

The Authority of Police Investigative in Implementing Diversion on Children in Conflict with The Law as Reviewed from The Principles Best Interests of The Child

Study at the PPA Unit of the Grobogan Police

Mustika Ayu Ariftiyani

Law Science, Faculty of Law and Politic Science, Universitas Muhammadiyah Surakarta
C100220083@student.ums.ac.id

M. Junaidi

Law Science, Faculty of Law and Politic Science, Universitas Muhammadiyah Surakarta
mj122@ums.ac.id

ABSTRACT

Introduction: Children, as individuals in their developmental phase, require special protection when dealing with the law to avoid the negative impacts of the formal justice system. This research is motivated by the important role of investigators from the Grobogan Police Women and Children Unit (PPA) in implementing diversion to guarantee children's rights. This research uses an empirical juridical approach to analyze the factual application of legal norms in the field. **Method:** Data was collected through in-depth interviews with investigators from the PPA Unit of the Grobogan Police and literature studies of related regulations. **Novelty:** The difference between this article and previous research lies in the specific analytical focus on the effectiveness of investigators' authority in the Grobogan Police jurisdiction in implementing the principle of the best interests of children through the provision of deliberation facilities and the involvement of community leaders as mediators. **Results:** The implementation of diversion at the Grobogan Police Women and Children Unit (PPA) is guided by the Child Protection and Child Protection Law (UU SPPA). Investigators act as neutral facilitators, providing deliberation facilities, while mediation is conducted with community leaders to maintain objectivity. The principle of the best interests of the child has been implemented through a communicative-persuasive approach, identity protection, and the fulfillment of children's rights during the investigation process to minimize psychological stress. **Conclusion:** The implementation of diversion at the Grobogan Police Women and Children Unit integrates formal regulations with social moral authority through collaborative facilitation involving community leaders. This legal protection prioritizes the principle of the child's best interests, taking into account their mental health and environment. social to prevent trauma and ensure the future well-being of children.

Keywords: Diversion; Police Investigators; Best Interests of Children; Restorative Justice.

INTRODUCTION

Children are individuals who are in a growth phase, so they are vulnerable to environmental influences and need special protection. This form of protection extends beyond basic rights such as access to education and healthcare, but also includes legal guarantees when children are involved in criminal cases. This is because children do not yet possess the intellectual capacity and emotional maturity of adults, and therefore cannot be held criminally accountable to the same standards.

In carrying out its duties, the police can act in two ways: first, by enforcing the law in accordance with the provisions of the Criminal Procedure Code by means of coercive measures; and second, by means of discretionary action based on moral considerations and legal obligations to protect the public, as regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code and Law Number 2 of 2002 concerning the Indonesian National Police. (1)

Criminal acts committed by children should not be treated the same as adult perpetrators. Limited judgment, unstable emotions, and the need for guidance require a different approach. Direct involvement of children in the formal criminal justice system can have negative consequences such as psychological trauma, social stigmatization, and an increased risk of recidivism. (2) Therefore, it is important to take an approach that is oriented towards the best interests of the child.

Diversion essentially aims to provide a different option for resolving cases than formal criminal proceedings, leading to a peaceful resolution involving various stakeholders. The primary goal of diversion is rehabilitation, not retribution, so that children have the opportunity to improve themselves without undergoing a lengthy and intimidating court process. The Child Protection Act provides law enforcement officials with the authority to pursue diversion at all stages of juvenile criminal cases. (3) Diversion is in line with the restorative justice paradigm, which emphasizes the restoration of social relations, accountability, and balance.

According to data from the Grobogan Police Women and Child Protection Unit, the number of cases successfully resolved through diversion remains relatively limited.

Impediments include investigators' limited understanding of restorative justice, inadequate regulations, and resistance from the community and victims. The fundamental question is whether investigators have acted in accordance with the principle of the child's best interests.

One example of a case that became the basis for implementing diversion was recorded in Police Report Number: LP/B/21/III/2024/SPKT/GROBOGAN POLICE/CENTRAL JAVA POLDA, dated March 5, 2024. The case relates to alleged theft as referred to in Article 362 of the Criminal Code. The incident occurred in February 2024 at the victim's house in Nonang Hamlet, Karangharjo Village, Toroh District, Grobogan Regency. The perpetrator is suspected of being a minor, so investigators from the PPA Unit of the Grobogan Police took an approach in accordance with the SPPA Law by prioritizing diversion.

Previous research has examined the implementation of diversion by investigators, such as research at the Magelang Regional Police which reviewed the diversion process based on the SPPA Law (4), and research in Gayo Lues which focused on consultation and agreements between parties. (5) However, these studies have not investigated in depth how investigators' regulations are applied to ensure the principle of the child's best interests.

METHOD

This research method applies an empirical juridical approach to examine the effectiveness of the implementation of legal norms in factual practice in the realities of field practice.(6) This approach was used to analyze the alignment between legal norms governing investigators' authority in implementing diversion and their implementation in the investigation of children in conflict with the law at the Women and Children Protection Unit (PPA) of the Grobogan Police, Central Java. This location was chosen because the unit has the authority to handle children's cases and represents the implementation of diversion at the regional level, particularly regarding the application of the principle of the best interests of the child.

The classification of data sources in this study includes primary and secondary data. Primary data was obtained through in-depth interviews with investigators from the Women and Children's Services Unit (PPA) of the Grobogan Police. The subjects were determined using purposive sampling, based on specific criteria of experience in handling diversion

procedures. (7) Secondary data was collected through literature studies that focused on primary legal materials, particularly relevant legal regulatory instruments. Direct observation techniques were also implemented to comprehensively observe the dynamics of diversion implementation at the research location.

The data obtained was analyzed qualitatively by processing, classifying, and interpreting data from literature studies, interviews, and observations. The analysis was conducted to describe the application of investigators' authority in diversion and to assess its compliance with the principle of the best interests of the child.

RESULTS AND DISCUSSION

1. Authority and Implementation of Diversion for Children at the Grobogan Police

Both national and international legal systems provide special protection to children because there are fundamental differences in their legal and sociological characteristics compared to adults. Children are classified as vulnerable entities in Indonesian positive law, so the legal approach applied must not be limited to repressive measures, but must include rehabilitative and restorative dimensions. (8) This protection is essential to anticipate various negative consequences arising from the acceleration of development, the development of science and technology, and the flow of global information. In addition, shifts in adult lifestyles that create new social dynamics are also crucial factors that demand comprehensive protection for children. (9) These developments can increase the level of vulnerability of children to being dragged into legal problems. This condition causes the legal system to position children as parties who require special protection when facing legal processes.

Based on data obtained through interviews, diversion implementation at the Grobogan Police Women and Children Protection Unit has remained very limited over the past three years. The statistics show a stable trend, but with a highly selective case volume.

Table 1. Table of Number of Diversion Implementations at Grobogan Police

Year	Number of ABH Cases Attempted	Number of Successful Diversions	Success Rate (%)
2023	1 Case	1 Case	100%
2024	1 Case	1 Case	100%
2025	1 Case	1 Case	100%

Despite a 100% success rate, the total number of cases included in these statistics is very small (1 case per year). This suggests two sociological possibilities: first, the number of juvenile criminals eligible for diversion in Grobogan is indeed low; or second, investigators are very selective in screening cases with genuine potential for agreement before initiating the formal diversion process.

The success of diversion at the Grobogan Police Department is marked by the achievement of a peace agreement between the perpetrator and the victim, followed by the child's return to their parents for guidance. Another indicator of success is the child's avoidance of imprisonment and continued education, which is essential for fulfilling a child's right to a better future.

The implementation of diversion at the Grobogan Police PPA Unit is based on the mandate of the SPPA Law and PERMA Number 4 of 2014. Based on the statement of Mrs. Mila Desy Niswati, Administrative Officer of the Grobogan Police PPA Unit, this mechanism prioritizes the resolution of cases outside the litigation route through formal deliberation. This process involves collaboration between law enforcement officers, Community Guidance Officers, and Professional Social Workers to reach a consensus between the perpetrator and the victim. This paradigm is in line with the Beijing Rules which position diversion as a discretionary instrument for law enforcement in handling child cases without going through formal courts. (10)

The authority of Indonesian National Police investigators in the diversion mechanism at the investigation stage is limitedly stated in Articles 8 to 12 of the SPPA Law, which includes a number of details of authority as follows:

- a. First, investigators have a legal obligation to submit a request for advice to the Bapas Community Guidance Officer (PK) and Professional Social Workers (PSP) within a maximum of 24 hours after the child's examination.
- b. Second, investigators have a legal obligation to submit a request for advice to the Bapas Community Guidance Officer (PK) and Professional Social Workers (PSP) within a maximum of 24 hours after the child's examination.
- c. Third, investigators act as neutral facilitators who coordinate and lead diversion deliberation forums involving children, parents or guardians, and the victim.
- d. Fourth, investigators have a role in formulating the form of diversion agreement, which can take the form of peaceful reconciliation, returning the child to the parents, or placement in an education and training program.
- e. Fifth, the investigator must forward a report regarding the results of the agreement reached to the District Court in order to obtain a legally binding diversion decision.

Child Protection Act integrating all components of the judiciary that handle cases of children in conflict with the law. Article 1 number 5 of the SPPA Law emphasizes that the resolution of children's cases must be carried out fairly through a restorative approach.⁽¹¹⁾ This approach involves the relevant parties in order to find a solution that is oriented towards restoring the situation and not towards revenge.

Diversion deliberations function as a meeting forum between children, parents or guardians, victims, Community Guidance Officers, Professional Social Workers, and community elements to reach an agreement through a restorative approach. ⁽¹¹⁾ This process aims to establish peace between the perpetrator and victim, prevent the use of deprivation of liberty against children, encourage community participation, and foster responsibility in children. The active involvement of all parties is necessary to ensure that the resulting agreement reflects justice and emphasizes restitution.

Based on the results of an interview with the Administrative Officer of the Women and Children's Service Unit (PPA) of the Grobogan Police, Mila Desy Niswati, it was revealed that the implementation of diversion in the agency was initiated through the receipt of a report followed by outreach steps to the victim. The initial handling stages include a series of procedures including preliminary examination, carrying out crime scene processing (TKP) as needed, facilitating a post-mortem, and providing psychological support for the victim. Diversion efforts are carried out consistently at every level of examination with strict legal criteria limitations. These requirements include the threat of imprisonment under seven years, the subject is not a recidivist, the child is between the ages of 12 and 18, and there is consensus or agreement from all parties involved. The stages of the diversion procedure according to Mrs. Mila Desy Niswati include:

- a. The process begins with applying for diversion for children in conflict with the law;
- b. Diversion facilitated by competent parties involving children, parents/guardians, victims, PK, PSP, community representatives and related parties;
- c. Reaching an agreement formulated in the Diversion Agreement Letter and signed by all parties;
- d. Court ruling by submitting minutes and agreements to the Head of the District Court for the issuance of a ruling; and
- e. If unsuccessful, the matter will proceed to trial.

The agreement of all parties involved is an absolute prerequisite for the continuation of the diversion process in resolving children's cases. This agreement document serves as both a legal and operational foundation for the implementation of deliberations at every level of examination. Law enforcement officials hold hierarchical responsibility in facilitating this forum, starting from investigators in the investigation phase to judges in the trial realm. The mandate of Article 7 paragraph (2) of the SPPA Law requires every law enforcement institution to play an active role in seeking mediation as long as the material requirements are met. This collective obligation aims to ensure that

every stage of handling children's cases always prioritizes solutions outside the formal justice system. (12)

Based on information obtained through interviews with Mila Desy Niswati, Administrative Officer of the Women and Children's Services Unit (PPA) of the Grobogan Police, it was revealed that police investigators play a central role in providing the facilities and infrastructure supporting the diversion mechanism. The implementation of mediation in this forum involves community elements, such as Village Heads and Community Leaders who act as mediators. Investigators function to facilitate a meeting space that brings together the victim, perpetrator, and community leaders in a structured diversion discussion. The implementation of a restorative justice approach is prioritized to formulate optimal solutions, especially in situations where the victim and child in conflict with the law have reached a consensus to reconcile.

If a diversion agreement is successfully reached in handling a child's case, the Chief Justice is required to issue a diversion decision no later than three days after all parties agree to the agreement. This decision is then submitted to the Community Guidance Officer, investigator, public prosecutor, and judge handling the child's case, as regulated in Article 12 paragraph (3) of the SPPA Law. After the decision is issued, the entire criminal justice subsystem follows up by stopping the process of examining the child's case in court, because this decision marks the finalization and end of the diversion process. (13)

The information obtained indicates that Grobogan Police investigators did not act as mediators during the diversion deliberations. Their role was more focused on providing the necessary facilities and administrative support to facilitate the deliberations. The mediators in these meetings are generally represented by local community or religious leaders. Investigators maintain a neutral stance throughout the process, aiming to safeguard the child's best interests.

The implementation of diversion involving children at the Grobogan Police Women and Children Unit (PPA) follows the procedures stipulated in the Child Protection and Child Protection Law (UU SPPA). The stages begin with the receipt of the report and the

preparation of an Examination Report by the investigator. The file is then submitted to the Correctional Center for Community Research. The research results form the basis for issuing recommendations regarding the possibility of resolving the case through diversion. The recommendation stating that the case can be diverted is followed by summoning the relevant parties, including the child perpetrator, the victim, the parents, a Professional Social Worker, and the Community Guidance Counselor. A diversion deliberation is then held to reach an agreement, which is then formalized in the form of a diversion agreement.

In addition to BAPAS, the success of the diversion program was also supported by social workers from the Grobogan Regency Social Services. They play a role in providing social protection and psychological support, particularly for child victims. The Grobogan Regency Government itself has issued Regional Regulation Number 15 of 2013 concerning Child Protection, which is the basis for providing rehabilitation facilities and child violence prevention programs at the village level. However, the availability of social rehabilitation centers or job training institutions for children undergoing diversion sanctions in the Grobogan area still needs to be optimized so that the diversion agreement does not simply end with the return to parents without ongoing technical guidance.

2. Application of the Best Interests of the Child Principle(*best interest of the child*)in the Diversion Process at Grobogan Police

The principle of the best interests of the child (*the best interest of the child*) occupies a central position in international child protection legal instruments that have now been adopted into Indonesia's national legal framework. This doctrine requires all legislative, executive, and judicial authorities to place the welfare of children as the primary determinant in policy formulation and legal decision-making. (14)

The mandate regarding prioritizing children's interests in all public institutional activities is explicitly stated in Article 3 paragraph (1).*Convention on the Rights of the Child* (1989). The Indonesian government has internalized this global norm through Presidential Decree Number 36 of 1990. This ratification became a crucial legal foundation

that guided the formation of various sectoral regulations related to child protection in Indonesia.(15)

The juvenile criminal justice system places imprisonment as a *last resort* in the law enforcement process. This principle is a fundamental pillar in child protection, in line with the provisions of Article 37 letter (b) of Presidential Decree Number 36 of 1990. The state has a constitutional obligation to ensure that the deprivation of liberty of children is not carried out arbitrarily or contrary to the law.

This norm is reaffirmed in Article 66 paragraph (4), which instructs that procedures for the detention, arrest, and even sentencing of children must have a strong legal basis. These measures are only permitted as a final solution, implemented for the minimum duration. The implementation of legal actions such as arrest and imprisonment must comply with applicable regulations and be positioned as a final measure to ensure the best interests of the child.

The provisions in Article 37 letter (b) of Presidential Decree Number 36 of 1990 *juncto* Article 66 paragraph (4) explicitly confirm the function of criminal law as a last resort in handling child cases. This legal instrument mandates that criminal sanctions are a last resort and can only be taken when other means are inadequate. Aspects of protection and guidance for children in conflict with the law must also integrate the principle of *parens patriae*. This doctrine places the state in the position of primary protector, which has sovereign authority to act in the interests and welfare of children as vulnerable legal subjects.(16)

The *parens patriae* principle should serve as the main basis in handling children in conflict with the law. This doctrine emphasizes the role of the state or related authorities to be present to provide assistance and protection for children, instead of only focusing on giving punishment. (17) Absolute (retributive) theory offers a different perspective by viewing punishment purely as a means of retribution. This approach emphasizes its focus on the criminal act itself without considering the protection aspect. Criminal sanctions in

this view are considered as logical consequences or commensurate suffering (retaliation) which the perpetrator must accept for the loss he caused to another person.(17)

The relative theory, also known as deterrence theory, positions criminal sanctions not as an instrument of retribution for the perpetrator's actions. The primary focus of this doctrine is the function of punishment as a strategic tool for realizing the broader public good. This goal relates to protecting society and efforts to create order and social welfare. Punishment is imposed to alleviate social unrest arising from crime and to prevent similar acts from occurring in the future.

The combined (integrative) theory combines elements of retribution and the goal of protecting public order as the basis for punishment. This theory views punishment not only as retribution for the perpetrator's actions but also as an effort to maintain legal order and improve the perpetrator's personality. Thus, the combined theory is essentially a synthesis of absolute and relative theories, positioning punishment as a means of maintaining legal order while simultaneously improving the behavior of the perpetrator.

Referring to the Convention on the Rights of the Child adopted by the United Nations in 1989, children's rights are generally grouped into four main classifications.(18) The Convention also groups children's rights into four main categories as a framework to ensure that the principle of the best interests of children is fulfilled in every policy and action concerning children, as follows:

a. Right to Survival

This right relates to a child's basic right to conditions that support a decent life. These rights include the right to life from birth, the right to health care, the right to adequate nutrition, and the right to a standard of living adequate for a child's physical development. The state has an obligation to ensure the availability of health facilities, medical services, and protection against various conditions that could threaten a child's safety and health.

b. The Right to Protection

This right relates to protecting children from various forms of harmful or dangerous treatment. This right includes protection from physical and psychological violence, economic and sexual exploitation, discrimination, child trafficking, neglect, and other inhumane treatment. Protection also extends to children in special situations, such as children who are victims of conflict, children who are victims of drug abuse, and children in conflict with the law. The state is obliged to provide adequate legal and social protection mechanisms to ensure the safety and well-being of children.

c. The Right to Grow and Develop

This right relates to fulfilling a child's various needs, enabling them to develop optimally, physically, mentally, emotionally, socially, and intellectually. These rights include the right to education, the right to obtain useful information, the right to play and recreation, and the right to develop their talents and potential. Fulfilling this right aims to create an environment that supports the child's holistic development so that they can achieve an optimal quality of life.

d. Right to Participate

This right relates to a child's right to express opinions and participate in decisions that affect their lives. Children have the right to have their views heard within their family, social environment, and in legal proceedings involving them. Fulfillment of the right to participation must take into account the child's age and maturity. Recognizing this right aims to respect children as legal subjects with views and interests that must be considered in every decision-making process.

The diversion mechanism in the Juvenile Criminal Justice System Law is a concrete manifestation of restorative justice for children who come into contact with the law. (19) This policy aims to foster a sense of responsibility in perpetrators for their illegal actions. Through this procedure, perpetrators are given the opportunity to recover for the losses and negative impacts suffered by the victim. (20)

Based on an interview with Mila Desy Niswati, the implementation of the principle of the best interests of the child in handling child cases at the Grobogan Police is reflected in a number of practices aimed at protecting children's basic rights throughout the legal process. Investigators understand this principle as an effort to consider the child's health, education, security, and social conditions at every stage of the case process.

a. Considerations for Child Well-being and Development

During the investigation process, the principle of the best interests of the child is pursued by considering the impact of the legal process on the child's psychological condition and future. Based on the results of interviews with Mrs. Mila Desy Niswati, examinations of children are generally conducted using a more communicative and persuasive approach. The examination process is also attempted to take place in a conducive atmosphere to minimize psychological stress on the child. In some situations, investigators do not wear full official attire when interacting with children in an effort to reduce any fear or anxiety the child may experience during the examination.

b. Fulfillment of Children's Rights During the Investigation Process

The implementation of child investigations at the Grobogan Police Women and Children Unit (PPA) adheres to the provisions of the SPPA Law, particularly regarding the fulfillment of children's rights during the judicial process. Based on interviews and field observations, the fulfillment of these rights includes the following aspects:

- 1) Humane treatment, namely the examination is carried out without using physical violence or verbal pressure.
- 2) Separation of detention places, if detention is forced as a last resort, children are placed separately from adult detainees, for example in a Special Service Room (RPK) or through custody at a Social Welfare Institution (LPKS).

- 3) Legal and family assistance, namely the child is accompanied by parents or guardians and legal advisors during the examination process.
- 4) Protection of identity confidentiality, namely the identity of the child, whether as perpetrator or victim, is not published to avoid the impact of negative labeling.

Investigators also consider the child's age and level of psychological development when determining the method and duration of the examination. This approach aims to ensure that the child's testimony can proceed without causing undue stress.

3. Lessons that Indonesia Can Learn from the Implementation of Child Diversion in Malaysia
Discussions on the implementation of diversion for children in various countries demonstrate a variety of approaches influenced by evolving legal systems, policies, and social values. Malaysia, as a country with relatively similar legal characteristics to Indonesia, offers diversion practices that can be used for reflection and comparison. An analysis of the successes and challenges of diversion implementation in Malaysia provides a concrete picture of strategies that can be adapted to improve the effectiveness of the juvenile criminal justice system in Indonesia.

Malaysia has made significant reforms to its juvenile justice system through the introduction of *Child Act 2001*. This Act replaces *Juvenile Courts Act 1947*, *Child Protection Act 1991*, and *Women and Girls Protection Act 1973*. This merger aims to create a comprehensive framework that not only addresses children who commit crimes, but also children who need protection and care (*children in need of care and protection*).

Child Act 2001 Malaysia places a strong emphasis on prevention and rehabilitation. Courts for Children (*Court for Children*) has broad jurisdiction to impose non-custodial orders. Although the term "diversion" does not appear explicitly in the original text of the law, the spirit of restorative justice has been integrated through recent amendments and judicial practice. For example, the 2016 Amendments introduced Community Service Orders as a formal recognition of restorative principles. (21)

One of the most relevant aspects for PPA investigators in Indonesia is how the police in Malaysia (PDRM) manage their discretion towards child offenders. Although

Malaysia does not yet have a strictly mandated pre-trial diversion system like Indonesia, the practice of "Police Cautioning" or issuing warnings by the police has long been an informal instrument for dealing with minor offenses. (22)

Malaysian police often act as mediators to seek amicable resolutions between child perpetrators and victims without having to take the case to court. This practice, while not formally documented in official crime statistics, has proven effective in preventing the stigmatization of children early on. This is particularly relevant for adoption in PPA units like the Grobogan Police, where investigators can be provided with more structured guidelines for conducting mediation at an early stage, particularly for minor crimes that can be substantially resolved through apologies and limited compensation.

Malaysia, in collaboration with UNICEF and the Department of Social Welfare (JKM), has launched a Diversion Pilot Project to test the effectiveness of diverting cases before they reach the courts. This project involves the development of community-based rehabilitation modules that include interactive workshops for children and their parents. Data from these pilot projects indicates that children diverted from the formal system have significantly lower recidivism rates than those who undergo conventional justice processes. This is based on research conducted by Wilson and Robert, who examined 73 diversion programs. The results obtained are as follows. Recidivism rates for children who participated in diversion ranged from 2% to 81%, with an average of 31.5%. In contrast, recidivism rates for children processed through conventional justice mechanisms ranged from 8% to 81%, with an average of 41.3%. These findings indicate that, in general, children who participated in diversion programs had lower recidivism rates. (23)

The transformation of the National Police's investigative authority in implementing diversion is an effort to achieve humane justice for children. A comparative study with Malaysia provides valuable lessons: effective diversion is not simply about avoiding punishment, but about providing a structured rehabilitation pathway that involves the entire child support system, from family to school to community.

The implementation of best practices from Malaysia such as strengthening the role of parents through formal assurances of proper treatment, utilizing cost-efficient community service programs, and ensuring close collaboration with social welfare officers from the early stages of investigation can significantly improve the quality of diversion outcomes at the Women and Children Unit of the Grobogan Police.

The best interests of the child must be the moral and legal compass guiding investigators in every exercise of their discretion. By adopting a more restorative and evidence-based approach, the Indonesian National Police (Polri) is not only fulfilling its legal mandate but also investing in the formation of a better future generation, free from the trauma and damaging stigma of crime.

CLOSING

1. Conclusion

The authority of investigators from the Grobogan Police's Women and Children Protection Unit (PPA) in implementing diversion is exercised through a collaborative facilitation mechanism, positioning officers as managers of the deliberation facilities and infrastructure. Field mediation involves community and religious leaders as the primary intermediaries to reach an inclusive peace agreement. This model demonstrates that the effectiveness of diversion at the regional level depends heavily on the integration of formal regulations and social moral authority within the local community.

The principle of the best interests of the child is realized through humane treatment that prioritizes a persuasive approach and consistently fulfills the child's procedural rights. Investigators strive to create a conducive environment by removing official attire and ensuring the confidentiality of the child's identity to prevent psychological trauma and social stigmatization. This practice emphasizes that legal protection for children extends beyond simply fulfilling administrative procedures and must integrate sociopsychological considerations to ensure the child's future well-being.

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