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# Diversion and Juvenile Narcotics Sentencing: Indonesia and Japan Comparison under Pancasila Justice

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**This study aims to** analyze the policy of diversion and criminalization of children in narcotics cases in the juvenile criminal justice system in Indonesia, and compare it with practices in Japan to identify systemic problems that hinder rehabilitative orientation.

**This study uses** normative legal methods with legislative, conceptual, and comparative approaches. The analysis focused on the provisions in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System and Law No. 35 of 2009 concerning Narcotics, as well as their comparison with the welfare-oriented juvenile justice system in Japan.

**The novelty** of this research lies in the placement of Pancasila justice as an evaluative framework in analyzing the design of the juvenile criminal justice system, so that diversion is not understood solely as a procedural mechanism, but as a systemic principle that must integrate rehabilitation and social reintegration.

**The findings** of the study show that the failure to implement diversion in narcotics cases against children is more due to normative restrictions and fragmentation of goals between criminal justice subsystems, rather than solely by technical implementation issues.

**This study concludes** that policy reconstruction is needed by placing rehabilitation as the main response and imprisonment as the ultimate remedium, in order to realize child protection that is in line with human values and social justice within the framework of Pancasila justice.

**Keywords:** Diversion; Pancasila Justice; Child Criminalization

**Abstrak**

**Penelitian ini bertujuan untuk** menganalisis kebijakan diversifikasi dan pemidanaan anak dalam perkara narkoba dalam sistem peradilan pidana anak di Indonesia, serta membandingkannya dengan praktik di Jepang guna mengidentifikasi problem sistemik yang menghambat orientasi rehabilitatif.

**Penelitian ini menggunakan** metode hukum normatif dengan pendekatan perundang-undangan, konseptual, dan komparatif. Analisis difokuskan pada pengaturan dalam Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak dan Undang-Undang Nomor 35 Tahun 2009 tentang Narkoba, serta perbandingannya dengan sistem peradilan anak di Jepang yang berorientasi kesejahteraan.

**Kebaruan** penelitian ini terletak pada penempatan keadilan Pancasila sebagai kerangka evaluatif dalam menganalisis desain sistem peradilan pidana anak, sehingga diversifikasi tidak dipahami semata sebagai mekanisme prosedural, melainkan sebagai prinsip sistemik yang

*harus mengintegrasikan rehabilitasi dan reintegrasi sosial.*

**Temuan** penelitian menunjukkan bahwa kegagalan penerapan diversifikasi dalam perkara narkoba terhadap anak lebih disebabkan oleh pembatasan normatif dan fragmentasi tujuan antar subsistem peradilan pidana, bukan semata-mata oleh persoalan implementasi teknis.

**Penelitian ini menyimpulkan** bahwa rekonstruksi kebijakan diperlukan dengan menempatkan rehabilitasi sebagai respons utama dan pidana penjara sebagai *ultimum remedium*, guna mewujudkan perlindungan anak yang selaras dengan nilai kemanusiaan dan keadilan sosial dalam kerangka keadilan Pancasila.

**Kata Kunci:** Diversifikasi; Keadilan Pancasila; Kriminalisasi Anak

## 1. INTRODUCTION

The development of juvenile criminal policies in narcotics cases shows a paradigm shift away from a retributive orientation towards rehabilitation and restoration approaches. This shift has been fueled not only by criticism of the effectiveness of child prisons, but also by global awareness that children's involvement in drug crime is often linked to structural, social, and psychological vulnerability factors.<sup>1</sup> Recent systematic reviews confirm that juvenile drug treatment courts demonstrate significant impacts on substance use reduction, mental health improvement, and recidivism prevention.<sup>2</sup> In this context, diversion serves as a key tool designed to prevent children from becoming trapped deeper in the formal criminal justice system. However, the reality of law enforcement in various countries shows that the success of diversion is greatly influenced by the design of the criminal justice system, not just the presence of normative norms that govern it.

Conceptually, diversion is a mechanism for transferring the settlement of children's cases from the formal criminal justice process to a non-judicial mechanism oriented towards recovery, rehabilitation, and social reintegration.<sup>3</sup> In the framework of the juvenile criminal justice system, diversion cannot be understood as the technical discretion of law enforcement officials alone, but as a policy principle that reflects the principle of *ultimum remedium* and the best interests of the child. Child criminalization in narcotics cases contains its own complexity because the position of children is often in the gray area between perpetrator and victim of addictive substance abuse.<sup>4</sup> Thus, the relationship between diversion and juvenile punishment is not linear, but is determined by the configuration of the legal system and the philosophy of justice adhered to.<sup>5</sup>

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<sup>1</sup> Emily E. Tanner-Smith, Frank Mojekwu, and Lauren Frankel, 'Examining the Effects of Juvenile Drug Treatment Courts: A Systematic Review and Meta-Analysis', *Criminal Justice and Behavior* 51, no. 1 (January 2024): 148–170, <https://doi.org/10.1177/00938548231208208>.

<sup>2</sup> Steven Belenko et al., 'The Impact of Juvenile Drug Treatment Courts on Substance Use, Mental Health, and Recidivism: Results from a Multisite Experimental Evaluation', *The Journal of Behavioral Health Services & Research* 49, no. 4 (October 2022): 436–455, <https://doi.org/10.1007/s11414-022-09805-4>.

<sup>3</sup> Le Thu Dao et al., 'Diversion and Restorative Justice in the Context of Juvenile Justice Reforms in Indonesia, Thailand, the Philippines and Vietnam', *The International Journal of Restorative Justice* 5, no. 2 (August 2022): 237–262, <https://doi.org/10.5553/tijrj.000104>.

<sup>4</sup> Mochammad Sajarod Zakun, H. Erwin Owan Hermansyah Soetoto, and Lukman Hakim, 'Sanksi Rehabilitasi Bagi Anak Pecandu Narkoba', *Ranah Research: Journal of Multidisciplinary Research and Development* 7, no. 2 (December 2024): 1108–1120, <https://doi.org/10.38035/rj.v7i2.1405>.

<sup>5</sup> Matanat Pasha Asgarova, 'Reforms of Juvenile Justice in the Republic of Azerbaijan', *Path of Science* 9, no. 10

The main problem that arises is the gap between normative recognition of diversion and the practice of juvenile criminalization in narcotics cases. In Indonesia, various studies have shown that although legal frameworks have recognized diversion and restorative justice, their implementation is still fragmentary and highly dependent on institutional preferences.<sup>6</sup> Diversion often stops at the early stages of the judicial process, while at the stage of prosecution and examination in court, the punitive orientation remains predominant. This condition shows that the main problem does not lie in the absence of norms, but in the design of the criminal justice system that is not yet fully integrated. As a result, the criminalization of children in narcotics cases still reproduces the logic of punishment which has the potential to exacerbate stigmatization and recidivism. Recent research confirms that diversion in narcotics cases involving children is more often applied at the investigation stage, while at prosecution and court examination stages it tends not to receive enough attention.<sup>7</sup>

International studies show that countries with developed child criminal justice systems include diversion as an integral part of system design, not as a procedural exception. Matsumoto et al.'s study of Japan shows that the mechanism for the transfer of children's cases is more influenced by family court institutions that are oriented towards a strong understanding and social support.<sup>8</sup> Recent literature from highly reputable journals also confirms that a non-punitive approach to children facing the law is more effective in preventing criminal escalation compared to imprisonment. Meanwhile, national and regional research focuses more on the normative and implementive aspects of diversion, without placing it as a whole within the framework of the criminal justice system comparatively.<sup>9</sup> Research by Budiyo et al. highlights that the values of restorative justice and the principles of Pancasila have been adopted normatively in the Law on the Juvenile Criminal Justice System, these values have not been fully lived and applied in daily law enforcement practices.<sup>10</sup> A similar conclusion was expressed by Jenitasari and colleagues, who stated that the application of diversion in narcotics cases against children is highly dependent on the choice and interpretation of law enforcement officers at the police level.<sup>11</sup> Thus, previous research shows the dominance of sectoral studies that have not made a deep connection between the philosophy of justice, system design, and juvenile penalization policies in narcotics cases.

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(October 2023): 5001–5010, <https://doi.org/10.22178/pos.97-18>.

<sup>6</sup> Asgarova.

<sup>7</sup> Silviyanica Jenitasari et al., 'Problems of the Implementation of Diversion in the Case of Children Who Use Narcotics in the Police', *International Journal of Social Service and Research* 5, no. 5 (June 2025): 508–517, <https://doi.org/10.46799/ijssr.v5i5.1229>.

<sup>8</sup> Wahab Aznul Hidayat, "Penerapan Diversi Dalam Sistem Peradilan Pidana Anak," *JUSTISI* 5, no. 2 (2019): 84–96, <https://doi.org/10.33506/js.v5i2.543>.

<sup>9</sup> Dyah Ersita Yustanti Sunnah, Hamidah Abdurrachman, Gunawan Widjaja, 'Juvenile Diversion by The Police in The Perspective of Pancasila Justice: Reformulation and Optimization', *Lex Localis-Journal Of Local Self-Government* 10, no. 11 (2025): 908–918, <https://doi.org/https://doi.org/10.52152/801050>.

<sup>10</sup> Budiyo Budiyo, Setya Wahyudi, and Dwi Hapsari Retnaningrum, 'Kompatibilitas Restorative Justice Dengan Nilai-Nilai Pancasila Dalam Sistem Peradilan Pidana Anak', *Pancasila: Jurnal Keindonesiaan* 4, no. 1 (2024): 38–47, <https://doi.org/10.52738/pjk.v4i1.444>.

<sup>11</sup> Jenitasari et al., 'Problems of the Implementation of Diversion in the Case of Children Who Use Narcotics in the Police', June 2025.

Based on the analysis of the literature, there is an important research gap, namely that there has not been a comprehensive study that compares diversion policies and child law enforcement in narcotics cases, viewing it as a problem of the criminal justice system as a whole. Previous research has tended to debate diversion as a legal tool or sectoral policy, without examining how the fundamental value of a legal system influences the direction of child punishment. In addition, research that incorporates the perspective of Pancasila justice as an analytical lens in comparison with legal systems from other countries, especially Japan, is still quite rare. Existing scholarship has predominantly addressed diversion through sectoral lenses examining police implementation, prosecutorial discretion, or judicial decision making in isolation treating diversion as a dependent variable shaped by exogenous factors rather than interrogating how systemic configuration and normative foundations determine whether diversion can function as a binding principle.

The novelty of this research lies in the placement of Pancasila justice as an evaluative framework in analyzing the design of the juvenile criminal justice system, so that diversion is not understood solely as a procedural mechanism, but as a systemic principle that must integrate rehabilitation and social reintegration. This research addresses critical gaps through three interrelated contributions. Theoretically, it develops Pancasila justice as an operational analytical framework, operationalized through three measurable dimensions such as humanitarian protection (prioritizing child development over retribution), social integration (emphasizing rehabilitation and community reintegration), and systemic coherence (requiring unified philosophical orientation across all justice subsystems). Methodologically, it employs functional comparative analysis to examine how Indonesia and Japan two jurisdictions with shared communitarian orientations but divergent systemic designs structure the relationship between diversion and punishment in juvenile narcotics cases. Substantively, it demonstrates that diversion failure in Indonesia stems not from absent norms but from treating diversion as a procedural exception within a fragmented, punitive system, whereas Japan's success derives from embedding diversion as a systemic principle through institutionally integrated, welfare oriented design.

This study aims to analyze and compare the policy of diversion and criminalization of children in narcotics cases in the Indonesian and Japanese legal systems, by placing Pancasila justice as a normative framework for evaluation. Specifically, this study pursues three objectives: first, to analyze the normative framework and implementation patterns of diversion and criminalization in juvenile narcotics cases within Indonesia's criminal justice system; second, to examine Japan's juvenile justice system as a comparative reference point, focusing on institutional design and philosophical orientation; and third, to develop a Pancasila-based reconstruction model that repositions diversion as a systemic principle and rehabilitation as the primary sentencing response, to realize child protection that is in line with human values and social justice.

## **2. METHOD**

This research employs a normative legal approach with statute, conceptual, and

comparative legal methods.<sup>12</sup> The normative approach focuses on analyzing legal norms governing diversion and juvenile sentencing policies in narcotics cases within the juvenile criminal justice systems of Indonesia and Japan. This study applies the functional comparative legal method, which examines how different legal systems address similar social problems. This approach enables analysis of systemic design features institutional structures, subsystem integration, and philosophical coherence that determine policy outcomes, rather than merely comparing statutory texts. The comparison identifies structural factors that enable or obstruct diversion implementation. Japan was selected based on three considerations. First, Japan's juvenile justice system embeds diversion as a systemic principle through family court institutions, contrasting with Indonesia's fragmented system. Second, both nations share communitarian legal cultures where collective values influence criminal justice philosophy, enhancing comparative relevance. Third, Japan's approach to juvenile drug offenses prioritizes rehabilitation through integrated social interventions, offering lessons for reforming Indonesia's punitive orientation. The statute approach analyzes consistency between Law No. 11/2012 (Juvenile Criminal Justice System) and Law No. 35/2009 (Narcotics), and their compatibility with international instruments including the Convention on the Rights of the Child and Beijing Rules. The conceptual approach operationalizes Pancasila justice humanitarian protection, social integration, and systemic coherence as an evaluative framework assessing alignment with constitutional values in Article 28B (2) of the 1945 Constitution. The comparative approach examines institutional design, diversion mechanisms, and sentencing orientation differences between Indonesia and Japan. Primary sources include Indonesian and Japanese legislation and court decisions. Secondary sources comprise accredited scientific journals from 2022-2025 addressing juvenile justice reform and comparative criminal policy. The analytical units are: (1) statutory provisions governing diversion eligibility and sentencing; (2) institutional architecture and coordination mechanisms; and (3) philosophical orientations in legal frameworks. These are analyzed qualitatively through doctrinal interpretation and critical argumentation, integrating statutory, conceptual, and comparative approaches to address the research objectives.

### **3. DISCUSSION**

#### **3.1. Normative Framework and Systemic Failures of Diversion in Indonesia**

The juvenile criminal justice system in Indonesia is constitutionally grounded in the principle that children constitute a distinct subject of law requiring specialized protection. Article 28B paragraph (2) of the 1945 Constitution explicitly guarantees that every child has the right to survival, growth, development, and protection from violence and discrimination.<sup>13</sup> This constitutional mandate was operationalized through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which establishes the paramountcy of the child's best

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<sup>12</sup> Peter Mahmud Marzuki, *Metode Penelitian Hukum* (Jakarta: Kencana, 2005).

<sup>13</sup> Andika Dwi Amrianto, 'Comparison of Punishment Policies Against Children Narcotics Abuses in Indonesia and Thailand', *Proceedings International Conference on Sustainable Innovation (ICoSI)* 3, no. 1 (2023): 33–39, <https://doi.org/https://doi.org/10.18196/icosi.v3i1.112>.

interests as the governing principle at every stage of criminal proceedings. The legislative framework thus signals a fundamental departure from purely retributive responses toward children in conflict with law, positioning child protection and rehabilitation as central objectives rather than ancillary considerations.<sup>14</sup>

The SPPA Law explicitly mandates diversion defined as the transfer of case resolution from formal criminal justice processes to non judicial mechanisms oriented toward restoration and rehabilitation at every stage of examination, provided the offense carries a criminal threat of less than seven years and does not constitute a repeat offense (Article 7(2)).<sup>15</sup> This normative recognition reflects Indonesia's adherence to international instruments, including the Convention on the Rights of the Child, the Beijing Rules, and restorative justice principles.<sup>16</sup> However, the operationalization of diversion confronts immediate normative obstacles when applied to narcotics cases involving children, as Law Number 35 of 2009 concerning Narcotics imposes severe statutory penalties that categorically exclude most juvenile drug offenders from diversion eligibility.<sup>17</sup>

The philosophical foundation of diversion derives from critiques of punitive paradigms that have historically dominated modern criminal law. Criminal punishment theory provides essential analytical lenses for understanding this tension. Utilitarian theories prioritize social benefits and crime prevention, retributive theories emphasize moral accountability and proportionate punishment, while integrative or combined theories attempt to synthesize these objectives by positioning justice as the primary aim while incorporating both preventive and corrective functions.<sup>18</sup> In the context of children as subjects of narcotics abuse, the integrative approach proves particularly relevant because it permits reorientation from retribution toward rehabilitative processes without negating criminal law's broader social control functions.<sup>19</sup>

Penal policy as conceptualized by Marc Ancel, constitutes both a scientific and artistic endeavor aimed at formulating, implementing, and executing criminal law in rational and humane ways.<sup>20</sup> This perspective underscores that criminal law cannot operate independently of social context and prevailing value systems. Applied to Indonesia's juvenile narcotics policy, this framework reveals a fundamental contradiction such as despite normative instruments recognizing diversion and rehabilitation, the substantive policy orientation remains embedded

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<sup>14</sup> Hasnah Aziz, Imam Rahmaddani, and Kuntadi Kuntadi, 'Child Perpetrators of Drug Crimes: Legal Protections and Effectiveness in Indonesian Juvenile Justice', *Lex Publica* 9, no. 2 (December 2022): 102–117, <https://doi.org/10.58829/lp.9.2.2022.102-117>.

<sup>15</sup> Walim Walim et al., 'The Regulation of Diversion in Indonesia's Juvenile Criminal Justice System Oriented Toward the Best Interests of the Child and Fairness', *Rechtsnormen: Journal of Law* 2, no. 3 (September 2024): 256–265, <https://doi.org/10.70177/rjl.v2i3.1280>.

<sup>16</sup> Aziz, Rahmaddani, and Kuntadi, 'Child Perpetrators of Drug Crimes'.

<sup>17</sup> Gatot Eko Yudhoyono and Eko Soponyono, 'Jurisprudence for Resolving Crimes of Narcotics Abuse by Children in Indonesia', *Jurnal Jurisprudence*, 27 June 2024, 63–84, <https://doi.org/10.23917/jurisprudence.v14i1.4289>.

<sup>18</sup> Barda Nawawi Arief and Muladi, *Teori-Teori Dan Kebijakan Pidana, Cet.Ke-4* (Bandung: Alumni, 2010).

<sup>19</sup> B. Patmawanti, 'Formulation of Policy on the Implementation of Criminal Punishment Sanctions and Rehabilitation Against Children as Drug Abuse Perpetrators', *Interdisciplinary Journal and Humanity (INJURITY)* 4, no. 4 (May 2025): 166–178, <https://doi.org/10.58631/injury.v4i4.1418>.

<sup>20</sup> Marc Ancel, *Social Defence: A Modern Approach to Criminal Problem* (London: Routledge & Kegan Paul, 1965).

in punitive logic that privileges incarceration as the primary response.<sup>21</sup> The welfare oriented approach to child justice, which prioritizes children's developmental needs as the paramount consideration in case handling, remains aspirational rather than operational in narcotics proceedings.<sup>22</sup>

The primary normative to diversion implementation stems from Article 7(2) of the SPPA Law, which restricts diversion eligibility to offenses carrying criminal threats below seven years. This threshold based criterion proves fundamentally incompatible with the Narcotics Law's sentencing structure, where even possession for personal use attracts penalties exceeding this limitation.<sup>23</sup> Consequently, children involved in narcotics abuse who occupy an ambiguous position between perpetrator and victim are systematically excluded from diversionary mechanisms and subjected to formal adjudication and potential incarceration despite their evident rehabilitation needs.<sup>24</sup> Recent empirical research confirms that this normative barrier operates as the principal constraint on diversion application in juvenile narcotics cases, overshadowing implementation challenges at the operational level.<sup>25</sup>

Beyond statutory restrictions, Indonesia's juvenile justice system exhibits profound structural fragmentation across its constituent subsystems. Research demonstrates that diversion, when applied, concentrates overwhelmingly at the investigation stage, while prosecution and judicial phases default to punitive orientations.<sup>26</sup> This pattern reflects the absence of a unified philosophical orientation binding police, prosecutors, and courts to shared child protection objectives. Each subsystem operates according to distinct institutional logics investigation prioritizes case clearance efficiency, prosecution emphasizes conviction rates, and courts balance formalistic legal interpretation with public pressure for accountability resulting in systemic incoherence that undermines diversion's transformative potential.<sup>27</sup> Law enforcement actors frequently cite the severity of statutory penalties in the Narcotics Law as justification for bypassing diversion, revealing that formal legal constraints interact with institutional risk aversion to perpetuate criminalization of vulnerable children.<sup>28</sup>

The conventional diagnosis attributes diversion failures to implementation deficits

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<sup>21</sup> Walim et al., 'The Regulation of Diversion in Indonesia's Juvenile Criminal Justice System Oriented Toward the Best Interests of the Child and Fairness', September 2024.

<sup>22</sup> Patmawanti, 'Formulation of Policy on the Implementation of Criminal Punishment Sanctions and Rehabilitation Against Children as Drug Abuse Perpetrators'.

<sup>23</sup> Yudhoyono and Soponyono, 'Jurisprudence for Resolving Crimes of Narcotics Abuse by Children in Indonesia', 27 June 2024.

<sup>24</sup> Mochammad Sajarod Zakun, H. Erwin Owan Hermansyah Soetoto, and Lukman Hakim, 'Sanksi Rehabilitasi Bagi Anak Pecandu Narkotika', *Ranah Research: Journal of Multidisciplinary Research and Development* 7, no. 2 (December 2024): 1108–20, <https://doi.org/10.38035/rrj.v7i2.1405>.

<sup>25</sup> Ismu Armanda S, 'Implementation of Diversion As A Restorative Justice Approach To Child Performers In Narcotics', *Ratio Legis Journal* 1, no. 1 (June 2022): 59–72, <https://doi.org/10.30659/rj.1.1.59-72>.

<sup>26</sup> Jenitasari et al., 'Problems of the Implementation of Diversion in the Case of Children Who Use Narcotics in the Police', June 2025.

<sup>27</sup> Herianto Herianto et al., 'Implementation of Diversion in the Juvenile Criminal Justice System in Indonesia: Analysis of Obstacles and Juvenile Punishment Based on Law Number 11 of 2012', *Journal of Management World* 2025, no. 2 (January 2025): 101–109, <https://doi.org/10.53935/jomw.v2024i4.879>.

<sup>28</sup> Armanda S, 'Implementation of Diversion as A Restorative Justice Approach to Child Performers In Narcotics', June 2022.

insufficient training, resource constraints, or discretionary preferences of individual officials. However, this explanation obscures a more fundamental pathology the architectural design of Indonesia's criminal justice system itself. The system treats diversion not as a binding systemic principle but as a conditional procedural mechanism that individual actors may invoke or disregard based on case specific assessments.<sup>29</sup> This positioning reflects a paradigm where child protection remains subordinate to prosecutorial imperatives and judicial formalism, rather than functioning as the overriding normative commitment that shapes all decision making.

Research examining the compatibility between restorative justice principles and Pancasila values reveals that, while these foundational concepts have been adopted normatively in the SPPA Law, they have not been operationalized across the criminal justice apparatus. The dominance of punitive paradigms creates structural obstacles to realizing restorative justice consistently, as subsystems lack institutional incentives or accountability mechanisms to prioritize rehabilitation over conviction.<sup>30</sup> Moreover, the criminal justice system's fragmentation means that even when police successfully implement diversion at the investigation stage, these cases may still proceed to prosecution and adjudication where diversionary principles hold diminished saliency.<sup>31</sup>

From the perspective of Pancasila justice which integrates humanitarian values, social justice, and systemic coherence the current approach to juvenile narcotics cases manifests fundamental normative contradictions. The criminalization of children without adequate consideration of rehabilitative imperatives and future developmental prospects violates the basic principle that Pancasila law rejects treating human beings merely as objects of punishment. Social justice as embodied in Pancasila demands that law enforcement prioritize both human dignity and substantive equity, not merely procedural regularity.<sup>32</sup> The systematic application of imprisonment to children involved in narcotics abuse achieves only formal legal compliance while failing to advance the substantive justice objectives that constitute Pancasila law's ultimate purpose.

This analysis demonstrates that the failure to implement diversion in narcotics cases against children stems primarily from normative restrictions embedded in Article 7(2) of the SPPA Law and fragmentation of institutional objectives across criminal justice subsystems, rather than solely from technical implementation shortcomings. The tension between the SPPA Law and the Narcotics Law reflects deeper contradictions in Indonesia's criminal policy

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<sup>29</sup> Feddy Hantyo Nugroho, Rodliyah, and Amiruddin, 'Law Enforcement against Children's Criminal Action Based on Law Number 11 of 2012 Concerning Children Criminal Justice Systems', *International Journal of Scientific Research and Management* 8, no. 06 (June 2020): 226–235, <https://doi.org/10.18535/ijorm/v8i06.11a03>.

<sup>30</sup> Setia Untung Arimuladi, 'Enhancing Legal Certainty Through Restorative Justice: A Focus on the Role of Indonesia's Attorney General's Office', *Pakistan Journal of Criminology* 16, no. 2 (2024): 903–912, <https://doi.org/10.62271/pjc.16.2.903.912>.

<sup>31</sup> Jenitasari et al., 'Problems of the Implementation of Diversion in the Case of Children Who Use Narcotics in the Police', June 2025.

<sup>32</sup> Rasdi Rasdi et al., 'Reformulation of the Criminal Justice System for Children in Conflict Based on Pancasila Justice', *Lex Scientia Law Review* 6, no. 2 (December 2022): 479–518, <https://doi.org/10.1529 4/lesrev.v6i2.58320>.

orientation, where punitive logic coexists uneasily with rehabilitative aspirations. Meaningful reform, therefore, requires not merely improving coordination or capacity building at the operational level, but fundamentally reconstructing the normative framework and systemic architecture to position child protection and rehabilitation as non negotiable principles that bind all criminal justice actors.

### **3.2. Welfare Model and Institutional Integration of Diversion in Japan**

Japan's juvenile criminal justice system is conceptually and institutionally constructed on the principle of *parens patriae* the state as guardian, prioritizing children's welfare over retributive punishment. This foundational orientation is codified in the Juvenile Law, which establishes that the primary objectives in addressing juvenile delinquency are education, rehabilitation, and social reintegration rather than punishment or moral condemnation.<sup>33</sup> The legislative framework explicitly positions children who violate the law not as criminals requiring sanction but as subjects necessitating protective intervention and developmental support. This philosophical premise generates profound systemic consequences: criminalization functions as an *ultima ratio* mechanism reserved for exceptional circumstances, while diversion and welfare oriented interventions constitute the normative baseline response to juvenile offending.<sup>34</sup>

The welfare orientation reflects broader socio legal commitments within Japanese society to communitarian values and collective responsibility for child development. Unlike adversarial justice systems that emphasize individual culpability and proportionate punishment, Japan's model conceptualizes juvenile delinquency as symptomatic of failures in socialization processes, family support structures, and community protective mechanisms. Consequently, the state's response focuses less on determining guilt and imposing penalties than on diagnosing developmental needs and mobilizing rehabilitative resources. This paradigm shift from adjudication to assessment, from punishment to treatment permeates every institutional component of Japan's juvenile justice apparatus.<sup>35</sup>

The structural cornerstone of Japan's system is the Family Court, which exercises comprehensive jurisdiction over juvenile cases and functions not merely as an adjudicative body but as a welfare coordinating institution.<sup>36</sup> Every juvenile case, regardless of offense severity, is in principle referred to the Family Court, which possesses broad discretionary authority to determine the most appropriate dispositional response based on holistic assessment of the child's circumstances, developmental needs, and rehabilitative prospects.<sup>37</sup> This institutional design embeds diversion structurally rather than treating it as a discretionary

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<sup>33</sup> Tom Ellis and Akira Kyo, 'Youth Justice in Japan', in Oxford Handbooks Online: Criminology and Criminal Justice, 1st edn, ed. Oxford Handbooks Editorial Board (Oxford University Press, 2017), <https://doi.org/10.1093/oxfordhb/9780199935383.013.65>.

<sup>34</sup> Ellis and Kyo.

<sup>35</sup> Ellis and Kyo.

<sup>36</sup> Eiichiro Watamura and Tomohiro Ioku, 'Japanese Public Opinion on Reporting the Real Names of Juvenile Criminals: An Examination from the Perspective of Justification Preferences', *Children and Youth Services Review* 150 (July 2023): 107015, <https://doi.org/10.1016/j.childyouth.2023.107015>.

<sup>37</sup> Ellis and Kyo, 'Youth Justice in Japan'.

deviation from standard criminal processing.

The Family Court operates through specialized procedures distinct from ordinary criminal trials. Cases undergo a thorough social investigation conducted by family court investigators, who examine not only the offense but also comprehensively assess the child's family environment, educational background, psychological state, and social relationships. This investigative process generates detailed reports that inform judicial decision making, enabling dispositional choices grounded in individualized welfare assessments rather than formulaic sentencing calculations.<sup>38</sup> The court's dispositional options range from dismissal without protective measures, through various forms of probation and community based supervision, to commitment to juvenile training schools, with formal criminal prosecution transferred to adult courts representing the exceptional rather than routine pathway.<sup>39</sup>

This institutional integration produces several critical advantages. First, it ensures philosophical coherence all actors within the Family Court system operate under unified welfare oriented mandates rather than divergent institutional objectives. Second, it facilitates comprehensive case management the same institution oversees investigation, disposition, and subsequent supervision, enabling continuity and accountability.<sup>40</sup> Third, it positions diversion as the default presumption requiring no special justification, while formal adjudication demands affirmative demonstration that welfare measures prove insufficient.<sup>41</sup> This structural inversion where diversion constitutes the norm and prosecution the exception fundamentally distinguishes Japan's system from fragmented multi agency models where each subsystem retains autonomous decision making authority.

Within this framework, children involved in narcotics use receive treatment fundamentally different from that in punishment oriented jurisdictions. Japanese law and practice conceptualize juvenile drug involvement primarily as a public health and social welfare concern rather than a criminal justice problem.<sup>42</sup> Children who use narcotics are viewed predominantly as subjects requiring medical intervention, psychological support, and environmental modification rather than as offenders warranting incarceration.<sup>43</sup> This orientation aligns with empirical evidence demonstrating that narcotics use among juveniles correlates strongly with psychosocial vulnerabilities, family dysfunction, peer influence, and educational disengagement factors amenable to rehabilitative intervention but exacerbated by punitive responses.<sup>44</sup>

Family Courts addressing juvenile narcotics cases typically employ protective measures

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<sup>38</sup> Hyeok Kim, 'Treatment of Juvenile Reformatories and Protection of Human Rights in Japan', *Korean Juvenile Protection Review* 35, no. 1 (June 2022): 1–34, <https://doi.org/10.35930/KJPR.35.1.1>.

<sup>39</sup> Ellis and Kyo, 'Youth Justice in Japan'.

<sup>40</sup> Hyeok Kim, 'Treatment of Juvenile Reformatories and Protection of Human Rights in Japan'.

<sup>41</sup> Ellis and Kyo, 'Youth Justice in Japan'.

<sup>42</sup> The Korean Society of Culture and Convergence, Jeewung Kim, and Sangwoon Kim, 'A Study on Measures to Prevent Recidivism of Drug Offenders', *The Korean Society of Culture and Convergence* 45, no. 3 (March 2023): 469–479, <https://doi.org/10.33645/cnc.2023.03.45.03.469>.

<sup>43</sup> 横山實, 'Protective Educative Treatment under Japanese Juvenile Law', no. 1, preprint, 国学院大学法学会, July 2018, <https://doi.org/10.57529/0002000974>.

<sup>44</sup> Hyeok Kim, 'Treatment of Juvenile Reformatories and Protection of Human Rights in Japan'.

emphasizing treatment and supervision rather than detention. Common dispositions include probation with conditions requiring participation in drug rehabilitation programs, counseling, and regular reporting to probation officers; placement in welfare facilities providing structured environments with educational and therapeutic components; or commitment to juvenile training schools only when less restrictive alternatives prove inadequate. The emphasis throughout remains on addressing underlying factors contributing to drug involvement and preventing recidivism through positive behavioral change rather than deterrence through punishment.

Research on drug offender rehabilitation in Japan confirms that integrated approaches combining medical treatment, social service provision, and community based supervision demonstrate superior outcomes in preventing repeat offenses compared to incarceration centered strategies.<sup>45</sup> These findings reinforce the systemic logic of prioritizing welfare interventions effective crime control, particularly for juvenile drug cases, requires addressing root causes rather than imposing punitive consequences that risk deepening social marginalization and escalating criminal trajectories.<sup>46</sup>

Despite its foundational welfare orientation, Japan's juvenile justice system has experienced significant normative pressures toward increased punitiveness in recent decades. Amendments to the Juvenile Law in the early 21st century lowered the age threshold for potential criminal prosecution, expanded the range of offenses subject to adult court transfer, and introduced provisions permitting greater transparency regarding juvenile offenders' identities in serious cases.<sup>47</sup> These reforms reflected public concern about highly publicized violent crimes committed by juveniles and political demands for enhanced accountability and victim protection.<sup>48</sup>

Empirical research on public attitudes reveals substantial societal support for stricter policies toward juvenile offenders, particularly regarding disclosure of offenders' identities and imposition of more severe sanctions.<sup>49</sup> Legal psychology studies demonstrate that support for punitive measures correlates with perceptions of crime severity, victim impact, and public safety concerns, suggesting that the welfare model faces ongoing legitimacy challenges when confronting serious juvenile offending.<sup>50</sup> These tensions illustrate that even institutionally mature systems with deeply embedded welfare orientations remain subject to political and social pressures that can erode rehabilitative commitments.

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<sup>45</sup> Hyung-Ui Baik, Song-Hee Lee, and Ju-Yong Lee, 'Comparison with Cases of Japan and Thailand to Prevent Drug Addiction and Develop Social Rehabilitation Services', *JOURNAL OF THE KOREA CONTENTS ASSOCIATION* 24, no. 3 (March 2024): 563–572, <https://doi.org/10.5392/JKCA.2024.24.03.563>.

<sup>46</sup> The Korean Society of Culture and Convergence, Kim, and Kim, 'A Study on Measures to Prevent Recidivism of Drug Offenders'.

<sup>47</sup> Tae-Seok Hong, 'Japan's Revised Juvenile Law on the Road to Severe Punishment - The Main Contents and Our Direction of Revision -', *Legal Theory & Practice Review* 11, no. 1 (March 2023): 47–76, <https://doi.org/10.30833/LTPR.2023.02.11.1.47>.

<sup>48</sup> Hong.

<sup>49</sup> Watamura and Ioku, 'Japanese Public Opinion on Reporting the Real Names of Juvenile Criminals'.

<sup>50</sup> Tomoya Mukai et al., 'The Effect of Real-Name Reporting of Specified Juveniles on Sentencing', *JAPANESE JOURNAL OF RESEARCH ON EMOTIONS* 30, no. 3 (November 2023): 52–60, [https://doi.org/10.4092/jsre.30.3\\_52](https://doi.org/10.4092/jsre.30.3_52).

However, scholarly analysis emphasizes that despite these punitive trends, Japan's fundamental systemic architecture has remained substantially intact. The Family Court continues to serve as the primary institutional mechanism for processing juvenile cases, welfare oriented dispositions predominate across offense categories, and commitments to rehabilitation retain normative and operational priority.<sup>51</sup> Moreover, research on juvenile reformatory treatment confirms that institutional practices emphasize human rights protection, educational advancement, and character development rather than purely custodial control.<sup>52</sup> This institutional resilience suggests that structural design features particularly the centralized Family Court model with unified welfare mandates create path dependencies that constrain the extent to which punitive impulses can reshape systemic orientation.

Japan's relative success in maintaining welfare oriented juvenile justice despite punitive pressures derives from several interrelated factors. Institutional integration through the Family Court creates organizational coherence that fragmented systems lack. When investigation, adjudication, and disposition occur within a single institution operating under unified mandates, competing logics across subsystems cannot undermine policy consistency. This structural arrangement positions diversion as default rather than exception, meaning that departures from welfare approaches require explicit justification, reversing the burden that exists in systems where formal prosecution constitutes the presumptive pathway.<sup>53</sup>

The communitarian legal culture in Japan provides normative resources supporting collective responsibility for child welfare that can counterbalance individualistic accountability demands.<sup>54</sup> While Western liberal democracies often frame juvenile justice as balancing individual rights against public safety, Japanese discourse emphasizes social obligations to nurture children and restore wayward youth to productive community membership. This cultural foundation reinforces institutional welfare commitments even amid punitive pressures. Moreover, the integration of legal, psychological, and social service expertise within the Family Court system enables holistic assessment and individualized intervention that purely juridical institutions cannot provide.<sup>55</sup> Family court investigators bring social work training and child development expertise that complements legal analysis, ensuring that dispositional decisions incorporate a comprehensive understanding of children's circumstances and needs.<sup>56</sup> This multidisciplinary approach operationalizes welfare principles through institutional capacity rather than merely aspirational rhetoric.

Comparative analysis reveals that these success factors are not culturally idiosyncratic but represent transferable design principles. Institutional integration, default diversion presumptions, multidisciplinary expertise, and unified welfare mandates constitute structural

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<sup>51</sup> Ellis and Kyo, 'Youth Justice in Japan'.

<sup>52</sup> The Korean Society of Culture and Convergence, Kim, and Kim, 'A Study on Measures to Prevent Recidivism of Drug Offenders'.

<sup>53</sup> Ellis and Kyo, 'Youth Justice in Japan'.

<sup>54</sup> Baik, Lee, and Lee, 'Comparison with Cases of Japan and Thailand to Prevent Drug Addiction and Develop Social Rehabilitation Services', March 2024.

<sup>55</sup> Ellis and Kyo, 'Youth Justice in Japan'.

<sup>56</sup> Hyeok Kim, 'Treatment of Juvenile Reformatories and Protection of Human Rights in Japan'.

features that can be adapted across diverse legal contexts.<sup>57</sup> The critical insight is that effective welfare oriented juvenile justice depends less on cultural homogeneity or resource abundance than on systemic architecture that embeds rehabilitative commitments structurally rather than treating them as discretionary preferences vulnerable to institutional fragmentation and punitive drift.

For Indonesia, Japan's model offers salient lessons not for wholesale transplantation but for identifying architectural deficits. The contrast between Japan's integrated Family Court system and Indonesia's fragmented multi agency structure highlights how institutional design determines whether welfare principles can operate as binding commitments or remain aspirational norms easily subordinated to punitive imperatives. The comparison demonstrates that normative recognition of diversion proves insufficient without structural mechanisms ensuring all subsystem actors operate under unified child protection mandates a fundamental gap characterizing Indonesia's current juvenile justice architecture.

### **3.3. Comparative Analysis of System Design and Philosophical Coherence**

A comparison of diversion and child punishment policies in narcotics cases between Indonesia and Japan cannot be done superficially by only comparing the legal rules. Meaningful comparative analysis must be conducted within the framework of the criminal justice system, which includes philosophical foundations, institutional design, criminal orientation, and practical impact on child protection. This approach is important because the main criticism of previous research has been that it tends to address diversification sectorally and normatively, without linking it to the configuration of the underlying legal system.<sup>58</sup> Thus, the comparison between Indonesia and Japan in this study aims to answer the main question, namely: why the diversion mechanism produces different implications in two legal systems that both recognize the principle of child protection.

The main problem in the implementation of diversion in Indonesia does not come from the absence of standards or norms, but from weaknesses in the integration between parts of the criminal justice system. Research by Budiyo et al. highlights that the values of restorative justice and the principles of Pancasila have been adopted normatively in the Law on the Juvenile Criminal Justice System.<sup>59</sup> However, these values have not been fully lived and applied in daily law enforcement practices. A similar conclusion was also expressed by Jenitasari and colleagues, who stated that the application of diversion in narcotics cases against children is highly dependent on the choice and interpretation of law enforcement officers at the police level.<sup>60</sup> Based on the existing literature, it can be concluded that diversion in Indonesia is still seen as a procedural tool, not as an underlying principle and binding on the entire criminal

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<sup>57</sup> Baik, Lee, and Lee, 'Comparison with Cases of Japan and Thailand to Prevent Drug Addiction and Develop Social Rehabilitation Services', March 2024.

<sup>58</sup> Sunnah, Hamidah Abdurrachman, Gunawan Widjaja, 'Juvenile Diversion by The Police in The Perspective of Pancasila Justice: Reformulation and Optimization'.

<sup>59</sup> Budiyo, Wahyudi, and Retnaningrum, 'Kompatibilitas Restorative Justice Dengan Nilai-Nilai Pancasila Dalam Sistem Peradilan Pidana Anak'.

<sup>60</sup> Jenitasari et al., 'Problems of the Implementation of Diversion in the Case of Children Who Use Narcotics in the Police', June 2025.

justice process.

In contrast, reliable international research on Japan shows a different pattern. The studies of Kuzuno and Ellis and Kyo consistently state that diversion is an inherent part of the design of the juvenile criminal justice system in Japan. Diversion is not seen as an exception, but rather is considered as the main mechanism integrated in family justice authority. Kim's research also reinforces this by showing that the treatment of children in the Japanese justice system remains oriented towards rehabilitation and protection of human rights, despite the pressure of more punitive policies. The main findings of this international literature suggest that the success of diversion is highly dependent on the alignment of the philosophy and structure of the criminal justice system. These fundamental differences can be briefly shown through the following comparison table.

**Table 1.**  
**Comparison of Diversion and Criminalization of Children in Indonesia and Japan**

Comparative Aspects	Indonesia	Japan
Philosophical foundations	Child protection and restorative justice	Welfare oriented juvenile justice
Diversion position	Conditional obligations	procedural Systemic principles
Institutional design	Fragmentative subsystems	between Integrated through Family Court
Penal orientation	Punitif	Dominant rehabilitative
Child treatment of narcotics	A tendency to be criminalized	to be Rehabilitative social approach
Systemic implications	Implementation inconsistencies	Policy consistency

Source: Author's Analysis.

The table does not aim to replace the analysis, but rather to clarify the pattern of structural differences that are the basis of the arguments in this study. The difference in diversion positions between Indonesia and Japan shows that the success of the case transfer mechanism is not only determined by normative regulations, but also by the way the legal system understands the function of juvenile punishment. Research by Ismu Armanda shows that in the Indonesian legal system, the severe criminal threat in the Narcotics Law is often the main reason for ignoring diversion.<sup>61</sup> This shows that the punitive paradigm still dominates and has not been completely replaced by a rehabilitative approach in SPPA.

International literature on criminal policies against children globally also supports these findings. E. Ackerman emphasized that the juvenile criminal justice system that relies on

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<sup>61</sup> Armanda S, 'Implementation of Diversion As A Restorative Justice Approach To Child Performers In Narcotics'.

imprisonment as the main action tends not to succeed in achieving the goals of prevention and rehabilitation.<sup>62</sup> These findings are in line with criticism of the system that separates criminal policy and social services. In the Indonesian context, this separation can be seen from the lack of optimal integration between the criminal justice system and the medical and social rehabilitation system for children involved in narcotics use.

The Japanese legal system shows how institutional integration can reduce conflicts between legal certainty and child protection. Research by Hyung-Ui Baik et al. shows that integrated rehabilitative approaches with social services in Japan as well as other East Asian countries contribute to the prevention of repeat crime.<sup>63</sup> These findings prove that a non-punitive approach does not mean a lack of effectiveness in controlling crime but can improve the effectiveness of the criminal justice system in the long run. The main theme of the study is the importance of integrating diversion as part of the design of the legal system, not just as an additional mechanism.

From the point of view of legal theory, this comparison shows the importance of a combined approach in determining the punishment of children. This approach, which includes the goals of justice, benefits, and protection of human rights, is more clearly and consistent in the Japanese legal system than in the Indonesian legal system. This study finds that inconsistencies in the application of the law in Indonesia occur because this combined approach paradigm has not been fully internalized in the entire criminal justice subsystem. The results of this study are in accordance with Marc Ancel's view that criminal law policy must be rational, humane, and have clear social goals.

This comparative analysis shows that the difference between Indonesia and Japan lies not only in the difference in regulations, but rather in the way the legal system of each views children, criminal acts, and the purpose of punishment. Diversion in Japan plays a systemic instrument that functions to maintain a balance between the protection of children and broader social interests, while in Indonesia it is still trying to get out of the influence of the dominating punitivism. Conclusions from past research show that without a thorough reconstruction of the criminal justice system, diversion will remain a weak norm in real practice. This comparative emphasizes the novelty aspect of research, namely the placement of diversion and juvenile criminalization in narcotics cases as an issue related to the design of the criminal justice system based on values. By comparing Indonesia and Japan, the success of the implementation of diversion is inseparable from institutional integration, orientation in punishment, and the philosophy of justice embraced.

The comparison in this study specifically focuses on the criminal justice system as a whole and based on certain values. The comparison between Indonesia and Japan does not aim to create a model of regional harmonization, but rather to explore how differences in justice philosophy and system design affect the diversion position and orientation of criminalization

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<sup>62</sup> E. Ackerman, J. Magram, and T. D. Kennedy, 'Systematic Review: Impact of Juvenile Incarceration', *Child Protection and Practice* 3 (December 2024): 100083, <https://doi.org/10.1016/j.chipro.2024.100083>.

<sup>63</sup> Baik, Lee, and Lee, 'Comparison with Cases of Japan and Thailand to Prevent Drug Addiction and Develop Social Rehabilitation Services', March 2024.

of children in narcotics cases. By referring to the concept of Pancasila justice as a frame of reference, this research moves beyond just describing policy towards a normative and critical analysis of the relationship between values, systems, and criminal practices.

### 3.4. Policy Reconstruction Based on Pancasila Justice

The reconstruction of the policy of diversion and criminalization of children in narcotics cases cannot be separated from the basis of values that are at the core of the Indonesian legal system. The national legal system does not stand alone in an empty space but has its roots in Pancasila as a source of values and legal goals.<sup>64</sup> Justice based on Pancasila places humans at the center of all legal regulations, while ensuring that the law works to maintain a balance between legal certainty, utility, and justice. The criminalization of children that does not consider the humanitarian aspect and the protection of the future is contrary to the basic principle of Pancasila law which rejects the adoption of human beings only as an object of punishment.<sup>65</sup> This perspective demands a change in policy from a repressive approach to a more corrective and rehabilitative approach.

Pancasila justice is philosophically based on a view that integrates humans and society as an inseparable unit. Everyone is part of a society that is interrelated with the surrounding environment as well as its social relationships. Children involved in the use of narcotics should not only be seen as perpetrators of criminal acts, but also as individuals who have failed in terms of social protection and education. This study shows that a punishment-based approach to children of narcotics abuse deepens feelings of alienation in society and increases the risk of similar acts happening again. Pancasila Justice rejects the way of law enforcement that only prioritizes legal certainty without paying attention to the future of children.

**Pyramid of Child Narcotics Policy Reconstruction**

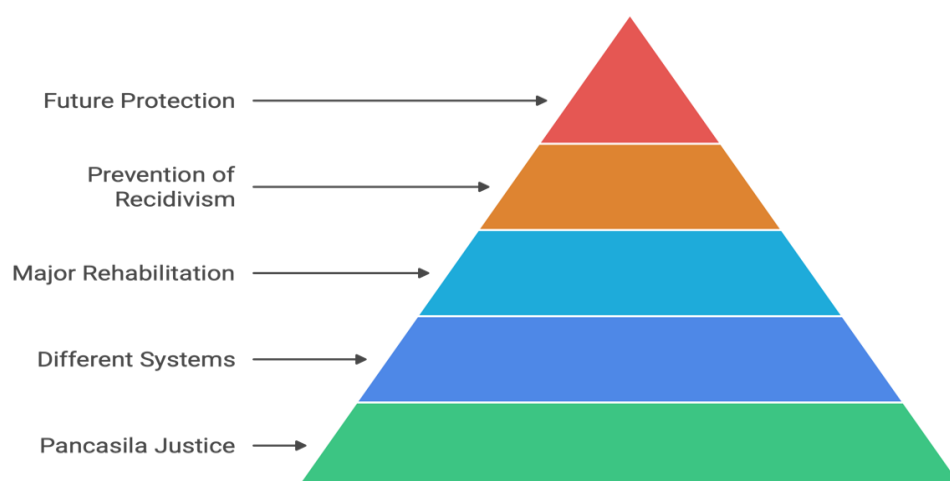


Figure 1. Child Narcotics Policy Reconstruct Model

<sup>64</sup> Yudi Latif, *Negara Paripurna: Historisitas, Rasionalitas, Dan Aktualitas Pancasila* (Gramedia Pustaka Utama, 2012).

<sup>65</sup> Sunnah, Hamidah Abdurrachman, Gunawan Widjaja, 'Juvenile Diversion by The Police In The Perspective of Pancasila Justice: Reformulation and Optimization'.

The child narcotics policy reconstruction pyramid model illustrates a policy structure that is built in several layers and has clear levels. The lowest layer is the principle of Pancasila justice which serves as a normative basis. This layer emphasizes that all policies related to the exemption from punishment and criminalization of children must start from the values of humanity, social justice, and the protection of children as legal subjects. Pancasila justice does not only play a role as a moral value, but also as a principle used in understanding and applying norms in the juvenile criminal justice system. Without this foundation, policies tend to become too formally law based and punitive, which does not consider the best interests of the child.

Diversion in the perspective of Pancasila justice must be understood as a principle that applies systemically, not just as a mere procedural mechanism. This principle requires that every stage in the juvenile criminal justice system be directed to the recovery and protection of the best interests of children. Policy reconstruction places diversion as the operational foundation that binds the entire criminal justice subsystem, from investigation to the implementation of decisions. This position differs fundamentally from current practice, which tends to treat diversion as an exception that is easy to ignore. Pancasila justice guarantees consistency in the system, not just compromise at the sectoral level.<sup>66</sup>

The criminalization of children in narcotics cases needs to be changed from prison to rehabilitation. Modern punishment goal theory emphasizes that punishment should aim to correct the actions of the offender and prevent future crimes.<sup>67</sup> Empirically and from a normative point of view, children involved in narcotics abuse are more appropriately seen as subjects in need of rehabilitation, rather than as objects to be imprisoned. This research shows that the imprisonment of children of narcotics abusers does not have a significant relationship with a decrease in repeat crime, often even leading to an increase in criminal acts in the future. The main rehabilitation policy is in line with the values of humanity and social justice as stated in Pancasila.

Rehabilitation within the framework of the reconstructed policy focuses not only on the medical aspect, but also includes matters related to social and education.<sup>68</sup> Children need an environment that can help restore their social function and help build a positive identity. The juvenile criminal justice system needs to be integrated with the social, health, and education service systems so that the rehabilitation process really runs real, not just as normative words. Pancasila Justice requires the state to be active in the process of restoring children's conditions, not just providing punishments. This approach strengthens the validity of the policy because it is based on social sustainability.

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<sup>66</sup> Silviyanica Jenitasari et al., 'Problems of the Implementation of Diversion in the Case of Children Who Use Narcotics in the Police', *International Journal of Social Service and Research* 5, no. 5 (2025): 508–517, <https://doi.org/10.46799/ijssr.v5i5.1229>.

<sup>67</sup> H. Kim, 'Treatment of Juvenile Reformatories and Protection of Human Rights in Japan', *So'nyeon Boho Yeon'gu* 35, no. 1 (2022): 1–22, <https://doi.org/https://doi.org/10.35930/KJPR.35.1.1>.

<sup>68</sup> Hyung-Ui Baik, Song-Hee Lee, and Ju-Yong Lee, 'Comparison with Cases of Japan and Thailand to Prevent Drug Addiction and Develop Social Rehabilitation Services', *The Korea Contents Society* 24, no. 3 (2024): 563–73, <https://doi.org/10.5392/JKCA.2024.24.03.563>.

Social reintegration has an important role in the formulation of Pancasila justice-based policies. Children who have gone through the rehabilitation process must return to society in a way that prevents stigmatization and marginalization. The study explains that failure to reintegrate social is often the main cause of relapse of narcotics abuse in children.<sup>69</sup> The criminal justice system that does not consider the reintegration phase moves the problem from the legal environment to the social environment. Pancasila justice demands the continuation of policies from the legal process to the social life of children.

The prevention of recidivism in policy reconstruction is not considered a repressive goal, but rather as the result of consistent rehabilitative policies. Modern prevention theory emphasizes that long-term crime control is more effective by improving the social conditions of criminals, rather than by imposing severe punishments. Children who receive adequate rehabilitation and reintegration have a greater chance of not returning to the deviant act.<sup>70</sup> The reconstruction of this policy is in line with the findings of credible international research, which rejects punitivism as the main strategy in tackling child crime. The concept of Pancasila justice strengthens this argument through an approach based on humanity and justice.

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The reconstruction of the policy of diversion and criminalization of children in cases of narcotics crimes needs to begin by identifying weaknesses in the norms contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The norm that has the most significant impact is Article 7 paragraph (2) of the SPPA Law, which limits the application of diversion only to perpetrators of criminal acts with a threat of punishment of less than seven years and not a repeat criminal act. This restriction normatively poses a serious problem when applied in narcotics cases, because the threat of punishment in the Narcotics Law is generally high and formalistic. Thus, children involved in narcotics abuse automatically do not meet the criteria to receive diversion, even if they are substantially in the victim's position.<sup>71</sup> This study shows that these norms have created the practice of criminalizing children that are contrary to the goal of child protection.

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<sup>69</sup> Rasdi Rasdi et al., 'Reformulation of the Criminal Justice System for Children in Conflict Based on Pancasila Justice', *Lex Scientia Law Review* 6, no. 2 (2022): 479–518, <https://doi.org/10.15294/lesrev.v6i2.58320>.

<sup>70</sup> B. Patmawanti, 'Formulation of Policy on The Implementation Of Criminal Punishment Sanctions And Rehabilitation Against Children As Drug Abuse Perpetrators', *Injuriy: Interdisciplinary Journal and Humanity* 32, no. 3 (2021): 167–186, <https://doi.org/https://doi.org/10.58631/injuriy.v4i4.1418>.

<sup>71</sup> Gatot Eko Yudhoyono and Eko Sopyonyono, 'Jurisprudence for Resolving Crimes of Narcotics Abuse by Children in Indonesia', *Jurnal Jurisprudence* 14, no. 1 (2024): 63–84, <https://doi.org/10.23917/jurisprudence.v14i1.4289>.

The weakness of Article 7 paragraph (2) of the SPPA Law lies in the use of the criminal threat criteria as the main reference in determining the feasibility of diversification. This approach reflects a retributive legal paradigm, which focuses more on the criminal act itself, rather than on the condition and interests of the child as a subject of law.<sup>72</sup> In the case of narcotics abuse, this approach leads to the fact that the use of narcotics by children should be seen as a health and social problem, not just a criminal problem. The reconstruction of the proposed norms changes the basis for the use of diversion from criminal threats into the character of the child's actions and conditions.<sup>73</sup> Children involved in narcotics abuse should be grouped as a special category that normatively must receive priority in the implementation of diversion and rehabilitation.<sup>74</sup>

The norms of criminalization against children are guided by the provisions of Article 71, Article 79 paragraph (1), and Article 81 paragraph (1) of the SPPA Law, which explain the types of crimes and actions that can be given. Although the norm has mentioned the existence of criminal and non-imprisonment acts, in judicial practice, prison is still the main choice. The shortcoming of this norm lies in the lack of an assertion of a hierarchy of actions that expressly prioritizes a rehabilitative approach.<sup>75</sup> The proposed reconstruction places medical and social rehabilitation as the primary response for children involved in narcotics abuse, while prison sentences are seen only as a residual last resort. This direction of change does not eliminate the penal system but directs its focus to be more in line with the goal of child protection.

The norm mentioned above requires a complete change in the juvenile criminal justice system. The current system is still separate, where investigators, public prosecutors, and judges work according to the logic of each section. Research shows that the diversion process often stops at the investigation stage and loses its strength in the prosecution and court examinations.<sup>76</sup> The change in the system aims to place diversion as a principle that binds all parts of the juvenile criminal justice system. Each stage in the judicial process must be oriented towards rehabilitation and protection of the best interests of the child.

The reform of this system is in accordance with the theory of restorative justice which sees criminal acts as violations of social relations, not just violations against the government.<sup>77</sup> In a restorative justice approach, the primary goal in handling a child's case is restoration, not

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<sup>72</sup> Feddy Hantyo Nugroho, Rodliyah, and Amiruddin, 'Law Enforcement against Children's Criminal Action Based on Law Number 11 of 2012 Concerning Children Criminal Justice Systems', *International Journal of Scientific Research and Management* 8, no. 06 (2020): 226–235, <https://doi.org/10.18535/ijssrm/v8i06.11a03>.

<sup>73</sup> Reimon Supusepa and Margie Gladies Sopacua, 'The Success of Diversion for Children Who in Conflict With The Law On Investigation Level', *Sasi* 29, no. 2 (2023): 399, <https://doi.org/10.47268/sasi.v29i2.1584>.

<sup>74</sup> Walim Walim et al., 'The Regulation of Diversion in Indonesia's Juvenile Criminal Justice System Oriented Toward the Best Interests of the Child and Fairness', *Rechtsnormen: Journal of Law* 2, no. 3 (2024), <https://doi.org/10.70177/rjl.v2i3.1280>.

<sup>75</sup> Ahmad Rizal Roby Ananta et al., 'Criminal Limitations on Diversion of Children Against the Law Based on the Juvenile Criminal Justice System from a Comparative Perspective', *Jurnal Penegakan Hukum Dan Keadilan* 6, no. 2 (September 2025): 130–142, <https://doi.org/10.18196/jphk.v6i2.26234>.

<sup>76</sup> Herianto et al., 'Implementation of Diversion in the Juvenile Criminal Justice System in Indonesia'.

<sup>77</sup> Syed Muhammad Wasi Hyder et al., 'The Role of Restorative Justice in Juvenile Offenses: Lessons from Global Practices', *ACADEMIA International Journal for Social Sciences* 4, no. 4 (October 2025): 91–98, <https://doi.org/10.63056/ACAD.004.04.0868>.

retaliation. Children who commit drug abuse are not seen as perpetrators to be punished, but as individuals who need the restoration of social relationships and assistance from the health system. The reconstruction of the norms and systems offered applies the principles of restorative justice in a real way, not just symbolically, by making rehabilitation and social reintegration the result of the juvenile criminal justice system.

The reconstruction of norms and systems proposed in this study is based on strong theories and principles. The theory of the goals of modern punishment, the principle of restorative justice, and the values of Pancasila are combined in one coordinated policy framework.<sup>78</sup> This approach does not require sudden changes in the law, but rather emphasizes the interpretation and rearrangement of existing norms so that they can function according to their original purpose. In this way, the policy of diversion and criminalization of children in narcotics cases can be implemented realistically and consistently in the Indonesian legal system.

The policy proposals in this study produce a normative formulation that substantively corrects the weaknesses of the Juvenile Criminal Justice System Law without necessitating the existing positive legal framework. The norms offered are not abstract but are formulated operationally so that they can be applied in the juvenile criminal justice system.<sup>79</sup> The offering of this norm is based on the Research findings that the failure of diversion and rehabilitation of children of narcotics abusers stems from normative restrictions and fragmentation of the system. Therefore, reconstruction is directed at changing the orientation of norms, not just expanding the discretion of law enforcement officials.

The norm given is a special exception to Article 7 paragraph (2) of the SPPA Law for children involved in the use of narcotics. Diversion is no longer determined based on the threat of formal punishment, but based on the child's status as a perpetrator of narcotics use or a victim of narcotics use. This norm places children involved in narcotics use as subjects that must be prioritized in providing diversion and rehabilitation. With this reconstruction, the approach to diversion changed from a conditional mechanism to a systemic normative obligation in narcotics cases involving children. Normatively, this reconstruction can be formulated as follows: "Diversion must be sought against children who commit the crime of narcotics abuse, without considering the criminal threat, as long as the act does not involve violence or organized crime." This formulation emphasizes that the determination of the level of sanctions is no longer only based on the overall actions taken, but pays more attention to the nature of the act and the best interests of the child, in accordance with the principles of restorative justice and justice in accordance with the values of Pancasila.

The reconstruction of criminal norms aims to affirm the hierarchy of sanctions in cases of narcotics abuse by children. The proposed norm places rehabilitation measures as the main

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<sup>78</sup> Sunnah, Hamidah Abdurrachman, Gunawan Widjaja, 'Juvenile Diversion By The Police In The Perspective of Pancasila Justice: Reformulation and Optimization'.

<sup>79</sup> Rustam Rustam and Iskandar Wibawa, 'Comparison of Diversion and Restorative Justice in Handling Juvenile Crimes within Indonesia's Criminal Justice System', *Jurnal Indonesia Sosial Sains* 6, no. 1 (January 2025): 148–155, <https://doi.org/10.59141/jjss.v6i1.1582>.

sanction, while imprisonment is considered a last resort. This change changed the approach to sentencing from a system that offers free choice to one that sets out tiered choices that judges must consider. The normative formulation proposed is: "In cases of narcotics abuse by children, the judge is obliged to impose medical and social rehabilitation measures as the main decision, and a prison sentence can only be imposed if the rehabilitative measures are proven to be unfeasible." With this formulation, the policy of juvenile criminalization moves from punitive discretion to systemic rehabilitative obligations.

The reconstruction of criminal norms aims to clarify the structure of punishment in cases of narcotics abuse involving children. The proposed norm emphasizes rehabilitation as the primary form of punishment, while imprisonment is considered a last resort. This change shifts the approach to sentencing from a system that gives judges freedom of choice to a system that sets the order of choices that must be considered. The proposed normative formulation states that, in the case of narcotics abuse by children, the judge is obliged to decide on medical and social rehabilitation measures as the main punishment, while prison sentences should only be given if rehabilitation measures cannot be implemented. With this formulation, the policy of criminalization of children has moved from a discretionary and punitive legal approach to a policy that emphasizes the obligation of systemic rehabilitation.

The reconstruction proposed in this study does not only stop at the level of abstract values and policies, but also involves basic norms and positive legal systems. The process of reconstructing this norm helps clarify duties and responsibilities in terms of diversion and rehabilitation of drug cases involving children. Meanwhile, the reconstruction of the system ensures that the application of these principles is consistent in every subsystem in the criminal justice system. This approach makes the concept of Pancasila justice a practical basis, not just a theoretical value, in guiding judicial operations for children. This is the main contribution of this research to efforts to reform the criminal law of children in Indonesia.

#### **4. CONCLUSION**

This comparative study demonstrates that diversion failures in Indonesian juvenile narcotics cases stem from systemic design flaws rather than implementation deficits. The normative framework treats diversion as a conditional procedural exception through Article 7(2) criminal threat-based restrictions, while institutional fragmentation across police, prosecutors, and courts perpetuates divergent subsystem orientations undermining rehabilitative commitments. Japan's success derives from architectural features integrated Family Court jurisdiction, default diversion presumptions, welfare oriented dispositional logic, and unified child protection mandates binding all institutional actors not resource superiority or cultural uniqueness. The research establishes three principal contributions. Theoretically, it operationalizes Pancasila justice as an analytical framework through three measurable dimensions humanitarian protection, social integration, and systemic coherence demonstrating that constitutional values function as binding evaluative criteria rather than aspirational rhetoric. Methodologically, functional comparative analysis reveals that system design determines diversion outcomes more decisively than normative recognition or

implementation capacity. Substantively, meaningful reform requires comprehensive reconstruction: normative amendments creating categorical diversion eligibility for juvenile narcotics users, sentencing hierarchies mandating rehabilitation as primary disposition with imprisonment as ultima ratio, and systemic integration through binding protocols, interagency coordination, and reoriented institutional incentives. Policy reconstruction must align with Pancasila justice principles through the proposed pyramid model operationalizing constitutional commitments via diversion as systemic obligation, rehabilitation centered dispositions, coordinated social reintegration mechanisms, and evidence based recidivism prevention. The specific normative formulations provide actionable legislative amendments within Indonesia's existing legal framework while fundamentally reorienting operational logic from punitive to rehabilitative, discretionary to obligatory child protection. Future research should empirically evaluate the proposed model's implementation, expand comparative analysis to Southeast Asian jurisdictions facing similar challenges, and examine long term outcomes of welfare oriented versus punishment centered responses to juvenile drug involvement.

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