

# Protection Model Concerning Children Dealing with The Law in Central Java, Indonesia

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**Abstract.** Republic Indonesia Law Number 11 / 2012 concerning the Criminal Justice System for Children (SPPA) regulates diversion process that is oriented towards restorative justice. The existence of diversion is important in the implementation of the juvenile justice system. This research was conducted to find a model in an effort to optimize the implementation of SPPA Law in resolving cases of Children Dealing with the Law (ABH), especially the urge to carry out diversion with a restorative justice approach. This research used Research and Development (R&D) with a statistical analysis model. The results showed that Rembang and Kebumen were trying to carry out the mandate of SPPA Law by doing diversion. The model in implementing SPPA Law is carried out by providing understanding between law enforcement officials in each cluster, as well as providing socialization to the community related with motivation to increase participation in child protection.

**Keywords:** SPPA Law; ABH; Rembang and Kebumen

## 1 Introduction

The Law on Juvenile Justice No. 3/1997 on Juvenile Courts has been amended by Law No. 11/2012 on the Juvenile Criminal Justice System (SPPA Law). SPPA Law is a procedural law regulating the legal process against children who commit criminal acts (perpetrators), witnesses and victims. The amendment to the Law above is an attempt to refine the designation of a child who is in conflict with the law or a child in a criminal case. In Law No. 3/1997 concerning Juvenile Court, ABH is termed a naughty child who commits a criminal act or forbidden act, with an age limit of 8 (eight) years to 18 (eighteen) years, and has never been married. While in SPPA Law No. 11/2012 concerning SPPA Law, using the term ABH as Children Dealing with the Law.

The change in terms in the mention of ABH in SPPA Law raises an assumption that children are protected human beings and it is important to differentiate them from adult suspects, so that the mention must be differentiated. The difference in treating children who violate the law exacerbates the lesson that this law provides protection to children from the effects that it has on the judiciary in the courts they live in. Children are avoided from the influence that may arise in court proceedings. Furthermore, several community components

were asked to carry out protection for ABH at their respective levels. This fact indicates that protecting children from justice is a form of community responsibility.

It cannot be denied that a child's life is very dependent on who cares for, nurtures, and the environment he is raised in. Children can be described as white paper that depends on the adult writing. This is not much different from or the same as shown in the Convention on the Rights of the Child by the United Nations (UN) in 1990 which states 4 basic principles of children's rights, namely non-discriminatory, the best for children (best interest of the child), survival and development (the right to life, survival and development), and respect for the view of the child [1]. Indonesia has ratified this convention on children's rights with Presidential Decree No. 36 of 1990, dated 25 August 1990 [2]. This right convention provides a mandate that the treatment of child protection involves the government and society.

Child protection is an effort that is always exhilarated to be implemented through various government agencies, social institutions, and society on a broader scale. Each of them has a role in protecting all the blood of Indonesia, in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia. The consequence of this task has implications for efforts to eliminate all kinds of violence and discrimination against children. All efforts are made to protect and eliminate violence against children, so that children as assets and the nation's generation can become the holders of the relay of development.

The emergence of SPPA Law seeks to provide the best protection for ABH, as well as a reference for law enforcers in carrying out criminal cases against children. In essence, this law is expected to provide protection for children as perpetrators of criminal acts. In SPPA Law, it is known that children can be involved in crime as perpetrators, witnesses and victims. Efforts to regulate the treatment of the three are also different, from the stage of investigation, to undergoing punishment until after returning to their respective families. Two important principles in SPPA Law are to prioritize diversion and keep children out of prison [3].

The implementation of SPPA Law clearly implies a difference in treatment between the criminal process for children and adults. Some of the different treatments that were found by ABH in accordance with SPPA Law, among others, a) received education and assistance from family, b) received reading material, c) attended mass media broadcasts, d) was separated from adult courtrooms, e) received legal assistance effectively, f) free from torture and harsh treatment, g) not detained, except as a last resort, h) identity is not published, i) receives a maximum sentence of half of the maximum imprisonment for adults, j) the trial is held behind closed doors and so on [4].

From the mandate of the law above, basically the existence (*das sollen*) of SPPA Law can provide legal, life and other protection to ABH, but in reality (*das sein*) the implementation of the existing legal protection model is not as expected. This is proven by the absence of substantive justice, legal certainty, benefits for ABH, assistance and rehabilitation of children after serving a sentence. This important matter has not been implemented optimally. This condition then needs to be sought for a solution to the problem.

The results of the preliminary study conducted in the districts of Kebumen and Rembang, show that the implementation of SPPA Law has not been maximally implemented due to many things that surround it. Several problem points were categorized into several categories, namely: a) The investigation process, b) The process of implementing and enforcing the law and c) The process of rehabilitating children as perpetrators, witnesses and victims [5].

The problem in each of these juvenile justice system processes is a reality that requires resolutions and solutions for the good, justice and welfare of the child. This research seeks to capture the problems that arise in the implementation of juvenile justice in the districts of

Rembang and Kebumen using SPPA Law as a perspective. With the accuracy in elaborating the existing problems, the optimization of the implementation of SPPA Law can be realized.

This study seeks to develop the implementation of ABH protection which refers to SPPA Law Number 11/2012. The problem that will be sought for a solution is how to develop and optimize the implementation of the Juvenile Criminal Justice System Law Number 11/2012 as victims, witnesses and perpetrators? The paradigm used by researchers is more on the importance of diversion with a restorative justice approach as one of the mandates of SPPA Law in dealing with ABH, whose it existence is important to be carried out by competent parties in the field of child protection. With the answer to this problem, it is hoped that the implementation of SPPA Law can be used as one of the "winds of heaven" for ABH in carrying out its judicial process.

## **2 Literature Review**

The study of SPPA Law has been widely studied by previous researchers. Several researchers who studied ABH and SPPA Law, among others, first, Yanuar Farida Wismayanti (2007), *Model Penanganan Anak Berkonflik dengan Hukum* [6] revealed that it is very important to make a community-based approach to ABH. Second, Hariyanto (2011), *Pelaksanaan Rehabilitasi Sosial untuk Anak Wanita Usia 15-18 Tahun Korban Trafficking (Studi Kasus di PSKW Mulya Jaya Pasar Rebo)*[7] revealed that the implementation of social rehabilitation for child trafficking victims at PKSW Mulya Jaya has been effective by involving social workers who carry out rehabilitation. Third, Dheny Wahyudi, (2014), *Perlindungan terhadap Anak yang Berhadapan dengan Hukum melalui Pendekatan Restorasi Justice* [8]. This research states that a restorative justice approach by involving all parties, including perpetrators, victims and witnesses, with other related parties to sit together to find solutions to resolve child cases is the best step in keeping children away from prison.

From these researchs above, all of them discuss the journey of protecting children dealing with the law and all things surround it. The research above still focuses on normative studies on the application of child protection against the law. It has not on efforts to develop protective treatment against it yet. This means that previous research has focused more on the functions of government and social (non-government) institutions on protection of child dealing with law, but has not specifically examined child protection and child justice studies based on SPPA Law, especially on efforts to develop a child protection system, through diversion with a restorative justice approach.

## **3 Results and Discussions**

### **3.1 Children Dealing with the Law**

Laws are made in order to create and maintain order and peace in society. This condition then gave rise to the adage *Ibi Ius ubi Societas* (where there is a society, there is a law) [9]. The presence of law in the community is needed to regulate the various interests of society. This considers the reality that law is a social rule or norm that cannot be separated from the values prevailing in society. Law is a reflection and concretization of the values contained in people's life [10]. Children dealing with the law (ABH), commonly referred as ABH. ABH is entitled to special protection from the state. This is because children are considered unable to

fight for their rights. In this condition, a child companion is needed who can fight for the rights and needs of the child when dealing with the law and its tools. When dealing with the law, the child's psychology will suffer, so that an alternative treatment is needed to balance their physical and psychological conditions.

SPPA Law clearly regulates matters concerning the justice system against children. The drafting SPPA Law is clearly related to Law No. 35/2014 concerning Child Protection. The reflection of the articles in SPPA Law is an effort to protect children and fulfill their rights. There are at least three things that can be taken from the mandate of this child protection law, namely; *first*, the state or government is responsible for paying attention, maintaining, protecting, and guaranteeing the welfare of children; *second*, parents are obliged to nurture, maintain, educate the child's character and character; *third*, the community is also obliged to participate in protecting children, and reporting to parties. In the case of a violation against a child, plays an active role in social rehabilitation to eliminate the negative stigma of a child dealing with the law.

Although efforts to protect children have been regulated in such a way by the state, there are many child problems that develop in this country. Saraswati (2015) said that children problems occur in various fields, including education, health, child labor, children without birth certificates, children victims of violence and mistreatment, child trafficking, street children, children with disabilities, children needing parents substitute, the children is in dealing with the law [11]. Handling children problems can not only be done by one or two people. All components of society and state institutions need to join hands in solving problems in every field.

In this country, there are approximately 4000 cases involving children each year. In reality, ABHs do not get maximum support from social and state institutions. Throughout the 2000s, there were 11,344 children who were accused of criminal acts in the police criminal statistics in various cases. During the process of handling the cases, most (84.2%) were placed together with adult criminals [12]. This fact is very ironic, where the state has regulated the treatment of children in such a way, but in reality there are still many cases that occur.

The number of children dealing with the law always fluctuates. However, there is a tendency for the number to always increase every year with a variety of cases according to the reality it faces. From 2011 to 2019 the number of ABH cases reported to the Indonesian Child Protection Commission (KPAI) reached 11,492 cases, health problems and narcotics 2,820 cases, pornography and cyber crime 3,323 cases, and trafficking and exploitation 2,156 cases [13]. Moreover, it is possible that the number of ABH will increase if the number of cases that have not been reported is added. The reality of many cases faced by children sparks a thought to stem the cases that occur. To illustrate the current ABH case, the following numbers of Children in dealing with the Law, where the children are the perpetrators can be seen in the following table:

**Table 1.** Number of ABH as Actors in 2020

No	Child Case Form	Number
1	Child of the kidnapper	5
2	Child of psychological abuse	21
3	Child of the perpetrator of the possession of sharp weapons	32
4	Child of the murderer	38
5	Child abortion perpetrator	39
6	Child of the theft perpetrator	42
7	Child of a traffic accident	60
8	Child of physical abuse	78

No	Child Case Form	Number
9	Child of sexual violence perpetrators	116

Source: Gresnews.com

Based on the table above, it is known that the number of cases that afflict children is varied. Each is influenced by a variety of causes. This research does not focus on efforts to uncover the causes of child cases, but only describes the form of child cases, so that they have the ABH label. From this table, it is known that children are very vulnerable to crime on their own scale.

### 3.2 Diversion on Criminal Justice System for Children (SPPA Law)

In the perspective of SPPA Law, children dealing with the law are included in three categories, namely children of perpetrators, children of victims and children of witnesses. These three categories of children who deal with the law raise positive changes in the drafting of laws. Prior to the existence of SPPA Law, children dealing with the law found themselves always afraid which resulted in their psychological problems. Children get bad treatment in facing the cases they face, even though they are innocent. In the course of the law protecting children, prior to the existence of SPPA Law, many criminal acts were not resolved or even not reported because children tended to be afraid to face the criminal justice system.

The rules for the separation of investigation and prosecution of juvenile cases are regulated in separate rules. This does not mean that children get preferential treatment, and cannot be punished. Procedures for investigating cases of children are regulated separately, considering the effect of the investigation being carried out on them. The effect of fear, the psychological burden that occurs in the investigation process of ABH is a separate consideration, considering that children have good hopes for the future. In the investigation of the ABH case, many parties were involved, namely child investigators, child prosecutors, child judges, community advisers and social workers [14]. In examining the child of victim's, the investigator is obliged to request a social report from the social worker after the criminal act is reported [15].

In criminological studies, there are three models of juvenile justice, namely: retributive model, individual treatment model, and restorative model. According to researchers, SPPA Law prefers to use the third (restorative model) [16]. This is in line with the systematic implementation of examinations and prosecutions to the imposition of sentences. The reflection of these third model can be seen from the offer of a restorative justice approach that puts forward diversion as a way to resolve juvenile cases.

Furthermore, the reasons for the justification of sentencing are based on two theories, namely the absolute theory or retributive theory and the relative or goal theory (utilitarian theory) [17]. On the other hand, punishment theory is divided into four, namely: a) Retributive theory which considers that punishment is a moral justification; b) Deterrence theory which hopes that punishment is carried out to cause fear and refrain from the crime that will be committed; c) Treatment Theory, which assumes that punishment is directed at the perpetrator of the crime, not at the act he did; d) Social Defense Theory. This theory is divided into two thought, namely radical (social protection law must replace the current law with the main objective of protecting and social order) and moderate (new social protection, in which society requires a social order) [18].

In the perspective of absolute theory, punishment is imposed solely because someone has committed a crime or a criminal act. In contrast to the relative theory which states that punishing is not to satisfy the absolute demands of justice. Retaliation has a value to protect

society, so in the end, this relative theory is also called a goal theory, because the punishment is carried out for a specific purpose that has benefits for the community, not merely punishing the perpetrator of the crime, maybe also to protect him.

As well as ABH, it should be carried out at the level of investigation and prosecution by diversion. Diversion is settlement of juvenile cases from the criminal justice process with two conditions, namely 1) ABH is threatened with a prison sentence of less than 7 (seven) years and; 2) ABH is not a repetition of the criminal act. This is contained in article 7 of SPPA Law. Children of Perpetrators' should not be subjected to punishment in a criminal act, because of the labeling of children as criminals (prisoners) cause children cannot get their right to continue their studies to the next level.

The loss of this child is doubled with two statuses at once (perpetrator and victim). This fact raises the understanding that prosecution against ABH can be carried out with the requirements regulated by law by prioritizing certain objectives. In short, in carrying out investigations, prosecutions and convictions against ABH using the theory of relativity. The paradigm of drafting laws governing ABH is a return to this objective theory, with various considerations that have been raised.

### 3.3 Implementation of Diversion in Central Java

Optimizing the implementation of SPPA Law can be done by assessing the implementation of the mandate of the law. The mandate of the law in question is the implementation of diversion using a restorative justice approach. Measurement of the use of SPPA Law to resolve children cases is a parameter used by researchers. The material for implementing SPPA Law is more on the implementation of diversion. This measurement aims to determine the level of understanding of law enforcement officials and ABH's response to the implementation of SPPA Law. Based on the research data about the implementation of diversion by law enforcement officials in districts of Rembang and Kebumen, the average assessment of diversion implementation in these two districts run well with a score that can be described as follows:

**Table 2.** Recapitulation of Diversion Implementation Results (Trial 1)

Variants	Rembang District Score	Kebumen District Score
The Highest Score	83,5	85,6
Lowest Score	70,8	72,4
Average	77,15	79
Number of Successful Diversion	14	20
Number of Failed Diversions	1	2
Completeness	92,8%	90%

Based on the table above, it is known that the implementation of the juvenile justice process through diversion in Rembang districts is higher (92.8%) compared to Kebumen (90%). Based on the standard indicators used in this study, the implementation of diversion in the two districts was said to be high, because  $\geq 75\%$  of 100% scale. This shows that the implementation of diversion has been understood by law enforcement officials in the object of research.

Based on the results of the revision of draft II regarding the implementation of diversion described above, the researcher then conducted a product revision study based on the Focus Group Discussion (FGD) which involved legal experts and child protection experts. The results of the product revision illustrate that an understanding is needed in implementing the

diversion in accordance with Supreme Court Regulations (PERMA) No. 4/2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System, including mastery of methods and strategies during the diversion process and providing Child Special Development Institutions (LPKA), Temporary Child Placement Institutions (LPAS) in each districts. The results of the revision of the Draft II apparatus can be seen as follows:

**Table 3.** Result of Draft Revision II

No	Draft Tool II	Revision Result / Draft III
1	Implementation of Diversion	Understanding of Law Enforcement Officials
2	Means of SPPA Law	LPKA and LPAS
3	Diversion Design	Mastery of Methods, Strategies And Process Evaluation
4	ABH and Environmental Response	Socialization of SPPA Law

In the second phase of testing on the implementation of diversion in district of Rembang and Kebumen, as the following results:

**Table 4.** Results of Diversion Implementation on a Broader Scale

Variants	Rembang District Score	Kebumen District Score
The Highest Score	76,5	82,6
Lowest Score	65,8	71,6
Average	71.15	77,1
Number of Successful Diversion	14	20
Number of Failed Diversions	1	2
Completeness	92,8%	90%

From table 4, it can be concluded that on a wide scale the results of the diversion implementation are stated to be the same as when the first test was carried out. The differences of average score of diversification in the two districts. Both experienced a decline in scores, namely Rembang district ( $77.15 - 71.15 = 6\%$ ) and Kebumen district ( $79 - 77.1 = 1.9\%$ ). Kebumen district  $77.1$  or  $\geq 75\%$ . The decrease in the number of scores is thought to be due to a lack of understanding between law enforcement officials in the implementation of SPPA Law.

### 3.4 Analysis of the Optimization Model of SPPA Law in Central Java

Law is understood as an activity to apply agreed norms in a real event. Law enforcers are obliged with various efforts to make law exist, be accepted, and implemented by legal institutions and society. In this condition, the law is used as a clear and definite variable to be applied to things that are clear and definite [19].

Law enforcement through the judiciary as an institution that has power in law enforcement is highly anticipated by the community. This institution has an obligation to act neutral and fair without selective logging. Judges at the Court are the spearhead who are always supervised by the results of the decisions and their alignments with the law. Judges are also required to carry out the code of ethics they carry, as well as the oath of office that they decite. Judges are required to carry out the function of justice (not to harm someone and not take sides with one of the parties in a case), as well as an extension of the law [20].

In relation to the drafting of SPPA Law, the process of its formation is regulated in Law No. 12/2011 concerning the Formation of Laws and Regulations as amended by Law No. 15/2019 concerning Amendments to Law No. 12/2011 concerning the Formation of

Legislation. The formulation of the law has the aim of creating order and peace in people's lives by maintaining the material legal sources of law in Indonesia. However, in the formulation of Indonesian law, its development is influenced by external elements [21], so that the purity of the law is under the spotlight of experts, even though the elements that exist must have some connection with the environment.

The formulation of Law No. 11/2012 concerning the Criminal Justice System for Children is proven to be a response to the Convention on the Rights of the Child while complying with the Beijing Rules. This regulation seeks to increase harmony in child protection. In addition, SPPA Law seeks to uphold rights and security with children's welfare as its basis. The focus of managing and caring for children is an important thing that cannot be left behind. Ultimately all the rules governing children are dedicated to their well-being.

Regarding the process of SPPA Law in creating child welfare, it can be understood that this is contained in every mandate of the articles contained in it. The legal treatment of children in SPPA Law is a reflection of the state's involvement in supporting and caring for children, even if they commit acts that are prohibited. The process of investigating, prosecuting and judging children is packaged to create comfort and legal certainty. Each government agency and society has a role in their respective scope to protect children's rights [22].

Regarding the expert's response to SPPA Law, it seems that each article has a tendency to protect children in every judicial process. This stage of the process has a privilege makes special treatment to care the children. The increase in the score of the importance of SPPA Law in juvenile justice as described in table 4 (82,6%) indicates that legal experts, child protection experts and law enforcers at the district level have understood the essence of the drafting of SPPA Law. The socialization of the central government to the districts is considered successful by proving the success of judicial against children.

In addition, the success of SPPA Law is seen as an important part of educating children in legal aspects. Children get education and skills in serving punishment against the law. In this context, it means that the crime against the offender's children is dedicated to providing education and skills as a provision for the children's life after the process is over. Even the reintegration process in society is regulated in such a way in SPPA Law. The efforts to evaluate and coordinate juvenile justice provide benefits for the child perpetrators (SPPA Law, article 94, paragraphs (1 to 4).

The process to carry out the mandate of the law and decide the law in accordance with the demands is restorative justice. It is *the process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath offense and its implication for the future* [23]. A process in which all parties involved in a certain criminal act jointly seek solutions and solutions in dealing with events after the occurrence of the crime and how to deal with the influence in the future.

The characteristics of the restorative justice approach can be described as follows: *first*, there is flexibility in the response from the environment both from the case, and the perpetrator-victim; *second*, reflects deep concern and equality of treatment for everyone; *third*, is an alternative to solving cases outside court, by not using criminal law as the sanction imposed; *fourth*, it is used to solve problems and avoid conflicts; *fifth*, it is aimed at eliminating feelings of guilt and the media to meet the needs of victims; *sixth*, encouraging the perpetrator to receive correction and input for changes in behavior, *seventh*, it is flexibility can be used as an adoption for the environment, a legal tradition adhered to in the national legal system [24].



Based on the importance of resolving the ABH case outside the court and in the context of child protection, ABH awaits the existence of the community and its contribution. The community is asked to play a role in solving child cases through diversion as mandated by SPPA Law, article 93 paragraph (d) "*to participate in the settlement of juvenile cases through diversion with a restorative justice approach*". The context of community participation is the keyword in solving children's cases out of court. In the out of court ABH settlement model, Suharto (2005) states that it can be done in several steps, namely: 1) Identification as a first step in analyzing the problem, 2) Investigation as an effort to investigate an existing case, 3) Intervention as part of helping children, 4) Termination as a case ending [25].

However, it turns out that Rembang and Kebumen districts, as the object of this research, there is a new problem, where there are cases of denial of the diversion agreement. When a problem occurs, even though SPPA Law does not regulate this issue, what steps can be taken? Can the denial be prosecuted as part of a criminal case? Or has it become a civil case?. The existence of this fact requires further analysis of efforts to improve the Law on SPPA No. 11/2012. Not to mention if it is related to the diversion monitoring and evaluation process. This is important for the good of society. Although in article 94 paragraph (1) it has been mandated that "*the Ministry that carries out matters in the field of child protection carries out cross-sectoral coordination with related institutions*" in reality, after the child received a diversion decision, there has not been any maximum effort made by institution regarding child protection in guarding the agreement.

The facts above illustrate that there are weaknesses in SPPA Law in regulating the diversion issue. According to data, in relation to the mandate of SPPA Law on diversion implementation, there are two potential main weaknesses, namely: *First*, in terms of formulation, it is sometimes incomplete, unclear and abstract. The mandate given sometimes has not reached the application in detail yet. *Second*, from the aspect of material content, sometimes it is no longer relevant to social reality, in the sense that it has not considered the consequences of some of the articles it contains. Concretely, there has been no effort to anticipate the rooting agreement on the diversion that has been carried out. Indeed, SPPA Law still touches its legal content, but has not penetrated the consequences of its formal legal material yet. In fact, the legal material should be in accordance with the conditions of society, including considering the legal consequences [26]. In the act of a statutory regulation, it should not only look at the events that are happening now but also should see all the possibilities that will occur.

Furthermore, the emergence of new cases after the implementation of diversion cannot be denied that in Indonesia, there is no perfect or complete law. In Supreme Court Regulation (PERMA) No. 4/2014 concerning the Implementation of Diversion in the Juvenile Justice System, instead expanding what is regulated in article 7 paragraph (2) where diversion can only be carried out for crimes under 7 years and not repetition, extended to imprisonment for more than 7 years or more. PERMA No. 4/2014 is seen as denying the mandate of SPPA Law. The confusion between SPPA Law Article 7 paragraph (2) and PERMA No. 4/2014 requires revision for the perfection of juvenile criminal justice [27].

In relation to the difference between the mandate of Law and PERMA, it can be said that a law can be said to be good if it has several conditions, namely: *first*, it applies juridically, meaning that the law is made and issued by an official or institution that has the authority and according to the procedure. the legitimate one. *Second*, apply sociologically, meaning that law can apply effectively, be recognized and obeyed by society as part of daily life. *Third*, apply philosophically, meaning that the laws that apply in society have been obeyed in accordance with the intent when the law was made [28].

These three things are parameters that can be used to measure the legislation or law. However, it needs to be emphasized that the application of law in a philosophical way is largely determined by the enactment of law sociologically. In short, the application of law sociologically is an absolute prerequisite for the operation of law philosophically, each of which reinforces its character. Returning to the issue of contradiction between SPPA law and PERMA, it can be said that both have recognized legal products. However, when there is a difference in perspective, it will create new problems. This perhaps what needs to be considered by experts in minimizing mistakes in drafting laws or regulations.

Purba (2017) cited by Adi Kusno's opinion, that law is not only applied to fulfill the will of the law, but must see the sociological-rational value desired, so that law has more utility value, in order to achieve equality or balance life. This juridical-sociological understanding pattern makes law enforcement not solely directed at legal certainty, but is beneficial and equitable for society [29]. Indicators of creating benefits for the community and justice in handling legal cases are a paradigm that needs to always be released.

In achieving these legal problems, the legislative body in drafting laws is obliged to base on good regulatory principles and principles by developing knowledge and skills. This is in accordance with the mandate of Law No. 12/2011 concerning the Formation of Laws and Regulations. There are at least two means of assessing the performance of legal and government institutions, namely procedures and facts in decision making and attention to legal principles as a manifestation of the implementation of democratic principles. Judicial control in overseeing government actions against the decisions it makes, including Judicial Reviews, which are repressive in nature and prioritize the legality (*rechtmatigheid*) aspect of a decision [30]. However, in reality, the use of courts to resolve problems or cases has actually encountered many new problems.

Although the Juvenile Criminal Justice System uses a systems approach, it does not mean that it does not have weaknesses. This weakness exists not only from the failure to implement the Restorative Justice approach through Diversion, but also the implications made by the parties involved. Another indication of weakness in the implementation of SPPA Law is when Correctional Center (BAPAS) has a significant role in the process of investigation, prosecution and court. The subjective assessment of BAPAS is also quite influential on the judge's decision, because before the judge makes a decision, he must hear BAPAS's opinion. This fact will have implications for the objectivity of the judge's decision. The context will be different if in the diversion decision the investigator is not obliged to accept input and consideration of the decision.

Another possible weakness of the diversion process is the emergence of negative actions that violate the law, such as bribery, coercion for the peace process to take place on the part of the police and prosecutors and so on are things that need to be anticipated in implementing the mandate of SPPA Law. The appearance of a new problem that is a weakness of SPPA Law is a challenge that needs to be resolved [31]. Although there are weaknesses in the practice of SPPA Law that can be revealed in this research, that SPPA Law is an effort to place ABHs in the portion of fulfilling their rights. SPPA Law has played an important role in creating children's welfare.

In social life, there are agreed regulations to be used. For those who violate will be subject to sanctions in accordance with their actions, in accordance with the agreed norms. Criminals will always get punished. Punishment is an effect of the crimes committed. Punishment is considered as pain, suffering and loss for the offender. Garland (1990) defines punishment as not only pain and suffering, but curses, ritual procedures that impose punishment, criminal sanctions, rhetoric symbols, numbers and images in the criminal process represented by

various audiences [32]. In this view, the punishment for the perpetrators of crime is a parameter that can be assessed by the public on the performance of the judiciary.

The suitability between the demands in legislation and the facts of the incident is a measure to see the level of justice that is obtained. Punishment can be used as a measure or parameter of action. It has different forms, depending on the reality and the judge's reading of one's actions. In line with this fact, Adams (1999) states that punishment as mental suffering and a fact of discomfort and even pain for law offender [33]. Changes in the condition of the offender or perpetrator of a crime are part of the size of the decision carried by the perpetrator. Both stick together as part of the consequences.

Regarding the implementation of SPPA Law, despite its strengths and weaknesses, in the opinion of the researchers, harmonization of regulations governing child protection is needed. The purpose of providing child protection is used as a platform to create children justice and welfare. The substance of SPPA Law must be prepared in harmony with national and international legal instruments governing children care and protection [34]. Legal experts need to reform SPPA Law according to the urgent needs for children protection.

The important model is to be adopted in juvenile justice can be divided into two, namely structural and cultural models. The *structural model* is aimed at making a revision (*judicial review*) of the shortcomings and weaknesses of the mandate of the articles of SPPA Law. Synchronization of each article with other legal principles is an urgent need for the continuity of the juvenile justice system. The development of problems after the enactment of SPPA Law is summarized to then find any existing mistakes or weaknesses which are then replaced with other mandates that are more elegant and reflect the interests of the community on a broader scale. After the structural refinement of SPPA Law was carried out by the legislative body, then massive socialization was held to the public. Law enforcement officers are given education and training on SPPA Law, until finally there is diversity and understanding in exploring the process of applying SPPA Law. Thus, the potential for differences in interpretation and interpretation of regulations and SPPA Law can be maximally realized.

The *cultural model* involves the community, where the community is required to support the implementation of SPPA Law by providing supervision and attention to the interests of children. Communities together take preventive actions to supervise and pay attention to the parties involved in the implementation of SPPA Law. In addition, an important preventive action is to minimize children so they do not fall into juvenile delinquency so that they automatically avoid the legal problems that will befall them.

#### **4 Conclusion**

Based on the elaboration described in this research, it can be concluded that the implementation of diversion with a restorative justice approach in districts of Rembang and Kebumen has run well with a score of 71.15% in Rembang Regency and 77.1 in Kebumen Regency (quite good), 71.15 or  $\leq 75\%$ , while in Kebumen district 77.1 or  $\geq 75\%$ . Furthermore, ABH on average gave positive responses to SPPA Law by 77% or  $\geq$  more than 75%, which means that on average ABH felt that SPPA Law was on their side in solving the legal cases they faced. However, ABH's understanding of SPPA Law in two districts was low, namely 35% or below  $\leq 75\%$ .

In an effort to optimize Law No. 11/2012 concerning the Juvenile Criminal Justice System can be carried out in two models, structural and cultural. The structural model is aimed at making a revision (*judicial review*) of the shortcomings and weaknesses of the mandate of the

articles of SPPA Law. The cultural model is carried out by involving the community in monitoring the juvenile justice process, especially in diversion process. In addition, community participation is awaited in preventive efforts to minimize juvenile delinquency. After a long process, thank God this research was well completed. The researchers hope that the results of this research will have benefits in building a juvenile justice system. Thank you

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