supervise the implementation of diversion.

##### 4.5.2. Weakness

There are at least five weaknesses in implementing the diversion policy for children in conflict with the law in DKI Jakarta. First, detention of children under 14 years of age. According to The Law on the Child Criminal Justice System, children under 14 years who are under the threat of a seven-year sentence or less are prohibited

from being detained, let alone in a detention center. In the future, it is necessary to tighten the implementation of child detention policies so as not to cause things that worsen the mental and personality development and growth of children.

Second, child-friendly infrastructure. The lack of support facilities for children in conflict with the law often hinders progressive steps in implementing diversion. The facilities that children need can be in the form of a special examination room, a detention room, or a rehabilitation center. Not only are children often mixed with adult prisoners from various types of crimes, the design of children's examination rooms is also made to look like adults so that children are often intimidated. The existence of these facilities helps children's mental recovery to be more easily integrated into society.

"In South Korea, judges, prosecutors, psychologists, investigators, medical personnel are all under one roof. The victims came, only being interviewed once, and all of the law enforcement officers have the data." (Interview with ESL, 5<sup>th</sup> of April, 2022)

Third, the competence of the police. It must be acknowledged that the police's understanding of diversion clauses are not yet fully adequate. Investigators issued a discretion to terminate the investigation without considering recommendations of the Community Counsellor of the Correctional Centre. They even did not include the Community Counsellor of the Correctional Centre in the preparation of the police investigation report. Investigators also tend to issue diversions without written notes that have binding legal force through the courts. Apart from that, investigators also apply the same articles to all perpetrators who should be differentiated according to their roles. The availability of special competent human resources for children will certainly help children understand the legal process, know the risks of their actions and be aware of not repeating criminal acts. In the future, it is necessary to encourage the diversion process to be carried out first by the police. Studies show police-led diversion reduces the delinquent behavior of low-risk youth compared with justice channels. The police are expected to have the same knowledge and perspective regarding restorative justice so that from investigation to trial, the rights of the perpetrator remain guaranteed.

Fourth, advocacy support. Many Children in Conflict with The Law do not have legal representation since their cases were handled by the police. This fact has the potential to suppress children's rights. According to The Law on the Child Criminal Justice System Article 23, at every level of examination, children must have legal assistance, provided by the state. In this research, it was found that legal counsel was only presented when the child was about to enter the prosecution or trial stage. In the future, the police must ensure the availability of legal assistance to achieve humanistic and empathetic policing. However, it must also be ensured that the legal assistant must have sufficient competence and professionalism in order to truly understand the judicial process in order to further seek ways of diversion.

Fifth, there is an element of planning. In general, student brawl cases in DKI Jakarta started with planning conveyed via social media platforms. They were provoked by their seniors to determine the time and place as well as the tools that would be used to attack their opponents. The existence of this planning element makes the diversion process even more difficult to achieve. It is not surprising that the police took firm steps by imprisoning the perpetrators.

#### 4.5.3. Opportunity

There are two opportunities that can be encouraged to minimize the paradox of implementing diversion. First, strengthening the derivative regulations of The Law on the Child Criminal Justice System, such as implementing regulations regarding actions that can be imposed on children--which are not yet available. This needs to be worked on immediately so that law enforcement officers have the same paradigm in making assessments regarding the articles that apply to Children in Conflict with The Law.

Second, community-based policing. The basic paradigm of this policing is inclusive community involvement in law enforcement. Community participation helps police performance in coordinating, monitoring, and reporting criminal acts. This policing model is in line with democratic policing which pays attention to community

problems and further collaborates with the community to gain legitimacy (Karnavian & Sulisty, 2017). Marlina's (2012) study in the US shows that the involvement of community resources in implementing diversion is able to provide law violators with the opportunity to become good people. In a society that is steeped in customs, a restorative justice approach is the right choice for reconciling a criminal act. In the future, community involvement must be a source of education, promotion, and outreach to prevent brawl cases.

“So whether it is effective or not actually comes back to the preventive function we carry out and how much contact we have with the community. [...]” (Interview with IS, 18<sup>th</sup> of May, 2022)

#### 4.5.4. Threat

There are several important issues that will threaten the implementation of diversion policies in the future, including: the development of digital technology, the use of sharp weapons, gangster culture, the "eye for an eye" paradigm, and the fatality rate of brawls.

First, the development of digital technology. It cannot be denied that digital technology has been used as a tool to commit criminal acts. In the future, the police's digital resources in the form of cyber patrols should be directed at monitoring and preventing potential student brawls.

Second, the use of sharp weapons. This is of course ironic because the offense is no longer a student brawl but a crime. Consequently, the police will use the abuse or murder article rather than the normal article.

Third, gangster culture. The lives of children in urban areas are accustomed to gangster communities. In the future, social control policies can be implemented by diverting low-risk adolescents from gangster groups to reduce peer exposure. The police also need to take firm action against perpetrators of brawls through criminal offenses which could make the perpetrators' sentences more severe.

Fourth, case fatality. The fatality rate for student brawl cases is quite high. Therefore, the perpetrators of the student brawl were charged with multiple articles, including the most serious one being the application of the Emergency Law. However, the Emergency Law no longer needs to be used because it is no longer relevant to modern legal developments. Informants suggested that it was necessary to amend the Emergency Law to make it more relevant to the legal system.

Lastly, the “an eye for an eye” paradigm. There is a perception in society that punishment for criminals must be commensurate with their actions. In serious criminal cases, victims generally tend to be aggressive in demanding their rights, including asking that the perpetrator be sentenced to prison. In many studies, a gap has been found between perpetrators, victims, and police regarding the value of justice in criminal cases.

Based on the SWOT matrix analysis above, a diversion policy strategy can be created using the following two-by-two matrix:

Table 7. Two-by-Two Matrix Analysis Framework

	<b>Strength</b>	<b>Weakness</b>
<b>Opportunity</b>	<ol style="list-style-type: none"> <li>1. Strategy to expand community involvement in mapping the student brawl cases</li> <li>2. Community involvement strategies to assist prevention according to case mapping</li> <li>3. Strategy to strengthen the implementation of regulations derived from The Law on the Child Criminal Justice System to strengthen the existence of correctional centers and the thoroughness of the use of juvenile criminal offenses</li> </ol>	<ol style="list-style-type: none"> <li>1. Child-friendly infrastructure development strategy</li> <li>2. Strategy for developing police human resource competencies to gain community legitimacy in handling juvenile crime</li> <li>3. Attention to advocacy support to ensure the facilitation of children's rights</li> <li>4. Community policing strategies to prevent student brawls</li> </ol>



<b>Threat</b>	<ol style="list-style-type: none"> <li>1. Strategy for using digital technology to anticipate irregularities in the use of social media for brawls</li> <li>2. Human resource mobilization strategy to prevent the use of sharp weapons with the risk of death</li> <li>3. <i>Kamtibas (Keamanan dan Ketertiban Masyarakat</i> or Public Security and Order) patrol strategy to polarize gang power</li> <li>4. Correctional center education and outreach strategy to the community about justice</li> </ol>	<ol style="list-style-type: none"> <li>1. The strategy prevents the element of planning in order to minimize the fatality rate and the use of sharp weapons during brawls</li> <li>2. Strategy to strengthen the competency of police human resources to be able to anticipate the negative impacts of developments in digital technology</li> <li>3. Strategy for engaging legal counsel since the investigation</li> <li>4. Strategies for creating child-friendly infrastructure for mental recovery</li> </ol>
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Source: Author's Data Processing (2023)

## 5. Conclusion

There are three important conclusions from this research. First, the implementation of diversion in student brawl cases involving children in DKI Jakarta can be carried out at the investigation level. This is because the police apply criminal offenses based on the perpetrator's actions and can consider the recommendations of the Community Counsellor of the Correctional Center. However, investigators often do not proceed the case to the court to determine child diversion. In general, barriers to diversion are not caused by primordial factors such as *SARA (Suku, Agama, Ras, dan Antargolongan* or Ethnicity, Religion, Race, and Intercommunity).

Second, there is a paradox of implementing the diversion policy for children in conflict with the law in DKI Jakarta. Starting from the high use of the Emergency Law in student brawl cases to the low competence of the law enforcement officers in implementing The Law on the Child Criminal Justice System. The law enforcement officers also sometimes terminate investigations without involving and considering recommendations of the Community Counsellor of the Correctional Center and detains children in detention centers that are not child-friendly.

Third, forecasting analysis on diversion policy shows the urgency of transforming legal policy in the future. There must be legal political will and commitment to truly map student brawl cases so that they can minimize escalation and case fatality rates. Based on the SWOT analysis, a new policy strategy is needed to increase the competency of police and human resources of the correctional centre, the availability of child-friendly infrastructure, and advocacy to support the rights of Children in Conflict with The Law as well as the extensification of community-based policing.

**Author Contributions:** All authors contributed to this reserch

**Funding:** This research received no funding.

**Conflict of Interest:** The authors declare no conflict of interest.

**Informed Consent Statement/Ethics approval:** Not applicable.

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