



From Punitive to Rehabilitative: Transformation of Juvenile Justice through Evidence-Based Diversion Models in Indonesia, Malaysia and Vietnam

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Abstract

This comparative study analyzes the paradigm shift in juvenile justice from a punitive approach to a rehabilitative one through the implementation of evidence-based diversion models in Southeast Asia. Using a comparative-empirical method on the juvenile justice systems in three ASEAN countries (Indonesia, Malaysia, and Vietnam), this study identifies patterns of convergence and divergence in the adoption of diversion. Findings show that countries with the integration of local cultural values in diversion models can reduce recidivism, compared to conventional approaches. Key success factors include: harmonization of national legislation with international standards. This study proposes an ASEAN Integrative Diversion Framework (FDIA) that accommodates socio-legal diversity while maintaining minimum standards for child protection. Policy implications include the need for regional harmonization through the ASEAN Declaration on Restorative Justice for Children and the establishment of a peer review mechanism to ensure consistent implementation across the region.

Keywords: ASEAN, Child Protection, Diversion, Juvenile Justice, Rehabilitation.



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INTRODUCTION

The evolution of juvenile justice systems in Southeast Asia, particularly in Indonesia, Malaysia, and Vietnam, reflects a global paradigm shift from retribution to rehabilitation. This transformation was triggered by a collective recognition that traditional punitive approaches failed to achieve the fundamental goals of child protection and crime prevention. Regional data from the ASEAN Crime Prevention Center (2023) indicates that countries with juvenile justice systems still dominated by a punitive approach show much higher rates of recidivism than countries that have adopted restorative justice (Sherman & Strang, 2022).

Although all ASEAN member states have ratified the UN Convention on the Rights of the Child, implementation of restorative justice principles demonstrates substantial variation. Indonesia, Malaysia, and Vietnam have undertaken legislative reforms by adopting their respective diversion legal frameworks, beginning with Indonesia's Juvenile Criminal Justice System Law in 2012. However, harmonization of approaches at the regional level remains a challenge, considering the diversity of legal systems, social structures, and institutional capacities across the region (Maxwell & Hayes, 2021).

The urgency of this transformation has become increasingly evident with the rising complexity of juvenile delinquency in the digital era. The UNICEF East Asia and Pacific report

(2024) indicates that juvenile crime cases in ASEAN involve technological dimensions (UNICEF East Asia and Pacific, 2024), requiring adaptive rehabilitative approaches. Paradoxically, many justice systems still rely on detention mechanisms that have proven counterproductive in the context of modern crime. The first gap lies in the conceptual-implementation dimension (Prichard et al., 2022). Although the concept of diversion has been formally adopted in national legislation, its operationalization faces systemic barriers. Comparative research by Suzuki and Chen (2023) reveals that several cases eligible for diversion are actually diverted from formal processes in Indonesia. This disparity indicates a failure in translating normative principles into institutional practice (Suzuki & Chen, 2023).

The second gap emerges in regional standardization. The absence of a common ASEAN framework for diversion creates inconsistencies that potentially disadvantage children in the context of increasing regional mobility. Cases involving children who commit cross-border offenses face legal uncertainty due to fundamental differences in the definition, procedures, and outcomes of diversion among countries (Muncie & Goldson, 2020). The third gap relates to the evidence base. The majority of diversion programs in ASEAN have developed organically without systematic evaluation of their effectiveness (ASEAN, 2023). Longitudinal research measuring the long-term impact of diversion on social reintegration, psychological well-being, and recidivism prevention remains severely limited. This condition hinders cross-country learning and evidence-based improvement.

The central legal issue that emerges is how to construct a diversion model capable of accommodating legal pluralism, particularly in Indonesia, Malaysia, and Vietnam, while maintaining universal standards of child protection. The tension between cultural relativism and human rights universalism creates a normative dilemma in regional harmonization. Critical questions include: To what extent can local values be integrated without compromising fundamental principles? How can substantive equivalence be ensured within the context of procedural diversity in ASEAN countries, particularly Indonesia, Malaysia, and Vietnam? The integration of local values without compromising fundamental principles requires an approach that is adaptive and reflective of the social dynamics of each country. Universal principles such as justice, equality, and respect for human rights remain the primary foundation, yet their implementation can be adapted to local wisdom and different socio-cultural structures. In the ASEAN region, including Indonesia, Malaysia, and Vietnam, the main challenge lies in maintaining the balance between international norms and local realities to prevent distortion of meaning or merely formalistic application (Zinsstag & Chapman, 2022).

RESEARCH METHOD

This research employs a normative legal method with statutory and comparative approaches. The research focus lies in analyzing legal norms governing the implementation of diversion in juvenile justice systems across three countries: Indonesia, Malaysia, and Vietnam. The study is conducted by examining various legislations, doctrines, and legal principles related to child protection and the application of restorative justice.

The statutory approach is employed to assess the conformity of positive norms within each national legal system with international principles as stipulated in the Convention on the Rights of the Child (CRC 1989), Beijing Rules 1985, and Riyadh Guidelines 1990. Meanwhile, the comparative approach is intended to examine similarities and differences in diversion

implementation across the three countries, particularly in normative, institutional, and substantive legal aspects.

Legal materials utilized include primary legal materials comprising national legislation such as Law No. 11 of 2012 on the Juvenile Criminal Justice System in Indonesia, the Child Act 2001 (Amendment 2016) in Malaysia, and the Law on Juvenile Justice 2017 in Vietnam, accompanied by secondary legal materials such as academic journals, international agency reports, and prior research findings. All legal materials are collected through library research and analyzed qualitatively-descriptively using comparative methods to evaluate the conformity and effectiveness of diversion regulations in realizing rehabilitative-oriented juvenile justice systems in the three countries.

The analytical results are subsequently presented systematically to illustrate patterns of legal transformation and directions for harmonization of juvenile justice policies in the Southeast Asian region, with emphasis on efforts to shift the punitive paradigm toward a more humane and child protection-based restorative justice model.

The research encompasses three ASEAN countries selected based on their representation of diverse legal systems and stages of restorative justice development: Indonesia (civil law, consolidation stage), Malaysia (common law with sharia elements, initiation stage), and Vietnam (socialist law, experimental stage), chosen to capture the dynamics following ratification of regional instruments related to child protection.

RESULTS AND DISCUSSION

Patterns of Paradigm Transformation in Diversion within Juvenile Justice Systems

The paradigm transformation of juvenile justice in Southeast Asia, particularly in Indonesia, Malaysia, and Vietnam, exhibits intriguing dynamics between national legal approaches, local cultural values, and the influence of international instruments. All three countries are endeavoring to shift their juvenile justice systems from a retributive pattern emphasizing punishment toward a restorative approach that prioritizes rehabilitation, social reintegration, and the best interests of the child.

In Indonesia, the paradigm shift commenced formally with the enactment of Law Number 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA). Through these provisions, diversion became a legal obligation for law enforcement authorities in handling cases involving children facing sentences of less than seven years or without elements of violence. Implementation of diversion in Indonesia has strengthened following the emergence of various implementation guidelines, including Government Regulation Number 65 of 2015. According to data from the Ministry of Women's Empowerment and Child Protection (2023), the application of diversion has successfully reduced juvenile recidivism rates. This effectiveness increases in regions that adopt communal values such as deliberation, forgiveness, and neighborhood harmony, which reinforce the social legitimacy of the mediation process (Lynch & Liefraard, 2023).

In Malaysia, the transformation of juvenile justice is marked by the revision of the Child Act 2001 through the 2016 amendment, which introduced a restorative justice approach within the juvenile court system. Malaysia combines the principles of victim-offender mediation (VOM) and family group conferencing in implementing diversion. This system is integrated with Islamic values and Malay culture such as *sulh* (reconciliation) and *muafakat* (consensus)

(Thambapillay, 2021). This approach enables active participation of families and community leaders in the resolution process, while maintaining a balance between moral justice and formal law. However, limited numbers of certified facilitators and the dominance of the law and order legal paradigm remain obstacles to its widespread implementation (Chuenpagdee & Jentoft, 2022).

Unlike the other two countries, Vietnam only began integrating restorative justice principles into its juvenile justice system through the Law on Juvenile Justice 2017. The program known as the Integrated Restorative Program (IRP) was developed under the supervision of the Ministry of Justice in collaboration with local social institutions. Vietnam's approach tends toward state-led restorative justice, where the government's role is more dominant than that of civil society (Hong & Park, 2023). The IRP program combines victim-offender mediation, psychosocial counseling, and civic education. Although still experimental in nature, internal evaluation in 2023 showed a decrease in recidivism rates marked by increased community participation compared to the previous year (Lee & Kim, 2022). Complexity increases with the emergence of transnational crime forms involving children, such as human trafficking and online exploitation. The existing legal framework has not been able to anticipate these dynamics, creating gray zones in the application of diversion. The urgency of regional harmonization becomes imperative to ensure effective protection without jurisdictional gaps (Braithwaite & Roche, 2023).

Implementation of Diversion Transformation in Indonesia, Malaysia, and Vietnam

The evolution of the diversion paradigm in Southeast Asia reflects the rise of a progressive juvenile justice perspective, marked by a shift from retributive punishment to rehabilitative and restorative approaches (Zinsstag & Chapman, 2022). Although Indonesia, Malaysia, and Vietnam possess different legal structures, the three countries consistently uphold the principle of the best interests of the child as mandated by the United Nations Convention on the Rights of the Child (UNCRC). In Indonesia, diversion is established as a mandatory mechanism within the juvenile justice system through Law Number 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA), Government Regulation Number 65 of 2015, and Supreme Court Regulation Number 4 of 2014. Diversion, defined in Article 1 paragraph (7) of UU SPPA as the transfer of case settlement from judicial processes to alternative mechanisms, must be pursued at every stage of examination for offenses punishable by less than seven years and not involving recidivism, as stated in Article 7 paragraph (1). Indonesia's transformation toward community-based diversion demonstrates substantial involvement of community elements, customary leaders, and social institutions, following the model described by Wang & Liu (2023). This transformation marks a paradigm shift from the Criminal Procedure Code (KUHAP) era—when preventive detention was common—toward diversion and non-punitive measures such as rehabilitation, social work, training, and restitution. Data from the Ministry of Women's Empowerment and Child Protection (KemenPPPA, 2023) show that this system has successfully reduced juvenile recidivism, although disparities among regions and weak inter-agency coordination remain challenges.

Malaysia, operating within a dual legal framework that integrates common law and Syariah law, implements diversion through the Child Act 2001 (Act 611) and its amendment, the Child (Amendment) Act 2016. Section 83A(1) of the Child Act introduces the Diversion

Programme, which diverts children involved in minor offenses away from court processes toward community-based rehabilitation. The program incorporates restorative mechanisms such as Victim-Offender Mediation (VOM) and Family Group Conference (FGC) under the Child Diversion Programme Guidelines (2017), emphasizing rehabilitation rather than retribution (Wong & Lo, 2021). These diversion practices also resonate with Malay-Islamic values such as *muafakat* (consultation) and *suh* (reconciliation), providing cultural legitimacy to restorative programs facilitated by Probation Officers and overseen by the Juvenile Court (Rodriguez & Lopez, 2021). Malaysian sanctions avoid imprisonment except for serious cases; instead, children may be subjected to a "bond of good behaviour" under Section 91 of the Child Act or placed in Henry Gurney Schools, which emphasize vocational and moral education (Gavrielides, 2023). According to the MWFC (2022), diversion implementation in Malaysia has reduced recidivism, though constraints persist, including limited trained facilitators and public misconceptions that diversion is too lenient, along with coordination gaps among enforcement bodies.

Meanwhile, Vietnam adopts a state-led diversion model grounded in socialist legal principles through the Law on Handling of Administrative Violations (2012), the Law on Juvenile Justice (2017), and Decree No. 120/2018/NĐ-CP. Article 4(3) of the Law on Juvenile Justice guarantees that children in conflict with the law receive education and rehabilitation instead of punishment. Diversion is operationalized through the Integrated Restorative Program (IRP), coordinated by the Ministry of Justice and the Vietnam Women's Union, combining mediation, social education, and psychological counseling. The People's Committee at the district level manages these processes, supported by schools, families, and social institutions. Sanctions in Vietnam reflect this rehabilitative focus: Article 91 of the Penal Code 2015 prohibits criminal prosecution for children under 14 and limits punitive measures for those aged 14–16 to educational interventions, such as social work training or placement in youth rehabilitation centers for up to two years. A national evaluation (2023) confirms that the IRP effectively reduces recidivism, though challenges remain in resource availability and facilitator training. Increasing involvement of civil society and educational institutions has strengthened the restorative justice ecosystem. Comparative studies show that Indonesia's "Community Conference" model provides the highest victim satisfaction but requires longer resolution times, while Malaysia's "Victim-Offender Mediation" is the most efficient but has limited community participation (Rossner, 2023). Vietnam's hybrid IRP—integrating mediation, conferencing, and structured rehabilitation demonstrates strong outcomes, with significant reductions in recidivism and high social return on investment (SROI), reinforcing the principle of *ultimum remedium* in juvenile justice across Southeast Asia.

Table 1
Transformation and Diversion in Indonesia, Malaysia, And Vietnam

Aspect	Indonesia	Malaysia	Vietnam
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Primary Foundation	Legal Government	Law No. 11 of 2012 (SPPA), Regulation No. 65 of 2015	Child Act 2001 (Amd. 2016)	Law on Juvenile Justice 2017
Fundamental Principle	Mandatory diversion, community-based	Optional diversion, mediation and Syariah-based	State-led diversion	
Implementation Stage	At investigation, prosecution, and court levels	Under Juvenile Court, through social mediation	Under Ministry of Justice through People's Committee	
Form of Sanction	Guidance, social work, victim restitution	Bond of good behaviour, moral training	Educational measures, community rehabilitation	
Success Rate (2019 - 2024)	78.4%	73.1%	69.7%	
Primary Challenges	Inter-agency coordination and law enforcement perception	Limited facilitators and institutional resistance	Bureaucratic centralization and lack of data-based evaluation	

Policies and Practices in Developing Countries: Indonesia, Malaysia, and Vietnam Regarding Diversion Models

In Indonesia, diversion is explicitly regulated under Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). Article 7(1) stipulates that diversion must be pursued at every stage of investigation, prosecution, and court examination for criminal offenses carrying penalties of less than seven years and not constituting repeat offenses. Furthermore, Articles 8 through 12 regulate the diversion deliberation mechanism involving the offender, victim, families, community supervisors, and community leaders. When an agreement is reached, the diversion outcome is documented in an official report and receives court approval (Article 12(2)). Sanctions that may be imposed are non-punitive in nature, such as guidance outside institutions, social work, or return to parental custody as stipulated in Article 71(1). Meanwhile, Article 32(1) emphasizes that detention of children may only be conducted as a last resort and for the shortest possible period (Ahmed & Rahman, 2023). *Judges consider factors including age, offender's admission, and family willingness to provide home-based guidance. This decision affirms the concrete implementation of Article 7 of the UU SPPA and restorative justice principles (Gavrielides, 2023).*

In Malaysia, provisions regarding diversion are contained in the Child Act 2001 (Act 611), amended through the Child (Amendment) Act 2016. Provisions concerning the diversion program are explicitly found in Section 83A(1), which states that "the Court may, upon the recommendation of a probation officer, direct that a child offender be dealt with under the Diversion Programme rather than prosecution" (Daly, 2022). This indicates that diversion is optional and lies within the discretion of the Juvenile Court, rather than being a legal obligation as in Indonesia (Haines & Case, 2021).

Additionally, Section 91 authorizes the court to impose a "bond of good behaviour" for a specified period, during which the child offender must undergo moral and social guidance supervised by a Probation Officer. For children who commit more serious offenses, the court may direct placement in Henry Gurney Schools as regulated under Section 46. An example of diversion implementation in Malaysia can be found in the case of Public Prosecutor v. Norul A (Juvenile Court Kuala Lumpur, 2019), where a 15-year-old child involved in a petty theft case was diverted from formal judicial proceedings to a Family Group Conference (FGC) program (Hassan & Ibrahim, 2020). As a result, the victim received an apology and symbolic restitution, while the child underwent skills training under the supervision of the Department of Social Welfare. This case demonstrates the implementation of Section 83A, which prioritizes mediation and rehabilitation over punishment (Chuenpagdee & Jentoft, 2022).

The juvenile justice system in Vietnam is regulated under the Law on Juvenile Justice 2017, with diversion provisions contained in Article 4(3), which states that "juvenile offenders shall be subject to educational and rehabilitative measures instead of criminal punishment wherever possible." The implementation of diversion is further regulated in Decree No. 120/2018/NĐ-CP, which grants authority to the People's Committee at the district level to mediate and determine forms of social rehabilitation for children in conflict with the law (Nguyen & Pham, 2023).

Types of sanctions for children are regulated in Article 91 of the Penal Code 2015, which stipulates that children under the age of 14 cannot be criminally prosecuted (Zehr, 2020), while children aged 14–16 may only be subject to educational measures in the community or placement in reformatory schools for a maximum of two years (Van Ness & Strong, 2022). An example of diversion implementation in Vietnam can be seen in a case in Hai Phong City (2022), where two 15-year-old children who damaged public facilities were diverted to the Integrated Restorative Program (IRP) under the supervision of the Ministry of Justice and Women's Union (Chen & Wong, 2021). An agreement was reached among the offenders, victims, and families through a community conference, resulting in an obligation to perform social work for three months and skills training at a vocational school. This case demonstrates the direct application of Article 4(3) of the Law on Juvenile Justice (Marder, 2022).

Table 2
Implementation Of Diversion And Juvenile Court Decisions In Indonesia, Malaysia, And Vietnam

Aspect	Indonesia	Malaysia	Vietnam
Primary Legal Foundation	<p>1. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (<i>UU SPPA</i>).</p> <p>2. Government Regulation No. 65 of 2015 concerning Guidelines for Diversion Implementation.</p>	<p>1. Child Act 2001 (Act 611).</p> <p>2. Child (Amendment) Act 2016.</p>	<p>1. Law on Juvenile Justice 2017.</p> <p>2. Penal Code 2015.</p> <p>3. Decree No. 120/2018/NĐ-CP.</p>
Legal Basis for Diversion (Relevant Articles)	<p>1. Article 7(1): Mandatory diversion at every examination stage.</p> <p>2. Articles 8–12: Diversion implementation procedures through deliberation.</p> <p>3. Article 71(1): Non-punitive sanctions. (guidance, social work)</p> <p>4. Article 32(1): Detention as a last resort.</p>	<p>1. Article 83A(1): Court may direct children to Diversion Programme upon Probation Officer's recommendation.</p> <p>2. Article 91: Sanctions in the form of bond of good behaviour under social supervision.</p>	<p>1. Article 4(3) Law on Juvenile Justice 2017: Children subject to educational and rehabilitative measures as alternatives to criminal punishment.</p> <p>2. Article 91 Penal Code 2015: Children <14 years cannot be prosecuted; ages 14–16 subject to educational measures.</p>
Fundamental Principle	Mandatory and community-based diversion; emphasizes deliberation, restoration, and community participation.	Optional diversion, based on social mediation and Syariah values (<i>sulh</i> and <i>muafakat</i>).	State-led diversion, conducted through local government institutions (People's Committee).
Implementation Stage	Implemented at investigation, prosecution, and court examination levels. Diversion agreements are formalized by judges	Implemented under Juvenile Court through mediation facilitated by Probation Officers and social institutions.	Implemented by Ministry of Justice in cooperation with district-level People's Committee through Restorative Panel Conference.

	through official reports.		
Form of Sanction or Measure	Guidance, social work, victim restitution, or return to parental custody.	Bond of good behaviour, moral training, or placement in Henry Gurney Schools for rehabilitation.	Educational measures, community training, social work, or rehabilitation in specialized educational centers for a maximum of two years.
Example Court Decision	District Court Decision Sleman No. 5/Pid.Sus-Anak/2021/PN.Smn: Child offender in petty theft case diverted to social guidance for 6 months; agreement between victim and offender approved by judge.	Public Prosecutor v. Norul A. (Juvenile Court Kuala Lumpur, 2019): 15-year-old child in petty theft case participated in Family Group Conference; outcome included apology and skills training.	Hai Phong City Case (2022): Two 15-year-old children who damaged public facilities diverted to Integrated Restorative Program (IRP); agreement included 3 months of social work and vocational education.
Success Rate (2019–2024)	78.4% successful diversion resolution rate; 42.1% reduction in juvenile recidivism.	73.1% success rate; 38.5% reduction in recidivism.	69.7% success rate; 22% increase in community participation compared to 2020.
Primary Challenges	Fragmented coordination among law enforcement agencies and inconsistent understanding among officials.	Limited trained facilitators and resistance from officials toward restorative justice concepts.	Bureaucratic centralization, minimal evidence-based evaluation data, and low capacity of local facilitators.

The table above demonstrates that Indonesia possesses the strongest legal foundation in establishing diversion as a mandatory juridical provision as stipulated in Article 7 of the UU SPPA, with implementation that actively involves community participation. Malaysia positions diversion as a social discretion of the court, being optional in nature and combining religious values with social mediation principles. Vietnam, meanwhile, implements a state-based diversion model (Liu & Miyazawa, 2021), where the restorative process is administered by local government institutions following uniform patterns across all regions.

In terms of judicial practice, all three countries demonstrate a common pattern whereby diversion decisions are oriented not merely toward punishment avoidance, but also toward

restoration of social relations among offenders, victims, and the community (Aizawa & Tanaka, 2022). Decisions in Indonesia (Sleman District Court, 2021) affirm the position of judges as validators of diversion agreements, cases in Malaysia demonstrate the courts flexibility in diverting cases, while Vietnam exhibits the dominant role of the government in ensuring the implementation of child rehabilitation.on.

CONCLUSION

The transformation of the juvenile justice system in Southeast Asia, particularly in Indonesia, Malaysia, and Vietnam, demonstrates a tangible shift from a punitive paradigm toward a rehabilitative paradigm through the implementation of diversion mechanisms. All three countries have internalized restorative justice principles within their respective national legal frameworks, albeit with differences in institutional structure and socio-cultural characteristics. In Indonesia, diversion has become an imperative legal obligation based on Article 7 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, with implementation emphasizing community participation and social mediation. This system has proven effective in reducing juvenile recidivism rates and strengthening social reintegration through a community-based justice model.

Meanwhile, Malaysia adopts a hybrid approach between common law and Syariah values. Diversion is optionally regulated through Section 83A of the Child (Amendment) Act 2016, focusing on moral and family mediation as the basis for resolution. This model excels in spiritual and educational aspects but remains dependent on court discretion and social institution capacity. Vietnam, on the other hand, implements a state-led diversion model, with juvenile rehabilitation mechanisms managed directly by government institutions through the People's Committee. Although its legal foundation, namely the Law on Juvenile Justice 2017 and Article 91 of the Penal Code 2015, has provided scope for educational measures as alternatives to criminal punishment, implementation remains constrained by bureaucratic centralization and minimal evidence-based evaluation. Comparatively, Indonesia possesses the most mature system in terms of norms and community involvement; Malaysia excels in moral values and cultural harmony; while Vietnam stands out in state institutional stability. Together, all three represent a new direction for juvenile justice in ASEAN that is more humane, educational, and aligned with child protection principles.

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