

Reconstructing the Limits of Diversion for Juvenile Offenders in Attempted Rape Cases Involving Child Victims: A Victim Protection Perspective

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Abstract

Diversion is a case-resolution mechanism in the juvenile criminal justice system that is oriented toward rehabilitation and the best interests of children. However, its application to the case of a child perpetrator of the crime of attempted rape with a child victim raises legal problems because there is no clear normative boundary to balance the interests of the perpetrator's rehabilitation with the protection of the child victim. This study aims to analyze the limits of diversion's application in the case and to formulate a normative model as a basis for assessing the feasibility of diversion oriented towards victim protection. This research is normative legal research using a statutory, conceptual, and limited comparative approach. Legal materials are analyzed prescriptively through systematic and argumentative interpretation of relevant laws and regulations, doctrines, and international legal instruments. The results of the study show that the diversion regulation in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System has not provided operational limits regarding the feasibility of diversion in the case of children who commit the crime of attempted rape with a child victim. This condition has the potential to cause the application of non-uniform diversion and reduce the protection of the victim's child. This study offers the Diversion Propriety Test as a normative model based on five indicators: victim safety; prevention of victimization; victim consent free from pressure; accountability and rehabilitation of perpetrators; and the effectiveness of supervision in the implementation of diversion agreements. The model is expected to be a guideline for law enforcement officials in assessing the feasibility of diversion in a more objective, accountable, and oriented manner to the protection of the victim's child, without neglecting the purpose of rehabilitating the perpetrator's child.

Keywords: *Diversion, Child Justice System, Attempted Rape, Re-Victimization, Child Protection Victims.*

Abstrak

Diversi merupakan mekanisme penyelesaian perkara dalam Sistem Peradilan Pidana Anak yang berorientasi pada rehabilitasi dan kepentingan terbaik bagi

anak. Namun, penerapannya terhadap perkara anak pelaku tindak pidana percobaan perkosaan dengan korban anak menimbulkan persoalan hukum karena belum terdapat batas normatif yang jelas untuk menyeimbangkan kepentingan rehabilitasi pelaku dengan perlindungan anak korban. Penelitian ini bertujuan menganalisis batas penerapan diversi dalam perkara tersebut serta merumuskan model normatif sebagai dasar penilaian kelayakan diversi yang berorientasi pada perlindungan korban. Penelitian ini merupakan penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan perbandingan terbatas. Bahan hukum dianalisis secara preskriptif melalui penafsiran sistematis dan argumentatif terhadap peraturan perundang-undangan, doktrin, serta instrumen hukum internasional yang relevan. Hasil penelitian menunjukkan bahwa pengaturan diversi dalam Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak belum memberikan batas operasional mengenai kelayakan diversi dalam perkara anak pelaku tindak pidana percobaan perkosaan dengan korban anak. Kondisi tersebut berpotensi menimbulkan penerapan diversi yang tidak seragam serta mengurangi perlindungan terhadap anak korban. Penelitian ini menawarkan Uji Keparatan Diversi sebagai model normatif yang didasarkan pada lima indikator, yaitu keselamatan korban, pencegahan reviktimisasi, persetujuan korban yang bebas dari tekanan, akuntabilitas dan rehabilitasi pelaku, serta efektivitas pengawasan pelaksanaan kesepakatan diversi. Model tersebut diharapkan menjadi pedoman bagi aparat penegak hukum dalam menilai kelayakan diversi secara lebih objektif, akuntabel, dan berorientasi pada perlindungan anak korban tanpa mengabaikan tujuan rehabilitasi anak pelaku.

Kata kunci: *Diversi; Sistem Peradilan Pidana Anak; Percobaan Perkosaan; Reviktimisasi; Perlindungan Anak Korban.*

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Introduction

The protection of children in conflict with the law is an issue that continues to evolve in international law. The Convention on the Rights of the Child (CRC) recognizes every child as a holder of rights who is entitled to protection, humane treatment, and a

guarantee that the best interests of the child will be upheld in all legal proceedings.¹ This principle is reaffirmed in General Comment No. 24 (2019), which emphasizes that the juvenile justice system must prioritize rehabilitation, social reintegration, and respect for the child's dignity. Within this framework, diversion is regarded as one of the mechanisms for resolving cases that can spare children from the negative effects of the formal criminal justice process. Nevertheless, the application of diversion is not without limits. Any use of this mechanism must continue to guarantee the protection of the rights of the children involved, whether as offenders or victims.²

This development has sparked debates within the field of restorative justice, particularly in cases of sexual violence involving children. Zehr views restorative justice as an approach focused on redressing harm, meeting victims' needs, and holding perpetrators accountable. Conversely, Daly cautions that restorative mechanisms are not always appropriate for every case of sexual violence because they have the potential to reinforce power imbalances between perpetrators and victims if not accompanied by adequate protection.³ In line with this, Keenan and Zinsstag emphasize that restorative justice can only be applied if the safety of the victim, voluntary participation, and prevention of revictimisation are truly the primary prerequisites for its implementation.⁴ This debate shows that diversion is not a mechanism that can be applied automatically; rather, it must consider the characteristics of the crime, the level of risk, and the need to protect the victims.

In Indonesia, cases of sexual violence or rape against children remain one of the most serious issues in the child protection system. Data from the Online Information System for the Protection of Women and Children (SIMFONI PPA) show that throughout 2025, sexual violence remained the most prevalent form of violence experienced by children, with thousands of reports coming from various regions across Indonesia.⁵ This

¹ United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on Children's Rights in the Child Justice System*, CRC/C/GC/24 (Geneva: United Nations, 2019), paras. 11–18.

² UNICEF, *Access to Justice for Child Victims and Witnesses*, Technical Brief No. 7 (New York: UNICEF, 2025), 4–12.

³ Kathleen Daly, "What Is Restorative Justice? Fresh Answers to a Vexed Question," *Victims & Offenders* 11, no. 1 (2016): 9–29. <https://doi.org/10.1080/15564886.2015.1107797>

⁴ Marie Keenan dan Estelle Zinsstag, *Sexual Violence and Restorative Justice: Addressing the Justice Gap* (Oxford: Oxford University Press, 2022).

⁵ Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia, *Press Release: Penguatan Perlindungan Perempuan dan Anak*, 18 Juni 2025, diakses 2 Juli 2026, <https://ppid.kemenpppa.go.id/informasi/press/64>.

situation is consistent with the findings of the Indonesian Child Protection Commission (KPAI) and the Witness and Victim Protection Agency (LPSK), which show that child victims of sexual violence not only suffer physical pain but also face prolonged psychological trauma, social stigma, developmental disorders, and the risk of revictimization during the law enforcement process.⁶ Various studies have also shown that child victims of sexual violence are at risk of experiencing prolonged psychological trauma, developmental disorders, social stigma, and even revictimization if the law enforcement process does not fully accommodate the perspective of victim protection.⁷ The high incidence of sexual violence against children indicates that legal protection should no longer be understood merely as the imposition of sanctions on perpetrators. It must also ensure the safety, recovery, and overall well-being of victims.

The issue becomes even more complex when a child commits a criminal act against another child, particularly in the form of attempted rape.⁸ Unlike a completed criminal offense, attempted rape is an act that has not yet achieved the result intended by the perpetrator; therefore, the assessment focuses on whether the elements of an attempt, as defined in criminal law, have been met.⁹ Under Indonesian criminal law doctrine and statutory provisions, an attempt remains punishable if the perpetrator's intent is evident through the commencement of the act and the act is not completed not because of the perpetrator's own will, but due to factors beyond the perpetrator's control, such as resistance from the victim or intervention by a third party.¹⁰ In the context of child protection, these circumstances do not eliminate the threats or suffering experienced by the victim. Even if sexual intercourse did not actually occur, the victim may still experience a violation of their sense of safety and personal integrity, as well as

⁶ Komisi Perlindungan Anak Indonesia, *Laporan Tahunan KPAI 2025: Jalan Terjal Perlindungan Anak, Ancaman Serius Generasi Emas Indonesia* (Jakarta: KPAI, 2025).

⁷ Mahrus Ali, Andi Mulyono, Wawan Sanjaya, and Ari Wibowo, "Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution," *Cogent Social Sciences* 8, no. 1 (2022): 8–12, <https://doi.org/10.1080/23311886.2022.2069910>.

⁸ Melisa Halimatus Sa'diyah, "Penegakan Hukum terhadap Anak sebagai Pelaku Tindak Pidana Percobaan Perkosaan," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 2, no. 2 (2021): 78–91, <https://doi.org/10.18196/ijclc.v2i2.12318>

⁹ Fiba Demada, "Perbandingan Pengaturan Percobaan (Poging) Tindak Pidana Antara KUHP Lama dan KUHP Baru," *Referendum: Jurnal Hukum Perdata dan Pidana* 2, no. 1 (2025): 75–85, <https://doi.org/10.62383/referendum.v2i1.520>

¹⁰ Tirsa Aprilya Chiery, Altje Agustin Musa, dan Jusuf O. Sumampow, "Tinjauan Yuridis terhadap Tindak Pidana Percobaan Perkosaan (Studi Putusan Pengadilan Negeri Manado Nomor: 147/Pid.B/2023/PN Mnd.)," *Lex Crimen* 14, no. 2 (2025), <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/62787>

psychological effects that require comprehensive protection and recovery.¹¹ Therefore, even if sexual intercourse did not actually take place, such an act still poses a threat to physical integrity, a sense of security, and protected legal interests; consequently, its severity cannot be assessed solely on the basis that the ultimate consequence did not materialize, but must also take into account the perpetrator's intent and the actual danger that has been caused.¹²

Studies on diversion in the juvenile criminal justice system generally view diversion as a mechanism for resolving juvenile cases, focusing separately on its effectiveness, the implementation of restorative justice principles, legal protection for victims, and criminal accountability. Cahya Wulandari's research explains that the success of diversion is greatly influenced by the consistent application of the principles of restorative justice at every stage of the juvenile justice process.¹³ In addition, Batubara et al. 's study further examines legal protections for victims of sexual violence in the implementation of diversion through a restorative justice approach.¹⁴ From an international perspective, Keenan and Zinsstag¹⁵ examining the conditions for applying restorative justice in cases of sexual violence, while Daly emphasizes the importance of preventing power imbalances in restorative resolution mechanisms.¹⁶ Although they provide a strong conceptual foundation, these studies have not yet formulated a normative model that can be specifically used to assess the appropriateness of applying diversion in cases involving minors who have committed the crime of attempted rape of a child.

This study aims to analyze the normative limits of applying diversion in cases involving juvenile offenders accused of attempted rape against child victims and to formulate a victim-oriented normative framework for assessing the appropriateness of diversion in such cases. Drawing upon the principles of child protection, restorative

¹¹ Eko Nurisman, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 170–196, <https://doi.org/10.14710/jphi.v4i2.170-196>

¹² Demada, "Perbandingan Pengaturan Percobaan (Poging) Tindak Pidana Antara KUHP Lama dan KUHP Baru," 79.

¹³ Cahya Wulandari, "Dinamika *Restorative Justice* Dalam Sistem Peradilan Pidana Di Indonesia," *Jurnal Jurisprudence* 10, no. 2 (2021): 233–249, <https://doi.org/10.23917/jurisprudence.v10i2.12233>.

¹⁴ Hirsan Batubara, Nurhayati Nurhayati, dan Azmiati Zuliah, "Perlindungan Hukum Bagi Korban Kekerasan Seksual dalam Penerapan Diversi dengan Pendekatan Keadilan Restoratif dalam Sistem Peradilan Anak," *SENTRI: Jurnal Riset Ilmiah* 4, no. 10 (2025): 2843–2857, <https://doi.org/10.55681/sentri.v4i10.4807>.

¹⁵ Keenan and Zinsstag, *Sexual Violence and Restorative Justice*.

¹⁶ Daly, "Sexual Violence and Restorative Justice,"

justice, the best interests of the child, and victims' rights theory, the study examines how the rehabilitative objectives of the juvenile justice system can be balanced with the need to ensure effective protection and recovery for child victims. To address the absence of clear normative standards, this article proposes a Diversion Suitability Test as a normative-operational framework consisting of several assessment indicators, including victim protection, prevention of revictimization, offender accountability, rehabilitation prospects, victim participation and consent, and institutional oversight mechanisms. The significance of this research lies in its contribution to the development of a more balanced and rights-based approach to diversion by providing law enforcement officials, judges, prosecutors, and child protection institutions with objective and accountable criteria for determining the eligibility of diversion in serious sexual offense cases involving child victims, thereby strengthening legal certainty, victim protection, and the realization of child-centered justice within the juvenile criminal justice system.

Method

This study is a prescriptive form of normative legal research. This study focuses on the analysis of Indonesian positive law regarding the limits of applying diversion to juvenile offenders involved in attempted rape cases involving child victims. This study aims to identify gaps in the legal norms concerning the eligibility criteria for diversion and to formulate a normative model that can serve as a guideline for balancing the goal of rehabilitating juvenile offenders with the protection of child victims. This study employs three approaches: the statutory approach, the conceptual approach, and the limited comparative approach. The statutory approach was used to analyze the coherence of legal norms in Law No. 11 of 2012 on the Juvenile Criminal Justice System, Law No. 35 of 2014 Amending Law No. 23 of 2002 on Child Protection, Law No. 12 of 2022 on Sexual Violence Crimes, and Law No. 1 of 2023 on the Criminal Code as the legal basis for regulating diversion and criminal liability under Indonesian law.

The conceptual approach examines restorative justice, victimology, and the best interests of the child as an analytical framework for assessing the feasibility of diversion. The limited comparative approach is used to compare national regulations with international standards, specifically the Convention on the Rights of the Child, General Comment No.24 (2019) on Children's Rights in the Juvenile Justice System, and the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime to

assess the alignment of national regulations with the principles of child protection and the prevention of revictimization.

The legal materials used include primary, secondary, and tertiary sources. Primary legal materials include Indonesian laws and regulations governing the juvenile criminal justice system, child protection, sexual violence crimes, and criminal law, as well as relevant international legal instruments that serve as standards for the protection of children's rights. Secondary legal sources consist of books and journal articles. Tertiary legal sources include legal dictionaries, legal encyclopedias, and other reference materials used to clarify legal concepts and terminology. Legal materials were collected through library research, cataloged, classified, and evaluated for their relevance to the legal issue under study. Subsequently, the legal materials were qualitatively analyzed using the prescriptive legal analysis method through grammatical, systematic, teleological, and conceptual interpretations to arrive at a coherent legal argument. The results of the analysis were then used to formulate the Diversion Suitability Test as a normative model containing assessment indicators for the suitability of diversion for juvenile offenders of attempted rape involving child victims, while prioritizing the protection of the child victim's rights and the goal of proportionately rehabilitating the juvenile offender.

Results and Discussion

Definition and Scope of Application of Diversion for Juvenile Offenders Who Attempted Rape of a Child Victim

Criminal cases are generally rigid and take a long time to resolve; therefore, a system for resolving juvenile criminal cases is needed that prioritizes the child's best interest and promotes restorative justice. Through Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA Law) and Supreme Court Regulation (PERMA) No. 04 of 2014 on Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System, the resolution of juvenile cases can be conducted outside the criminal justice system, a process commonly referred to as "diversion."

According to the Child Criminal Justice Act (UU SPPA), diversion is the transfer of a juvenile criminal case from the criminal justice system to a process outside it. Diversion serves as the primary instrument in the Juvenile Criminal Justice System, aimed at protecting children from the negative impacts of the formal criminal justice process

through a rehabilitative and restorative approach.¹⁷ Under Indonesian law, diversion is not intended to eliminate a child's criminal liability but rather to provide an alternative resolution that ensures rehabilitation, social reintegration, and the restoration of relationships between the child offender, the child victim, and the community.¹⁸ However, the application of diversion to a child who has committed the crime of attempted rape of a child cannot be understood as a mechanism that applies automatically simply because the perpetrator is still a child.¹⁹ The legal issue that arises does not lie in the existence of diversion as a means of resolving cases, but rather in the limits of its application when the criminal act committed violates the child victim's physical integrity, dignity, and psychological development.

This concept aligns with the objectives of the Juvenile Criminal Justice System as stipulated in Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA Law). Article 6 of the UU SPPA states that diversion aims to achieve reconciliation between the victim and juvenile offender, resolve cases outside the judicial process, prevent the deprivation of the child's liberty, encourage community participation, and instill a sense of responsibility in the juvenile offender. This formulation indicates that diversion is not merely an instrument to reduce the use of criminal sanctions, but rather a mechanism that must produce a just resolution for all affected parties. Thus, the success of diversion cannot be measured solely by the achievement of an agreement, but also by the process's ability to fulfill the objectives of comprehensive child protection.

Diversion is based on the concept of restorative justice, as stipulated in Article 7, paragraph 2, of Law No. 11 of 2012. Diversion is applied in cases of criminal offenses punishable by imprisonment of less than 7 years, and that are not repeat offenses; however, it cannot be applied to all cases involving children, particularly in cases of sexual violence. Zehr views restorative justice as an approach focused on the recovery of

¹⁷ Indonesia, *Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak*, Lembaran Negara Republik Indonesia Tahun 2012 Nomor 153, Tambahan Lembaran Negara Republik Indonesia Nomor 5332, Pasal 6 dan Pasal 7.

¹⁸ Nashriana, Desia Rakhma Banjarani, Marwin S. Del Rosario, and Vera Novianti, "Enhancing Restorative Justice in Indonesia: Exploring Diversion Implementation for Effective Juvenile Delinquency Settlement," *Sriwijaya Law Review* 7, no. 2 (2023): 318–334, khususnya 329–332, <https://doi.org/10.28946/slrev.Vol7.Iss2.2427.pp318-334>.

¹⁹ Ton Liefwaard, "The Right to Appropriate Juvenile Justice," dalam *The United Nations Convention on the Rights of the Child: Taking Stock after 25 Years and Looking Ahead*, ed. Ton Liefwaard dan Julia Sloth-Nielsen (Leiden: Brill Nijhoff, 2017), 209–227.

victims and the accountability of perpetrators.²⁰ Meanwhile, Daly emphasized that this mechanism is appropriate only if it protects victims, avoids power imbalances, and takes into account the nature of the case, the safety of victims, and the accountability of the perpetrators.²¹ This view is supported by Keenan and Zinsstag, who emphasized that restorative mechanisms must be implemented voluntarily, based on a trauma-informed approach, and ensure the safety and dignity of victims.²² Therefore, diversion is not an automatic procedural right. Rather, it is a policy option that can only be applied in limited circumstances, provided it does not undermine the protection of child victims.

These differing viewpoints indicate that the application of diversion in sexual violence cases cannot be based solely on the paradigm of rehabilitating the child offender. Nevertheless, they must also consider the characteristics of the criminal offense and the victim's position in the case resolution process. In cases involving child victims of sexual violence, diversion may only be applied if it continues to prioritize the best interests of the child, prevents revictimization, and ensures that the case resolution process does not cause further stress or harm to the victim.²³ In other words, the restorative approach does not eliminate the state's obligation to protect victims; rather, it changes how the state fulfills that obligation through mechanisms that continue to ensure safety, recovery, and accountability for perpetrators.²⁴

This characteristic indicates that diversion has limits on its application that are inextricably linked to the nature of the offense.²⁵ In cases of criminal offenses that have serious consequences for victims, particularly sexual violence against children, the application of diversion requires greater caution than in other criminal offenses.²⁶ This is

²⁰ Howard Zehr, *The Little Book of Restorative Justice: Revised and Updated* (New York: Good Books, 2015).

²¹ Kathleen Daly, "Conventional and Innovative Justice Responses to Sexual Violence," *Australian Centre for the Study of Sexual Assault Issues* No. 12 (2011): 17–26.

²² Keenan and Zinsstag, *Sexual Violence and Restorative Justice*.

²³ Helena Soleto Muñoz, Nieke Elbers, Arno Akkermans, Josep Maria Tamarit Sumalla, Laura Arantegui, Gian Luigi Lepri, Dorian Chirico, Iluta Lāce, dan Nicholas Spetsidis, "Ineffectiveness of the Right to Compensation for Victims of Sexual Violence: A Comparison Between Five EU Member States," *International Criminology* 4, no. 1 (2024): 93–107, <https://doi.org/10.1007/s43576-024-00118-4>

²⁴ Dyah Ayu Sulistyarini, Deni Setya Bagus Yuherawan, dan Subaidah Ratna Juita, "Kebijakan Restorative Justice dalam Penyelesaian Perkara Pidana di Pengadilan," *Humani (Hukum dan Masyarakat)* 13, no. 2 (2023): 413–422, <https://doi.org/10.26623/humani.v13i2.7991>.

²⁵ Nashriana et al., "Enhancing Restorative Justice in Indonesia."

²⁶ Sri Wiyanti Eddyono, "Restorative Justice for Victim's Rights on Sexual Violence: Tension in Law and Policy Reform in Indonesia," *Journal of Southeast Asian Human Rights* 5, no. 2 (2021): 176–201, <https://doi.org/10.19184/jseahr.v5i2.28011>

because the harm suffered by the victim is not limited to physical suffering but also involves bodily integrity, dignity, a sense of security, and psychological development, which can have long-term effects on the victim. In this context, focusing on the rehabilitation of the child perpetrator cannot override the state's obligation to ensure effective protection of the child victim.²⁷

Normatively, diversion must be systematically applied within the framework of child protection. Although the SPPA Law provides a legal basis for diversion as a form of protection for child offenders, the provisions regarding attempted crimes in the Criminal Code still recognize attempted crimes as criminal acts for which one can be held responsible. Simultaneously, the Child Protection Law and the TPKS Law require the state to provide protection and recovery for child victims. Therefore, the decision to apply diversion must balance the interests of rehabilitating child offenders with the protection of the rights of the child victims. This approach is also consistent with General Comment No. 24 (2019) on Children's Rights in the Child Justice System, which emphasizes that diversion can only be applied voluntarily, based on sufficient evidence, with respect for children's rights, and while ensuring a fair process and protection for all parties involved.²⁸

The most important distinction lies in sexual violence as a criminal act that violates the victim's bodily autonomy and dignity. Sexual violence against children poses the risk of long-lasting trauma that can affect the victim's psychosocial development. In this context, restorative mechanisms for sexual violence can only be justified if they close the "justice gap" without creating new forms of injustice through coercion or unsafe processes. However, this often conflicts with the victims' perception of feeling unsafe in informal processes; therefore, an understanding of risk assessment must serve as the primary guide.²⁹ The importance of a design that prioritizes victims' safety and makes professional support a core element.³⁰

²⁷ Henny Saida Flora, "Restorative Justice in the Resolution of Sexual Violence Against Children," *SDGs: Journal of Law and Development* 12, no. 3 (2024), <https://doi.org/10.55908/sdgs.v12i3.2459>

²⁸ Committee on the Rights of the Child, *General Comment No. 24 (2019) on Children's Rights in the Child Justice System*, U.N. Doc. CRC/C/GC/24 (September 18, 2019), paras. 16, 18, and 72.

²⁹ Ashari Kurniawan, "Restorative Justice in Juvenile Justice Systems: A Comparative Study of Indonesia and Belgium," *Journal of Counseling and Education* (2025): 47–56, <https://jurnal.konselingindonesia.com/index.php/jkp/article/view/1499>.

³⁰ Keenan and Zinsstag, *Sexual Violence and Restorative Justice*.

The limits of diversion must be interpreted in conjunction with the state's obligation to protect children from violence and ensure the recovery of victims. The diversion process must be carried out through mechanisms that guarantee the safety, voluntariness, and protection of child victims. If the process has the potential to cause stress, insecurity, or revictimization, then diversion no longer fulfills the objective of protecting victims and loses its justification for implementation.³¹ The SPPA Law indeed promotes a non-incarceration approach, but it is not intended to downplay the seriousness of sexual violence. According to Arief, criminal law policy must be focused on protecting the public and victims; therefore, policy decisions must not come at the expense of vulnerable groups. The argument “for the sake of the perpetrator’s future” is invalid if it disregards the victim’s future. In sexual assault cases, child victims also need a safe future and a process that does not cause further harm. Therefore, the application of diversion in cases involving children as perpetrators of attempted rape against child victims requires stricter normative limits than other criminal offenses, because a resolution process that is not carefully designed has the potential to cause revictimization and reduce the effectiveness of legal protection for child victims.

Characteristics of Attempted Rape of a Child as a Threshold for the Application of Diversion

The application of diversion to a child who has committed the crime of attempted rape, where the victim is also a child, cannot be equated with juvenile crimes. The difference lies in the characteristics of the offense, the nature of the protected legal interests, and the level of risk to victims. Unlike criminal offenses that primarily cause material harm, attempted rape directly violates the victim’s bodily integrity, sexual freedom, dignity, and sense of security. This aligns with Nurisman’s view that sexual violence constitutes a violation of the victim’s rights and dignity and therefore requires comprehensive, specialized, and victim-centered legal protection.³²

The label “attempted rape” is often perceived as a less serious offense and is therefore considered more “appropriate” for diversion sentencing. This is risky because

³¹ Wahab Aznul Hidayat, A. Sakti R. S. Raki, Paulinus Kora, Muhammad Ali, dan Hadi Tuasikal, “Realizing Restitution Justice for Child Victims of Sexual Assault: The Role of Judges and Restitution Processes in Indonesia,” *Jurnal USM Law Review* 7, no. 3 (2024): 1484–1497, <https://doi.org/10.26623/julr.v7i3.9697>.

³² Eko Nurisman, “Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022,” *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022)

it relies on formal logic that may not align with the realities of victimization. An attempted rape may occur due to external factors, such as the victim fighting back, someone arriving on the scene, or the perpetrator failing for technical reasons, rather than because the perpetrator voluntarily abandoned the act. Consequently, the level of intent and threat experienced by the victim remains high; in some cases, the trauma can be as severe as that resulting from a completed offense. The danger posed by a criminal act is determined not only by the outcome but also by the perpetrator's intent and the risky situation created.³³ Therefore, the use of the "experimental" category cannot be used as a basis for automatic leniency. In this case, one must assess the "actual harm" suffered by the victim, not merely the "legal status" of the act.

Normatively, Article 17 of Law No. 1 of 2023 on the Criminal Code (KUHP) provides that an attempt remains a form of criminal liability if the perpetrator had intent, as evidenced by the commencement of the act. The act was not completed through their fault. This provision indicates that criminal law does not view an attempt as an act that loses its unlawful nature but rather as a criminal offense that has not yet achieved the intended result due to factors beyond the perpetrator's control.³⁴ Thus, the fact that sexual intercourse did not occur does not automatically negate the serious nature of the act or diminish the state's obligation to protect the child victims.

These characteristics have significant implications for cases involving child victims. Even if the criminal act remains at the attempted stage, child victims may still experience psychological trauma, a loss of a sense of security, anxiety, fear, and developmental disturbances that require legal protection and adequate recovery. Therefore, the severity of a case cannot be measured solely by the failure to achieve an outcome; it must also consider the actual impact on the victim and the potential harm that may persist long after the criminal incident.³⁵

This perspective is consistent with the developments in modern criminal law doctrine, which places victims at the center of the criminal justice system. A victim-

³³ Jeremy Horder, *Ashworth's Principles of Criminal Law*, 8th ed. (Oxford: Oxford University Press, 2016).

³⁴ P.A.F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia* (Bandung: PT Citra Aditya Bakti, 2019), 545–553.

³⁵ Topo Santoso and Hariman Satria, "Sexual-Violence Offenses in Indonesia: Analysis of the Criminal Policy in the Law Number 12 of 2022," *Padjadjaran Jurnal Ilmu Hukum* 10, no. 1 (2023): 59–79, <https://doi.org/10.22304/pjih.v10n1.a4>

oriented approach, or victim-centered justice, emphasizes that every decision in the judicial process must consider victims' needs for protection, recovery, and a sense of security as part of law enforcement's objectives.³⁶ In the context of children as victims, this approach is increasingly important, given that the act of sexual violence can cause physical, psychological, and social suffering that affects a child's growth and development, even if the crime is not fully committed.³⁷ Thus, the nature of legal protection in cases of attempted rape of a child places the victim's interests as the primary consideration in determining a proportionate legal response, including when diversion mechanisms are considered as an alternative means of resolving the case.³⁸

This view is supported by Ashworth's research, which explains that the seriousness of an attempted crime is determined not only by the actual consequences achieved but also by the perpetrator's intent, the proximity of the act to the completion of the offense, and the risk posed to the victim.³⁹ In the context of sexual violence, Daly added that the measure of a justice system's success should not be limited to the legal classification of an act but must also consider the victim's experience and the potential for injustice that may arise if the resolution process prioritizes efficiency over victim protection.⁴⁰ Thus, an approach that bases eligibility for diversion solely on "probationary" status risks overlooking the victimological realities that are, in fact, the primary basis for protecting child victims.

This approach is also consistent with developments in Indonesian child protection law. While the SPPA Law prioritizes the rehabilitation of child offenders through diversion, this principle cannot be separated from the state's obligations under the Child Protection Law and the TPKS Law to ensure the safety, recovery, and prevention of revictimization of child victims. Therefore, the application of diversion must be understood as a balance between two equally protected legal interests: the rehabilitation of child offenders and the protection of child victims.

³⁶ Anang Riyan Ramadianto, Milda Istiqomah, dan Nurini Aprilianda, "Victim Impact Statement as a Model of Victim-Centered Justice in Child Sexual Abuse Cases," *Jurnal Hukum IUS QUIA IUSTUM* 32, no. 2 (2025): 337–360, <https://doi.org/10.20885/iustum.vol32.iss2.art4>

³⁷ Eddyono, "Restorative Justice for Victim's Rights on Sexual Violence."

³⁸ Nurini Aprilianda, Febrianika Maharani, Nadhilah A. Kadir, Ardi Ferdian, and Solehuddin, "Re-conceptualizing Child Victim Rights: A Normative and Comparative Analysis of Victim Impact Statement in Indonesia's Juvenile Justice System," *Jambura Law Review* 7, no. 2 (2025): 442–467, <https://doi.org/10.33756/jlr.v7i2.30132>.

³⁹ Horder, *Ashworth's Principles of Criminal Law*.

⁴⁰ Daly, "Sexual Violence and Restorative Justice,"

The most common mistake is assuming that, because there are no serious physical consequences, the case can be “settled” to avoid a lengthy process. In sexual assault cases, the extent of harm should not be reduced to physical injury or penetration, as psychological impacts can be dominant. If the system forces victims to end the case without protection and recovery, the state is actually adding to the victim’s burden. The “attempt” category is relevant only to the construction of criminal liability but should not be the sole criterion for determining the resolution forum. The criteria should be risk, power imbalances, and the victim’s need for recovery. If these factors are significant, diversion is inappropriate, even if the offense is an attempt. This is because sensitivity to trauma and guarantees of safety are prerequisites to ensure that the process does not create new revictimization.⁴¹

Within the framework of children’s rights, an approach that normalizes leniency on the grounds of “experimentation” has the potential to conflict with the state’s obligation to prevent violence against children. The UN Committee on the Rights of the Child, in General Comment No. 24, emphasizes that alternative dispute resolution must respect the rights of the child and must not jeopardize the safety and dignity of the children involved, including victims.⁴² This principle means that the state must not choose the “easier” option if doing so would put the victims at risk. International standards call for greater caution in cases involving serious violence or high risk. In the context of attempted rape involving a child victim, such risks are often inherent because of the nature of the offense itself.

In the context of “trial” proceedings for sexual crimes against children, this highlights the danger of reducing cases to formal indicators that disregard psychological impact. Studies on the fulfillment of the rights of child victims within the system for addressing sexual violence emphasize that victims’ needs extend beyond the category of the offense itself to include a sense of safety, support for recovery, and protection from social pressure.⁴³ Thus, “preliminary” status should not be used as an automatic

⁴¹ Carmit Klar-Chalamish and Inbal Peleg-Koriat, “From Trauma to Recovery: Restorative Justice Conferencing in Cases of Adult Survivors of Intrafamilial Sexual Offenses,” *Journal of Family Violence* 36, no. 8 (2021): 1057–1068, <https://doi.org/10.1007/s10896-020-00239-0>.

⁴² United Nations Committee on the Rights of the Child, *General Comment No. 24*, para. 16

⁴³ Muh. Zainal Muttaqin, Ruslan Renggong, and Baso Madiung, “Penyelesaian Sengketa di Luar Pengadilan terhadap Pelaku Tindak Pidana Kekerasan Anak di Kepolisian Resor Gowa,” *International Journal of Law and Forensic* 8, no. 1 (2025): 1–12, <https://doi.org/10.35965/ijlf.v8i1.7201>.

justification for shifting the venue, because the logic of victim protection requires an assessment based on risk, power imbalances, and the potential for revictimization that may arise from informal resolutions.⁴⁴

Given these characteristics, the offender's status as a child cannot be the sole basis for diversion. An assessment of the appropriateness of diversion must comprehensively consider the nature of the criminal offense, the level of threat to the victim, the risk of revictimization, the need for rehabilitation, and the diversion mechanism's ability to ensure the child offender's accountability. These characteristics form the basis for the need for a more operational normative measure to determine the limits of applying diversion in cases involving juvenile offenders of attempted rape where the victim is a child.

This study further develops the Diversion Suitability Test as a normative-operational model that details the indicators, minimum evidence, and gatekeeping mechanisms for determining whether a case of attempted child rape is still suitable for resolution through diversion or must be processed through the formal criminal justice system. Thus, the assessment of the suitability of diversion must shift from an approach based solely on the classification of offenses to a risk- and victim-protection-based approach (risk and victim protection approach). This shift in perspective provides the conceptual basis for formulating the Divertibility Test as a normative model in this study.

An Assessment of Diversion as a Normative Model for Determining Eligibility for Diversion

The absence of normative standards regarding the appropriateness of diversion in cases involving minors who have committed the crime of attempted rape against a child victim means that law enforcement officials' assessments rely heavily on their individual discretion. This has led to variations in practice across regions, depending on the interpretations of law enforcement officials.⁴⁵ These findings reinforce the argument that diversion should be understood as a conditional policy option, because without strict safeguards and controls, non-formal proceedings may actually shift the burden of

⁴⁴ Rahel Siahaan, Winsherly Tan, and Emiliya Febriani, "Pemenuhan Hak Anak sebagai Korban dalam Sistem Pengadilan Tindak Pidana Kekerasan Seksual," *Legal Standing: Jurnal Ilmu Hukum* 9, no. 3 (2025): 640–653, <https://doi.org/10.24269/ls.v9i3.11362>.

⁴⁵ Yunita Febriana, "Diversi dalam Sistem Peradilan Pidana Anak menurut Undang-Undang Nomor 11 Tahun 2012," *ALADALAH: Jurnal Politik, Sosial, Hukum dan Humaniora* 4, no. 1 (2025): 273–282, <https://doi.org/10.59246/aladalah.v4i1.1786>

restitution from the state to the victims.⁴⁶ Although Law No. 11 of 2012 on the Juvenile Criminal Justice System has established the formal requirements for diversion, these provisions do not provide substantive criteria for assessing whether a diversion resolution remains consistent to protect child victims. Consequently, cases with similar characteristics may be treated differently, thereby reducing legal certainty and consistency in the application of diversion.⁴⁷

This situation indicates that the formal requirements outlined in the Law on the Juvenile Criminal Justice System are not yet sufficient to handle highly complex cases, particularly sexual violence crimes involving child victims.⁴⁸ Restorative justice practices have different psychological impacts on victims and offenders; therefore, the design of diversion programs must take into account the dynamics of victim recovery as a key element in the juvenile justice system.⁴⁹ In such cases, the assessment of eligibility for diversion should not be based solely on the severity of the criminal penalty or the offender's status as a child. However, it must also take into account the level of danger posed by the act, the victim's circumstances, the risk of revictimization, and the ability of diversion mechanisms to provide effective protection. Therefore, an assessment model is needed that can integrate the goal of rehabilitating child offenders with the state's obligation to protect child victims.

The effectiveness of diversion is determined not only by compliance with the formal requirements outlined in Law No. 11 of 2012 on the Juvenile Criminal Justice System but also by the quality of its implementation.⁵⁰ The diversion process must ensure that all parties participate voluntarily, prevent power imbalances between the perpetrator and the victim, and ensure that child victims receive adequate protection and support

⁴⁶ Ribut Hari Wibowo, Ahmad Busro, dan Ani Purwanti, "Reassessing Restorative Justice: Addressing Sexual Violence Cases in Indonesia," *Indonesia Law Review* 13, no. 3 (2023): 118, <https://doi.org/10.15742/ilrev.v13n3.8>

⁴⁷ Tahura Malagano, "Analisis Implementasi Diversi dan *Restorative Justice* sebagai Bentuk Perlindungan Hak-Hak Anak yang Berkonflik dengan Hukum," *Jurnal Pro Justitia (JPJ)* 1, no. 1 (2020): 1–11, <https://doi.org/10.57084/jpj.v1i1.430>.

⁴⁸ Eko Nurisman, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022).

⁴⁹ Neta Hadar, "Restorative Justice for Survivors of Sexual Violence Experienced in Adulthood: A Scoping Review," *Trauma, Violence, & Abuse* 24, no. 2 (2023): 340–343, <https://doi.org/10.1177/15248380231162108>

⁵⁰ Hadi Dwi Saputro and Miswarik, "Implementasi Diversi dalam Sistem Peradilan Pidana Anak yang Berhadapan dengan Hukum," *Journal Inicio Legis* 2, no. 1 (2021): 36–50, <https://doi.org/10.21107/il.v2i1.11071>

throughout the process.⁵¹ Thus, the design of diversion procedures is a key factor in achieving the goal of rehabilitating child offenders without compromising the rights of child victims to protection, recovery, and a sense of security.⁵² In light of this need, this study proposes a Diversion Suitability Test Model as a normative assessment framework for determining the appropriateness of applying diversion in cases involving juvenile offenders accused of attempted rape with a child victim.

This gap needs to be addressed through a model, namely, the diversion propriety test, as a normative-operational framework for assessing the appropriateness of applying diversion in juvenile cases. This model is not intended to replace the provisions of the Child Protection Act (UU SPPA) but rather to serve as an interpretive tool that assists investigators, prosecutors, judges, probation officers, and diversion facilitators in exercising their discretion in an objective, transparent, and accountable manner. Thus, the diversion propriety test functions as a gatekeeping mechanism, an initial screening before the diversion process is carried out, to ensure that only cases that truly meet victim protection standards are resolved through this mechanism.

The formulation of the diversion suitability test in this study was developed by synthesizing three main foundations. First, the normative foundation, which is derived from the SPPA Law, Criminal Code, Child Protection Law, TPKS Law, and General Comment No. 24 (2019) of the Committee on the Rights of the Child, which affirms that the resolution of cases involving children outside the judicial process may only be carried out if it continues to guarantee the rights, dignity, and safety of the child.⁵³ Second, the theoretical foundation, namely restorative justice theory, victimology theory, and the principle of the best interests of the child, collectively prioritize the recovery of victims and the rehabilitation of offenders as goals that must be achieved in a balanced manner. Third, the empirical-conceptual foundation, namely various studies on the application of diversion and restorative justice, which show that failures in victim protection are generally caused by the lack of clear criteria in the exercise of law enforcement officials'

⁵¹ Sarah van Mastrigt, Heather Strang, Lawrence W. Sherman, Kaare Bro Wellnitz, and Christian Gade, "Victim and Offender Ratings of Mediations and Restorative Justice Conferences: Findings from a Danish Randomized Controlled Trial," *Victims & Offenders* 20, no. 8 (2025): 1630–1660, <https://doi.org/10.1080/15564886.2024.2420284>

⁵² Dian Ekawaty Ismail, Yusna Arsyad, Ahmad Ahmad, Novendri M. Nggilu, dan Yassine Chami, "Collocation of Restorative Justice with Human Rights in Indonesia," *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (2024): 394–417, <https://doi.org/10.22219/ljih.v32i2.35374>.

⁵³ United Nations Committee on the Rights of the Child, *General Comment No. 24*, para. 17

discretion. The synthesis of these three foundations yields ten complementary indicators that serve as substantive parameters for determining diversion appropriateness.

Unlike approaches that merely assess whether the formal requirements for diversion are met, this study treats each indicator as part of an interconnected assessment system. The victim's safety is a primary prerequisite because, without a guarantee of safety, the entire purpose of restorative justice loses its legitimacy. Furthermore, the victim's consent must be given freely, knowingly, and without pressure from the family, offender, or the social environment. The diversion process must also be supported by the results of a professional assessment of the victim's psychological condition and the offender's potential for rehabilitation. Furthermore, the relationship between the offender and the victim, the level of risk of recidivism, the readiness of the rehabilitation program, and the availability of post-diversion supervision mechanisms are integral to the overall assessment process.

In sexual assault cases, particularly those involving child victims, the appropriateness test serves as a safeguard to ensure that law enforcement discretion does not turn into a social compromise that harms the victim. This test must be operational, meaning that it can be applied through auditable indicators and documentation. With these indicators, law enforcement cannot hide behind the claim that "the matter has been settled" without demonstrating how the victim has been protected. This is because the effectiveness of diversion programs highlights that implementation barriers often stem from inconsistent procedures and weak evaluation mechanisms.⁵⁴ This situation shows that diversity without selection criteria can actually be counterproductive.⁵⁵ The implementation of diversion mechanisms that lack operational indicators and oversight often fails to address victim protection, underscoring the need for a standardized assessment model.⁵⁶ Therefore, this model for assessing the appropriateness of diversion

⁵⁴ Iwan Rasiwan, Ardi Haris, and Yogi Maulana Suwanta, "Efektifitas Penerapan Diversi dalam Sistem Peradilan Pidana Anak," *Case Law: Journal of Law* 6, no. 1 (2025), <https://doi.org/10.25157/caselaw.v6i1.4755>

⁵⁵ Indriastuti Yustiningsih, "Perlindungan Hukum Anak Korban Kekerasan Seksual dari Reviktimisasi dalam Sistem Peradilan Pidana," *Lex Renaissance* 5, no. 2 (2020): 287–306, <https://doi.org/10.20885/JLR.vol5.iss2.art3>.

⁵⁶ Risma Yulestari, Fitriah Faisal, Dewi Ratna Sari Rustam, Handrawan Handrawan, dan Sitti Aisah Abdullah, "Restitution Rights for Child Victims of Sexual Violence: Justice or Legal Certainty," *JUSTISI: Jurnal Ilmu Hukum* 11, no. 3 (2025): 968–983, <https://doi.org/10.33506/js.v11i3.4498>.

is based on five interrelated indicators, with the safety of victims, the prevention of revictimization, and the accountability of perpetrators serving as three inseparable pillars.

The first indicator is the safety and best interests of the child victim, which must be evaluated through an independent and evidence-based risk assessment. Safety encompasses the risk of re-contact, intimidation, threats, and the victim being subjected to social pressure. If the assessment results indicate a risk, diversion is inappropriate because the deliberation process often requires interactions that can exacerbate the trauma. In this context, the principle of the best interests of the child serves as the primary foundation, meaning that the interests of the juvenile offender's rehabilitation must not undermine the victim's right to feel safe and receive effective protection.

The second indicator is the prevention of revictimization, which requires a trauma-sensitive process and minimizes the emotional burden on the victim. Diversion is only appropriate if the resolution mechanism can prevent revictimization. Revictimization can occur when victims are forced to confront the perpetrator, forced to repeat their story in informal settings, or forced to accept a narrative of "peace for the sake of reputation." From the perspective of Indonesian victimology, victims are often in a socially weaker position; therefore, the state must ensure that they receive support and protection from pressure.⁵⁷ Wrong⁵⁸ emphasizes the importance of protecting victims and witnesses within a balanced justice system. An agreement reached out of fear of stigma or family pressure is not free consent. Therefore, measures to prevent revictimization must include indicators of freedom from pressure, support services, and the option for victims to opt out of direct involvement.

The third indicator is the accountability of the perpetrator and the rehabilitation of juvenile offenders, achieved through structured rehabilitative interventions rather than mere symbolic apologies. Diversion should not become a "way out" without behavioral change, as this would leave the risk of recidivism unaddressed. Accountability means that the perpetrator understands their wrongdoing, accepts proportionate consequences, and undergoes relevant programs to prevent recurrence. In sexual cases, the need for intervention is often specific because it involves impulse control, education on healthy

⁵⁷ Vini Novilia dan Hudi Yusuf, "Viktimologi dalam Sistem Peradilan Pidana," *JICN: Jurnal Intelek dan Cendekiawan Nusantara* 1, no. 2 (2024): 1724–1741, <https://jicnusantara.com/index.php/jicn/article/view/198>

⁵⁸ Bambang Waluyo, *Viktimologi: Perlindungan Korban dan Saksi* (Jakarta: Sinar Grafika, 2011).

sexuality, and correction of cognitive distortions.⁵⁹ In this case, if the state is unable to provide intervention, diversion loses its rehabilitative rationale. Diversion without intervention places the victim at additional risk because the offender returns to their social environment without any measurable change. Therefore, accountability must be an operational requirement that can be monitored, including through periodic evaluation. Thus, the success of diversion is measured by changes in the juvenile offender's behavior and their ability to prevent recidivism, not merely by the achievement of an agreement between the parties.

The fourth indicator, the victim's free and meaningful consent, is an essential requirement for diversion; however, such consent must be given freely, knowingly, and without coercion. The assessment must not stop at mere formal consent; rather, it must ensure that the victim understands all the legal consequences of the agreement. Therefore, the presence of a legal advisor, psychologist, or social worker is crucial to ensure that the victim's consent truly reflects their will. The fifth indicator is the effectiveness of oversight of diversion agreement implementation in relation to diversion outcomes. Law enforcement officials and authorized agencies must be able to monitor the implementation of agreements. Oversight is necessary to ensure that juvenile offenders fulfill their obligations, that victims exercise their rights, and that the goals of rehabilitation and recovery are truly achieved. Without an effective monitoring mechanism, diversion risks become nothing more than an administrative agreement that provides no real protection to victims. The monitoring mechanism must also serve as a post-process control, because without compliance evaluations and risk monitoring, agreements can easily become mere pieces of paper lacking enforceability, leaving victims in vulnerable situations.⁶⁰

These five indicators are interrelated and complementary; they are not mutually exclusive but rather cumulative and hierarchical in nature. This means that some indicators serve as absolute prerequisites (mandatory thresholds), while others function as follow-up assessment indicators (assessment indicators). The victim's safety, absence of revictimization, and freely given consent are absolute prerequisites. If any of these

⁵⁹ Keenan and Zinsstag, *Sexual Violence and Restorative Justice*.

⁶⁰ Syawal Abdulajid, Anshar, Ahmad Mufti, dan Suwito Suwito, "Diversion Practices in Juvenile Traffic Crime Investigations as a Social Engineering Tool: A Case in North Maluku, Indonesia," *Cepalo* 8, no. 1 (2024): 69–78, <https://doi.org/10.25041/cepalo.v8no1.3294>.

three indicators are not met, the diversion process should not proceed, and the case must be processed through the formal criminal justice system. Conversely, indicators such as the offender's readiness for rehabilitation, family support, supervision mechanisms, and compliance with the recovery program are used to assess whether the diversion process can achieve its rehabilitation goals while effectively protecting the victim.

The “diversion suitability test” framework—which emphasizes victim safety, prevention of revictimization, and perpetrator accountability—also resonates with national research on out-of-court case resolution practices. Several empirical studies have shown that non-judicial mechanisms lacking operational indicators are difficult to monitor and prone to misuse as administrative shortcuts.⁶¹ These findings underscore the need to ensure that fitness-for-duty assessments are auditable through risk assessments, evidence of a stress-free environment, and measurable intervention designs.⁶² The diversion suitability test serves as a substantive screening mechanism (gatekeeping), not merely as an ethical guideline. This test determines eligibility for diversion by applying absolute prerequisites that must be met from the outset. If these absolute criteria are not met, particularly regarding the victim's safety, prevention of revictimization, and free consent, the diversion process must be terminated. The following table presents these indicators.

Table 1. Divertment Suitability Test (Normative-Operational Indicators) in the Case of a Child Perpetrator of an Attempted Rape Offense with a Child Victim

No.	Test Dimensions	Normative Indicators	Verifiable Operational Indicators	Minimum Evidence	Cutoff Threshold (Gatekeeping)
1	Victim Safety	The best interests of the child victim and the prohibition against harming the victim	A safety risk assessment is conducted before the diversion process, and a protection plan is in place.	Written risk assessment; accompanying recommendations; safety plan	Disqualified if the risk is high or there is no safety plan

⁶¹ Muh. Zainal Muttaqin, Ruslan Renggong, and Baso Madiung, “Penyelesaian Sengketa di Luar Pengadilan terhadap Pelaku Tindak Pidana Kekerasan Anak di Kepolisian Resor Gowa,” 1–12.

⁶² Diyariesta Caesari and Subekti, “Penerapan *Restorative Justice* dalam Penyelesaian Tindak Pidana Kekerasan Seksual terhadap Anak di Kabupaten Magetan,” *Recidive: Jurnal Hukum Pidana dan Penanggulangan Kejahatan* 11, no. 3 (2022): 312–320, <https://doi.org/10.20961/recidive.v11i3.67463>.

2	Prevention of Revictimization	The process must protect the dignity of the victims and prevent re-traumatization	Trauma-informed process; no mandatory in-person sessions; minimal re-exposure	Accompanying notes; Victim Services SOP; documentation of procedures	Invalidated if the victim is forced to meet the perpetrator or the perpetrator's family, or if the procedure triggers trauma
3	Consent Without Harm	An agreement must stem from free will	No pressure; the victim understands the consequences; there is time to consider	Informed consent; recording of the explanation of rights; legal representative	This is void if there is coercion or if the victim does not understand the consequences.
4	Proportionality of the Case	Diversion does not negate the seriousness of sexual violence	Hazard-based assessment: intent, mode, power relations, planning, threat	Summary of facts, behavioral assessment, Bapas report	It is invalid if there is violence, threats, a strong power dynamic, or predatory behavior
5	Risk of Recurrence	Protection of the public and prevention of recurrence	There is a risk assessment and an assessment of intervention needs	Bapas report; assessment by a psychologist or psychiatrist; behavioral history	Failure if the risk is moderate to high without mandatory intervention and oversight
6	Accountability of the Perpetrator	Restorative justice requires substantive accountability	The perpetrator admitted to the core of the offense, is willing to participate in the program, and is willing to be supervised	Statement of Acknowledgment; Code of Conduct; Program Plan	The case is dismissed if the defendant denies the core facts of the case or objects to the intervention
7	Victim Recovery	The victims' recovery must be tangible and measurable	There is a clear and actionable recovery plan	Recovery plan; psychological services; restitution, if applicable	It falls through if the agreement is merely a "peace" deal without concrete restoration
8	Privacy and Victim Data	The dignity of the victims must be upheld	Victims' identities are protected; access to documents is restricted; and exposure is prohibited.	Confidentiality SOP; statement of agreement; sanctions mechanism	Dismissed if there is a risk of the victim's identity being compromised

9	Monitoring and Evaluation	Diversi must be accountable and subject to oversight	There are regular monitoring procedures, designated personnel, and consequences for violations	Follow-up schedule, periodic reports, and evaluation mechanisms	Void if there is no written oversight mechanism
10	Written Considerations	Decisions must be verifiable and auditable	Feasibility analysis should include an analysis of victims and risks, not just perpetrators.	Minutes of the meeting; summary of considerations	Invalid if the reasoning focuses solely on “the perpetrator’s future” without analyzing the victim

Source: Data processed by the author

The appropriateness test for diversion in Table 1 identifies the prevention of revictimization as an operational criterion that can be verified through minimal evidence. The trauma-informed approach provides a practical foundation for ensuring that the diversion process does not trigger retraumatization, maintains a sense of safety, and preserves the victim’s control over the process.⁶³ At the same time, the Indonesian context shows that revictimization arises not only in interrogation rooms or during deliberations but also from repeated exposure to identity-based issues, stigma, and social pressure, including in public spaces and on social media.⁶⁴ Therefore, this suitability test mandates the protection of the victim’s privacy, restrictions on data access, and a prohibition on the disclosure of the victim’s identity as indicators to be assessed before and during diversion. With this design, the suitability test shifts the focus from the perpetrator’s interests alone toward risk assessment and the protection of child victims, without negating the rehabilitative mandate for child perpetrators. This assessment is also operational in nature because each indicator includes auditable minimum evidence requirements and decision thresholds, ensuring that officials’ discretion does not devolve into procedural impunity,

⁶³ Erika Putri Wulandari and Nurliana Cipta Apsari, “Penggunaan Perspektif *Trauma-Informed Care* Pekerja Sosial dalam Mendampingi Klien Remaja dengan Kehamilan Tidak Diinginkan,” *PEKSOS: Jurnal Ilmiah Pekerjaan Sosial* 21, no. 1 (2022): 124–136, <https://doi.org/10.31595/peksos.v21i1.540>.

⁶⁴ Dewi Asri Puannandini, Devi Anggraeni, Deden Octo Firmansyah Gulo, Agum Ahmad Nur, and Jumadi K. Karabi, “Peran Ganda Media Sosial dalam Kasus Kekerasan Seksual Anak: Antara Advokasi Publik dan Risiko Reviktimisasi Korban,” *Adagium: Jurnal Ilmiah Hukum* 3, no. 2 (2025): 387–398, <https://doi.org/10.70308/adagium.v3i2.230>.

which may appear administratively legitimate but disregards substantive justice for the victim.

This suitability assessment model also clarifies which actors are responsible at each stage of the evaluation. Investigators and community supervisors conduct an initial assessment of the case characteristics and the circumstances of the parties involved. The public prosecutor evaluates the suitability of diversion based on the assessment results and the prosecution's interests. The judge verifies that the legal requirements and suitability assessment indicators developed in this study have been met before approving the diversion agreement.⁶⁵ Meanwhile, psychologists, professional social workers, and victim advocates provide independent assessments of the victims' psychological condition, the risk of revictimization, and the perpetrator's readiness to undergo a rehabilitation program. This division of roles demonstrates that assessing eligibility for diversion is not solely the responsibility of law enforcement officials but rather a multidisciplinary process that integrates legal, psychological, and child protection aspects.⁶⁶

Thus, the diversion suitability test proposed in this study serves not only as an evaluation tool but also as a normative model that narrows the discretion of law enforcement officials, ensuring greater consistency with the goal of protecting children. Under this model, diversion is no longer determined solely by the child's status as an offender or the category of the attempted criminal act. This model also serves as the study's conceptual contribution to developing diversion practices that are more accountable, victim-centered, and aligned with the principle of the child's best interests.

Reinterpreting the Best Interests of the Child in Diversion Decisions Involving Juvenile Offenders and Child Victims

The biggest debate in this case centers on the interpretation of "the best interests of the child," a phrase often used to justify diversion. The principle of the best interests of the child is a fundamental tenet of the juvenile criminal justice system, requiring that any decision affecting a child prioritize the child's best interests as the primary consideration. In the development of international legal doctrine, this principle is

⁶⁵ Indonesia, Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak, Lembaran Negara Republik Indonesia Tahun 2012 Nomor 153, Pasal 8–15.

⁶⁶ Chepi Ali Firman Zakaria, Ade Mahmud, and Aji Mulyana, "Legal Protection for Child Victims of Sexual Assault in a Restorative Justice Perspective," *Jurnal Penelitian Hukum De Jure* 23, no. 1 (2023): 59–70, <https://doi.org/10.30641/dejure.2023.V23.59-70>.

understood not only as a substantive right but also as an interpretative principle and a rule of procedure that requires every decision-maker to rationally explain how the best interests of the child have been considered in every decision-making process.⁶⁷ However, the application of this principle in cases involving a child perpetrator of an attempted rape with a child victim has raised complex issues because two legal subjects are both children: the child perpetrator and the child victim. This situation creates a conflict of interest that cannot be resolved by unilaterally prioritizing the perpetrator's rehabilitation or the victim's protection. In this context, the principle of the best interests of the child must be interpreted inclusively, so that protection is applied equally to both parties without depriving either of their rights.

The best interests of the child should not be interpreted narrowly as referring only to the interests of the perpetrator. In sexual cases involving child victims, the best interests must include the victim as a subject of rights on equal footing. Eekelaar⁶⁸ emphasizes that the principle of the best interests of the child requires responsible judgment and cannot be reduced to a mere slogan, as it must rationally weigh conflicting interests. Consequently, the state cannot prioritize the rehabilitation of perpetrators at the expense of victims' safety and recovery. Ensuring safety, access to recovery, and respect for the right to restitution is integral to the best interests of the child.⁶⁹ In juvenile justice practice, a rehabilitative approach tends to place greater emphasis on the guidance and social reintegration of juvenile offenders, which may result in less attention being paid to the fulfillment of the rights of child victims if not balanced by adequate protection mechanisms.⁷⁰ Conversely, an approach that focuses solely on protecting victims without considering the rehabilitation of offenders also runs counter to the objectives of the juvenile justice system. Therefore, this conflict requires a mechanism capable of proportionally balancing these two interests rather than framing them as mutually exclusive.

⁶⁷ Milka Sormunen, "Understanding the Best Interests of the Child as a Procedural Obligation: The Example of the European Court of Human Rights," *Human Rights Law Review* 20, no. 4 (2020): 745–768, <https://doi.org/10.1093/hrlr/ngaa034>

⁶⁸ John Eekelaar, "Two Dimensions of the Best Interests Principle: Decisions About Children and Decisions Affecting Children," dalam *Implementing Article 3 of the United Nations Convention on the Rights of the Child: Best Interests, Welfare and Well-being*, ed. Elaine E. Sutherland dan Lesley-Anne Barnes Macfarlane (Cambridge: Cambridge University Press, 2016), 99-111, khususnya 101-106.

⁶⁹ Yulestari et al., "Restitution Rights for Child Victims of Sexual Violence: Justice or Legal Certainty," 975.

⁷⁰ Eddyono, "Restorative Justice for Victim's Rights on Sexual Violence," 246–269.

In cases of attempted rape of a child, this conflict becomes even more complex because the “attempted” status can lead to the view that the case still has room to be resolved through diversion mechanisms, even though the nature of the criminal act still has the potential to cause serious harm to the child victim. As previously explained, the fact that the criminal act was not completed does not eliminate the threat to the victim’s physical integrity or the psychological impact the victim has already experienced. Therefore, an assessment of the child’s best interests cannot be based solely on the status of the child perpetrator or the “attempted” classification of the crime but must consider the level of risk to the victim, the victim’s need for recovery, the potential for revictimization, and the effectiveness of the perpetrator’s rehabilitation. Thus, the child’s best interests must be understood as a principle that demands a balance between protecting victims and rehabilitating perpetrators in every diversionary decision.

From an international law perspective, General Comment No. 24 emphasizes that alternative judicial processes must ensure respect for children’s rights and protection from harm; therefore, non-judicial mechanisms should not be used if they create new vulnerabilities for children.⁷¹ This principle holds that diversion is not an end in itself, but a means to achieve comprehensive child protection. Therefore, the use of diversion that places pressure on the victim, hinders recovery, or increases the risk of revictimization is contrary to the principle of the best interests of the child, as recognized in both international and national law.

The diversion suitability assessment is a mechanism that can bridge the conflict between offender rehabilitation and victim protection. Unlike approaches that merely assess whether formal diversion requirements are met, this model integrates three key dimensions: victim safety, offender accountability, and effectiveness of rehabilitation. These three dimensions ensure that the best interests of the child are no longer interpreted in isolation but are realized through an assessment process that considers the interests of both child offenders and child victims simultaneously. Thus, decisions regarding eligibility for diversion are oriented not only toward case resolution but also toward the quality of legal protection provided to both parties. In the context of protecting child victims, the victim’s recovery must be treated as an integral part of the child’s best

⁷¹ United Nations Committee on the Rights of the Child, *General Comment No. 24*, para. 18.

interests, not merely an administrative consequence.⁷² Thus, the diversion eligibility assessment serves as a common ground between offender rehabilitation and victim protection. Without this, the system risks creating inconsistent policies that are difficult to monitor.

This study shows that the principle of the best interests of the child must also serve as the basis for determining the limits of diversion so that the rights of child victims are not neglected. Therefore, the application of diversion to child offenders of attempted rape, where the victim is a child, can only be justified if all indicators in the Divertibility Test are met. If the victim's safety, freedom of consent, or protection from revictimization cannot be guaranteed, then the best interests of the child actually require resolution through the formal criminal justice process as a form of protection for the child victim. This approach expands the doctrine of the best interests of the child from a declarative concept into a normative instrument that can be applied operationally through the Diversion Suitability Test, thereby providing clearer guidance for law enforcement officials in determining the suitability of diversion in cases involving minor offenders of attempted rape where the victim is a child.

In addition to providing guidelines for law enforcement officials, the diversion-suitability assessment model is also relevant to the formulation of future legal policies. The provisions regarding diversion in the SPPA Law do not yet include substantive indicators regarding the appropriateness of applying diversion to criminal offenses that have serious impacts on victims, particularly sexual violence against children. Therefore, the model proposed in this study can serve as a reference for drafting guidelines for the implementation of diversion, whether through implementing regulations or internal guidelines for law enforcement officials. It is hoped that these guidelines will enhance the consistency of diversion's application while strengthening the protection of child victims within the juvenile criminal justice system. Thus, the contribution of this study lies not only in formulating the Diversion Appropriateness Test Model but also in developing a normative framework to guide the exercise of discretion in a more objective, proportional, and child rights-oriented manner. This model is expected to strengthen the balance

⁷² Charlie Bremer, Richard B. Fletcher, Matt Shepherd, dan Shirley Jülich, "Professional Insights into Sexual Violence Restorative Justice Risk Assessment, Recommendations for Practice," *Journal of Aggression, Maltreatment & Trauma* (2025), <https://doi.org/10.1080/10926771.2025.2502371>

between the goal of rehabilitating child offenders and the state's obligation to provide effective protection to child victims in every case resolution.

Conclusion

The application of diversion to a child who committed the crime of attempted rape of a child victim cannot be based solely on the fulfillment of the formal requirements stipulated in Law No. 11 of 2012 on the Juvenile Criminal Justice System. The nature of the crime, which violates the child victim's bodily integrity, sexual freedom, dignity, and psychological development, places this case in a category that requires stricter limitations on the application of diversion. Therefore, the appropriateness of diversion must be assessed substantively by considering the protection of the child victim, the risk of revictimization, the level of accountability of the child offender, and the ability of the diversion mechanism to achieve the goal of rehabilitation without compromising the child victim's rights to protection, recovery, and a sense of security. Thus, diversion is a form of judicial discretion whose application must be grounded in a balance between the best interests of the child offender and the state's obligation to provide effective protection to the child victim.

This study proposes the Diversion Suitability Assessment Model as a normative contribution to address the lack of substantive criteria in determining the appropriateness of applying diversion in cases involving juvenile offenders accused of attempted rape with a child victim. The model is based on five indicators: protection of the child victim's safety and best interests; prevention of revictimization; accountability and rehabilitation of the juvenile offender; the victim's freely given and meaningful consent; and the effectiveness of oversight in implementing the diversion outcome. These five indicators form an assessment framework that can serve as a guideline for investigators, prosecutors, judges, probation officers, and diversion facilitators to exercise their discretion in a more objective, consistent, and accountable manner. This model is expected not only to strengthen the protection of child victims in juvenile criminal justice practice but also to provide a conceptual foundation for the development of policies and guidelines for the implementation of diversion that are more responsive to the characteristics of sexual violence crimes involving child victims.

The contribution of this study lies in formulating the Diversion Suitability Test Model as a normative parameter that integrates the principles of restorative justice, victimology, and the best interests of the child into a single operational assessment framework. However, this study remains limited to a normative legal approach and has not yet tested the implementation of the model in the practice of juvenile criminal justice. Therefore, future research should use an empirical or socio-legal approach to evaluate the effectiveness of the proposed model and adapt it to other forms of sexual violence crimes, as well as through comparative studies with juvenile justice systems in other countries.

Declarations

Author contribution statement

Both the authors contributed substantially to this study. SS conceived and designed the study, conducted the literature review, collected and analyzed the legal materials, developed the conceptual framework, and drafted the manuscript. HP supervised the research, contributed to the legal analysis and interpretation of the findings, critically reviewed the manuscript, provided substantive revisions, and approved the final version of the manuscript.

Declaration of interests statement

The authors declare that they have no financial interests, personal relationships, institutional affiliations, or other competing interests that could have influenced the design, conduct, analysis, interpretation, or publication of this study.

AI Usage Statement

The authors used artificial intelligence (AI) tools to a limited extent solely for language editing, grammar checking, and improving the clarity and readability of the manuscript. AI was not used to generate the research idea, formulate the research questions, conduct legal analysis, interpret legal materials, or draw the scholarly conclusions presented in this article. The authors take full responsibility for the originality, accuracy, and academic integrity of the content. AI tools are not recognized as authors or contributors to this research.

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