

**LEGAL PROTECTION FOR CHILDREN IN CONFLICT WITH
THE LAW: A COMPARATIVE STUDY OF LAW NUMBER
11 OF 2012 AND THE JUVENILE AND FAMILY
COURT ACT B.E. 2553**

JURNAL

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NPM: 2206200471**



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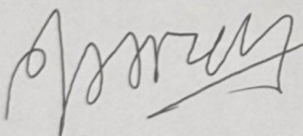

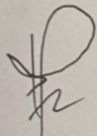
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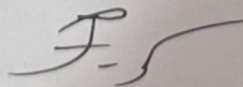
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NIDN: 0122087502

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NIDN: 0118047901



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NIDN: 0122087502

Sekretaris

Assoc. Prof. Dr. ZAINUDDIN, S.H., M.H.
NIDN: 0118047901

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1.

2.

3.

LEGAL PROTECTION FOR CHILDREN IN CONFLICT WITH THE LAW: A COMPARATIVE STUDY OF LAW NUMBER 11 OF 2012 AND THE JUVENILE AND FAMILY COURT ACT B.E. 2553

Cindy Atika ^{a*)}. Rachmad Abduh ^{a)}

^{a)} Universitas Muhammadiyah Sumatera Utara, Medan, Indonesia

^{*)} Corresponding Author: camarhadisony066@gmail.com

Article history: received 01 January 2026; revised 15 February 2026; accepted 14 March 2026

DOI: <https://doi.org/10.33751/jhss.v10i1.65>

Abstract. Legal protection for children in conflict with the law constitutes an integral part of criminal procedural law, placing the principle of the best interests of the child as the foundation of every law enforcement action. This study comparatively analyzes the regulation of child legal protection under Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, in conjunction with the Law Number 20 of 2025 concerning the Criminal Procedure Code, and the *Juvenile and Family Court Act B.E. 2553* in Thailand. The findings indicate that, normatively, both countries have adopted *restorative justice* principles through diversion mechanisms, the limitation of detention as an *ultimum remedium*, and guarantees of the right to legal assistance. However, at the level of implementation, challenges remain, including inconsistencies in the application of diversion and the suboptimal fulfillment of children's rights. Therefore, strengthening procedural aspects is necessary to realize a more responsive and humane juvenile justice system.

Keywords: *Legal Protection, Juvenile Criminal Procedure, Diversion, Restorative justice.*

I. INTRODUCTION

Children are a trust from Almighty God who must be safeguarded and protected so that they are able to grow and develop optimally into mature and qualified individuals as the successors of the nation's future. Therefore, the state and the government bear a full obligation to provide legal protection and to ensure the fulfillment of children's human rights as part of the next generation entrusted with achieving national aspirations. This commitment is firmly enshrined in the 1945 Constitution of the Republic of Indonesia and reinforced through various national laws and international legal instruments ratified by Indonesia, which serve as the foundation for policies and guidelines in guaranteeing comprehensive child protection. This affirmation is explicitly reflected in Law Number 23 of 2002 concerning Child Protection, as last amended by Law Number 17 of 2016, which positions children as strategic national assets as well as legal subjects possessing inherent dignity and worth as complete human beings, thereby entitled to special protection, including legal protection.[1]

Child protection constitutes a series of efforts aimed at creating conditions that enable children to enjoy and exercise their rights and obligations optimally. Based on the concept of *parens patriae*, the state is obliged to be present and act as a parent who provides care and protection for children. Accordingly, the handling of children in conflict with the law must prioritize the best interests of the child and be grounded in the values of Pancasila.

In Indonesia, the regulation of sanctions through a restorative approach for children in conflict with the law is governed by several statutory provisions, including Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the JCJS Law), as well as Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection. Nevertheless, its implementation continues to face various challenges and has not yet operated optimally.

The application of a restorative approach to children in conflict with the law requires support from various stakeholders, including families, communities, and law enforcement officers. The family plays a crucial role in providing guidance and emotional support to children during judicial proceedings as well as in the stage of social reintegration. Likewise, the community must be involved in the recovery and reintegration process of children who have served their sentence by creating a conducive environment for their growth and development.[2]

The effectiveness of implementing a restorative approach for children in conflict with the law requires synergistic roles from families, communities, and law enforcement officials, ranging from investigators, public prosecutors, judges, to probation officers who are professional, sensitive to child psychology, and knowledgeable about diversion mechanisms. Without proper coordination and commitment from all stakeholders, the restorative approach risks becoming merely a formality. On the other hand, differences in understanding and constructing the concept of a child in each country—shaped by social, cultural, developmental, and economic conditions—

demonstrate that social and cultural environments play a significant role in shaping children's behavior and preventing delinquency. Family structure, parental conflict, and social pressures within communities may become determining factors in the emergence of deviant behavior, while children's inability to adapt to social norms often leads to their perception as rule violators. These differing social and cultural backgrounds form an important basis for examining how other countries, particularly Thailand, formulate and implement legal protection systems for children in conflict with the law.[3]

The urgency of a comparative study on legal protection for children in conflict with the law is driven by various dynamics and current issues in the practice of the juvenile criminal justice system in Indonesia and Thailand. In Indonesia, although Law Number 11 of 2012 concerning the Juvenile Criminal Justice System has emphasized the principles of restorative justice and diversion mechanisms, practice in the field still encounters various obstacles, such as the use of detention that has not fully adhered to the principle of *ultimum remedium*, limitations in the implementation of diversion, and the suboptimal fulfillment of children's rights during judicial proceedings. With the enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP), the application of restorative justice has been further strengthened as an approach that allows case settlement outside the court, focusing on restoring the original condition and encouraging the active involvement of both victims and suspects in the process. However, implementation challenges remain due to inter-agency coordination issues and limited resources. Similar conditions are found in the implementation of the Juvenile and Family Court Act B.E. 2553 in Thailand, where challenges in child legal protection often relate to the effectiveness of legal assistance, consistency in applying the best interests of the child principle, and the influence of institutional structures and local legal culture in comprehensively implementing restorative justice and diversion approaches.

This study aims to examine the regulation of legal protection for children in conflict with the law in Indonesia, particularly through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, as well as similar regulations and practices in Thailand under the Juvenile and Family Court Act B.E. 2553. In addition, this research analyzes restorative justice mechanisms, diversion processes, and efforts to fulfill children's rights within both legal systems, which are subsequently examined comparatively. Through this study, it is expected to contribute academically to the development of child law and serve as a reference for policymakers in formulating a juvenile justice system oriented toward the protection of rights, restorative justice, and the social reintegration of children.

II. RESEARCH METHODS

Research methods may be understood as systematic approaches to identifying research topics and titles within a study. Essentially, research methodology is a discipline that regulates how legal research is conducted systematically, providing guidance for researchers in studying, analyzing, and understanding the object of research. In this study, the approach employed is normative legal research, which focuses

on literature review and the examination of primary and secondary legal sources. This research also positions law as a system of norms by discussing doctrines and principles within legal science. Normative legal research emphasizes the inventory of positive law, legal principles and doctrines, legal discovery in concrete cases, legal systematics, the level of legal synchronization, comparative law, and legal history. The data sources used in this study are secondary data derived from official documents, books, and research reports.[4]

IV. RESULT AND DISCUSSION

Child Protection System under Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in Indonesia

Under Law Number 11 of 2012, Article 1 paragraph (1), the Juvenile Criminal Justice System is defined as the entire process of resolving cases involving children in conflict with the law, from the investigation stage to post-sentence guidance. Based on this provision, the Juvenile Criminal Justice System in this study is understood as a series of legal mechanisms specifically designed to handle children in conflict with the law by prioritizing the principle of the best interests of the child. This system is not solely oriented toward punishment but emphasizes a restorative justice approach through diversion, guidance, and rehabilitation, while involving families, communities, and related institutions to ensure the child's recovery and sustainable social reintegration.[5]

The juvenile criminal justice system under Law Number 11 of 2012 places restorative justice as its principal approach. Restorative justice is a method of resolving criminal cases that focuses on restoring relationships and conditions disrupted by criminal acts by involving the offender, the victim, their families, and the community, rather than merely emphasizing punishment. One of its key mechanisms is diversion, namely the transfer of case settlement from the formal criminal justice process to alternative procedures outside the court. According to Article 1 point 7 of the Juvenile Criminal Justice System Law, diversion involves deliberation between the child, parents or guardians, and community counselors, with the aim of preventing detention, minimizing social stigma, and supporting the child's reintegration into society. This approach is considered appropriate for children in conflict with the law, particularly in criminal cases, because it enables the protection of children's rights without exposing them to the negative impacts of formal criminal proceedings.[6]

Although diversion and restorative justice are clearly regulated in the Juvenile Criminal Justice System Law, their implementation in practice still faces various challenges. Several factors hinder the effective application of restorative justice within the juvenile justice system. First, existing legal substance has not fully accommodated the comprehensive implementation of restorative justice. Second, law enforcement officers have not optimally implemented available regulations and often maintain rigid attitudes, while community participation in supporting restorative justice processes remains limited. Third, there is a lack of comprehensive supplementary regulations governing the handling of juvenile offenses through restorative approaches, including adequate

dissemination to law enforcement officials and society. Fourth, coordination among law enforcement authorities and the paradigm shift from retributive and restitutive approaches toward restorative justice have not been fully achieved, resulting in obstacles in the practical application of diversion and restorative mechanisms.[7]

Efforts to resolve cases involving children in conflict with the law are carried out through diversion and restorative justice, which constitute minimum standards within the juvenile criminal justice system. Law Number 11 of 2012 guarantees that juvenile courts are conducted separately from adult courts and are specifically intended for children involved in criminal cases. Article 5 of the Law stipulates that the juvenile criminal justice system emphasizes restorative justice and includes: (a) investigation and prosecution of juvenile crimes in accordance with statutory provisions; (b) juvenile trials within the general court environment; and (c) guidance, supervision, and assistance during and after the execution of sentences. Furthermore, Article 6 affirms that diversion must be pursued at every stage of the process, with objectives including achieving reconciliation between the victim and the child, resolving cases outside formal judicial proceedings, preventing deprivation of liberty, encouraging community participation, and instilling a sense of responsibility in the child.

In protecting children in conflict with the law, the resolution process must involve all relevant parties, including parents, families, communities, the government, and state institutions responsible for child welfare. This concept aligns with restorative justice principles implemented through diversion, whereby all parties involved in a criminal act collaborate to resolve the issue and seek the best solution for the child. The process emphasizes restoration and improvement of the situation, involving victims, children, communities, and related parties without elements of revenge. Thus, the application of restorative justice in juvenile cases places the child's best interests at the center of legal protection.[8]

Diversion applies only to specific criminal offenses, namely those punishable by imprisonment of less than seven years and not constituting repeat offenses (Article 7 paragraph 2), and must be implemented at every stage of examination—investigation, prosecution, and trial (Article 7 paragraph 1). In practice, diversion must consider the interests of the victim, the child's welfare and responsibility, avoidance of negative stigma, avoidance of retaliation, community harmony, and propriety and public order (Article 8 paragraph 3). Diversion agreements may take the form of reconciliation or compensation, return of the child to parents or guardians, participation in educational or social welfare institution programs for a maximum of three months, or community service (Article 11). Failure to implement diversion as required may result in administrative or criminal sanctions for responsible officials, including imprisonment of up to two years or a fine of up to IDR 200,000,000 (Articles 95–96).[9]

In line with strengthening restorative justice under the Juvenile Criminal Justice System Law, the enactment of the new Criminal Procedure Code through Law Number 20 of 2025 marks a paradigm shift from a retributive approach toward restorative justice, emphasizing restoration of the original condition and involvement of all relevant parties.

Article 1 point 21 defines restorative justice as a mechanism for handling criminal offenses involving victims, offenders, families, and other parties to achieve recovery. The 2025 Criminal Procedure Code regulates restorative justice at all stages of proceedings—from preliminary inquiry and investigation to prosecution and trial (Article 79 paragraph 8)—and affirms the role of the District Court, particularly the Chief Judge, in ratifying settlement agreements (Article 79 paragraph 5). Its application is limited to certain offenses, such as those punishable by fines up to category III or imprisonment of up to five years, first-time offenses, and non-recidivist acts except due to negligence (Article 80). Termination of investigation or prosecution based on restorative justice requires authorization from the Chief Judge of the District Court (Articles 84 and 86), ensuring checks and balances and prioritizing victim recovery over punishment. Implementation at the trial stage awaits further technical regulation through a Government Regulation (Article 88).[10]

With the comprehensive application of restorative justice through both the Juvenile Criminal Justice System Law and the new Criminal Procedure Code, Indonesia's juvenile justice system demonstrates a stronger commitment to restoring children's rights, promoting social reintegration, and involving all relevant stakeholders. This approach affirms that child protection prioritizes substantive justice through restoration of relationships among victims, offenders, and society. Its success depends on the preparedness of law enforcement officers, inter-institutional coordination, and the availability of supporting technical regulations.[11]

Child Protection System under the Juvenile and Family Court and Procedure Act B.E. 2553 (2010) in Thailand.

International legal developments provide normative foundations that every state must observe in law enforcement systems, including in handling cases involving children. In the context of children in conflict with the law, states are obliged to align their policies and judicial practices with applicable international standards, particularly regarding protection from violations and harmful treatment. A primary international instrument is the United Nations Convention on the Rights of the Child (UN-CRC), which entered into force on 2 September 1990 and affirms state responsibility to guarantee protection, welfare, and fulfillment of children's rights at every stage of legal proceedings.[12]

From this perspective, juvenile delinquency in modern legal systems is not equated with adult criminality. Children and adolescents who commit offenses are not labeled as criminals but are viewed as individuals who deviate from social norms at an age when they lack full criminal responsibility. Such behavior is generally associated with physical and psychological immaturity and environmental influences. Therefore, legal responses emphasize guidance and rehabilitation rather than purely repressive punishment.

Legal protection for children in conflict with the law in Thailand is specifically regulated under the Juvenile and Family Court and Procedure Act B.E. 2553 (2010), which applies to juvenile offenders and family cases involving children through a specialized court mechanism separate from adult courts and grounded in the best interests of the child. The Act includes provisions such as Section 66 (arrest of a child), Sections 67–68 (protection of children's rights), Sections 70–

71 (obligations of investigators after detention), and Sections 72–73 (review of arrest). Section 75 authorizes courts, where appropriate, to suspend or refrain from imposing criminal punishment and instead apply protective or rehabilitative measures if the child can be corrected without imprisonment.[13]

Implementation refers to Section 133 bis in conjunction with Section 134/2 of the Thai Criminal Procedure Code pursuant to Section 6 of the Juvenile and Family Court Act, which provides that the Criminal Procedure Code applies insofar as it does not conflict with juvenile law. Safeguards include separate interrogation rooms from adult offenders and mandatory legal assistance during notification of charges and examination. All proceedings, including sentencing, fall under the jurisdiction of the Juvenile and Family Court, with an approach that considers social development, sentencing objectives, and the child's rehabilitative needs.

Restorative justice and diversion are central instruments within Thailand's juvenile justice system. Normatively, these approaches are accommodated within the Juvenile and Family Court Act, allowing case resolution outside formal punishment if deemed beneficial to the child's development. Restorative justice emphasizes victim recovery, the child's moral responsibility, and restoration of social harmony. In practice, mediation may involve the child, victim, parents or guardians, social workers, and probation officers to reach fair and proportional agreements that support reintegration. The focus is correction and social restoration rather than retaliation.[14]

Diversion functions as a procedural instrument, redirecting cases from formal court processes toward educational and rehabilitative alternatives, particularly during investigation or prior to substantive court hearings for minor offenses. Measures may include formal warnings, probation supervision, community service, training programs, counseling, or participation in rehabilitation programs, all aimed at preventing stigmatization and minimizing psychological harm from litigation. This reflects a paradigm shift from retributive justice toward welfare-oriented justice, positioning the child as a subject requiring guidance and reintegration rather than state retribution. Its effectiveness depends on mediation quality, professionalism of officials, and availability of adequate rehabilitation infrastructure.

Similarities and Differences between Child Protection Systems in Indonesia and Thailand

From a normative perspective, Indonesia and Thailand both establish juvenile justice systems oriented toward the best interests of the child as affirmed in the Convention on the Rights of the Child. In Indonesia, the primary legal framework is Law Number 11 of 2012 on the Juvenile Criminal Justice System, reinforced by Law Number 20 of 2025 on the Criminal Procedure Code, which strengthens restorative justice across all stages of proceedings with defined limitations and judicial oversight mechanisms. Diversion is mandatory at every procedural stage for eligible offenses, aiming at reconciliation, prevention of detention, and social reintegration.[15]

In Thailand, the Juvenile and Family Court and Procedure Act B.E. 2553 (2010) establishes specialized Juvenile and Family Courts separate from general courts. The Act emphasizes protection, rehabilitation, and social guidance, granting authority to suspend punishment and impose

rehabilitative measures. Constitutional provisions, including Section 53 of the 1997 Constitution, affirm children's rights to protection from violence and unfair treatment and to receive state care and education where necessary. Reforms to the Criminal Procedure Code and victim compensation laws further strengthen victim protection and indirectly promote restorative justice implementation.[16]

Institutionally, Indonesia situates juvenile courts within the general judiciary under the Supreme Court, with functional differentiation through specialized judges and involvement of community counselors from the Correctional Center (BAPAS). Thailand, by contrast, integrates judicial and social welfare functions within a distinct Juvenile and Family Court structure that includes professional judges and associate judges with backgrounds in psychology, social welfare, or education.[17]

Comparatively, Indonesia relies on cross-institutional coordination among courts, BAPAS, police, and correctional institutions to implement restorative justice, whereas Thailand integrates judicial and social welfare functions within a single institutional framework. Although both countries share the same objective—child protection and recovery—the institutional model adopted influences coordination patterns, rehabilitation effectiveness, and consistency in applying restorative justice in practice.

IV. CONCLUSION

Both Indonesia and Thailand emphasize the principle of the best interests of the child and the application of restorative justice within their juvenile justice systems, with diversion serving as the primary instrument for recovery and social reintegration. Thailand demonstrates strength in institutional integration, where judicial and social functions are combined within a single Juvenile and Family Court, enabling mediation, psychosocial rehabilitation, and victim protection to be implemented more consistently and cohesively. Meanwhile, Indonesia stands out in its cross-institutional coordination involving the courts, the Correctional Center (BAPAS), the police, and rehabilitation institutions, thereby creating opportunities for community participation and flexibility in the implementation of diversion.

Thus, although both countries share the same objective of child protection and recovery, the effectiveness of restorative justice is significantly influenced by institutional design, the readiness of law enforcement officials, and supporting regulations within each juvenile justice system. In conclusion, the choice of institutional model—direct integration in Thailand and cross-agency coordination in Indonesia—determines how effectively the juvenile justice system can ensure substantive justice, restore victims' rights, and promote the social reintegration of children, making institutional design as crucial as the legal principles themselves.

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