

Risk-Based Diversion and Risk-Informed Disposition for Children with Psychopathic Traits in Indonesian Sexual-Violence Cases

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Abstract: *Indonesian juvenile justice law places diversion behind an offense- and repetition-based gate in Article 7(2) of the Juvenile Criminal Justice System Law (SPPA Law), while purposive scholarship emphasizes restorative justice and the best interests of the child as grounds for a wider practical reach of diversion. This article examines that doctrinal tension in child sexual-violence cases, the treatment of psychopathic traits under the 2023 Criminal Code, including the transitional operation of Article 618, and the lawful use of forensic assessment within the social inquiry report (Litmas). Using normative legal research with statutory, conceptual, interdisciplinary, and limited functional-comparative approaches, the article reconstructs the post-2026 offense map under Article 622 and Law Number 1 of 2026, and it distinguishes legal eligibility, criminal responsibility, and prospective risk-and-needs formulation. It finds that Article 7(2) remains a categorical eligibility gate. Article 419(1), which carries a maximum of exactly seven years, falls outside ordinary diversion, whereas mixed-charge cases remain governed by Supreme Court Regulation Number 4 of 2014. Psychopathic traits are neither a diagnosis under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR) nor an automatic excuse, aggravating factor, or disability status. Clinical information may inform treatment, supervision, reintegration, reasonable accommodation where independently warranted, restitution-related planning, and victim safety, but it cannot determine guilt or statutory eligibility. The proposed framework therefore separates Risk-Based Diversion for legally eligible cases from a Risk-Informed Disposition Module for formally adjudicated cases, supported by selective referral, youth-appropriate assessment, reasoned evidentiary weight, protection against stigma, and periodic review. Government Regulation Number 65 of 2015 and coordinated guidance may regulate procedure, but only legislation may alter statutory eligibility.*

Keywords: *Criminal Responsibility; Forensic Psychiatric Assessment; Juvenile Justice; Psychopathic Traits; Risk-Based Diversion*

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INTRODUCTION

Indonesia's response to sexual violence committed by children must protect victims, respect the developmental status and dignity of the child, preserve legality in criminal

responsibility, and avoid unnecessary deprivation of liberty. The Juvenile Criminal Justice System Law (SPPA Law) pursues these aims through restorative justice, diversion, social inquiry reports (Litmas), individualized sanctions and measures, and detention as a last resort.¹ Article 7(2), however, limits diversion to offenses punishable by imprisonment of less than seven years and not constituting a repeat offense. The central legal problem is therefore how individualized clinical information may inform intervention without altering this offense-based gate.

The governing statutes must be read together. Enhanced measures for adult perpetrators of child sexual offenses under Law Number 17 of 2016 expressly exclude child perpetrators. Article 23 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (Undang-Undang Tindak Pidana Kekerasan Seksual, hereinafter the TPKS Law) prohibits settlement outside judicial proceedings while preserving the special SPPA treatment of child perpetrators. Since January 2, 2026, Articles 38 and 39 of the 2023 Criminal Code have supplied the principal responsibility framework for conduct governed by the new Code. For conduct committed before that date that remained in process when the Code entered into force, however, Article 618 requires application of the new Code unless the earlier law governing the offense is more favorable to the suspect or accused. The article therefore treats Articles 38 and 39 as the principal post-2026 baseline while preserving a case-specific *lex favor reo* comparison with former Article 44 in transitional cases.²

Clinical terminology also demands restraint. Psychopathy is not a diagnosis under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR), and antisocial personality disorder cannot be diagnosed before age eighteen.³ Some relevant features may be examined through youth-appropriate constructs, but adolescent personality and behavior remain developmentally changeable. Assessment may assist case management; it cannot establish an immutable criminal identity or justify prolonged confinement.⁴ This article therefore uses “children exhibiting psychopathic traits” descriptively and avoids stigmatizing labels inconsistent with child-justice standards.⁵

Existing scholarship reveals not a complete absence of law, but a disagreement about how settled rules should be ordered when they point toward different institutional responses. Saputri and Soeskandi address responsibility for persons described as psychopaths, Brgtan and colleagues compare punishment in Indonesia and Denmark, and Nur reconstructs juvenile

¹ Indonesia, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, arts. 2–3, 6–10, and 69–83.

² Indonesia, Law Number 17 of 2016, arts. 81A(4) and 82A(3); Indonesia, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, art. 23; Indonesia, Law Number 1 of 2023 concerning the Criminal Code, arts. 38–39, 618, and 624.

³ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders: DSM-5-TR*, 5th ed., text rev. (Washington, DC: American Psychiatric Association Publishing, 2022), <https://doi.org/10.1176/appi.books.9780890425787>.

⁴ John F. Edens et al., “Assessment of ‘Juvenile Psychopathy’ and Its Association with Violence: A Critical Review,” *Behavioral Sciences & the Law* 19, no. 1 (2001): 53–80, <https://doi.org/10.1002/bsl.425>; Daniel Seagrave and Thomas Grisso, “Adolescent Development and the Measurement of Juvenile Psychopathy,” *Law and Human Behavior* 26, no. 2 (2002): 219–239, <https://doi.org/10.1023/A:1014696110850>.

⁵ United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on Children’s Rights in the Child Justice System*, CRC/C/GC/24 (Geneva: United Nations, 2019), paras. 7–8, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>.

measures. Other Indonesian studies examine restorative justice, the best interests of the child, the role of the Correctional Center (Bapas), and Litmas. More recently, Pirmansyah, Arifin, and Iqbal defend a purposive and progressive reading that gives judges a wider role in pursuing diversion in cases carrying penalties above seven years, particularly where the charging configuration engages Supreme Court Regulation Number 4 of 2014. The disagreement is therefore doctrinally material: one reading treats Article 7(2) as a hard statutory eligibility gate, while another gives greater weight to restorative justice and the best-interests principle in extending the practical reach of diversion.⁶

The strongest competing reading begins from Article 7(1) of the SPPA Law, the best-interests principle, minimum intervention, reintegration, and the child-centered orientation of Article 40 of the Convention on the Rights of the Child. In its strongest form, that reading argues that diversion should still be attempted where an individualized assessment shows that formal adjudication would unnecessarily harm the child and a restorative response could safely protect the victim and community. This article accepts the normative force of that concern but rejects the conclusion that it authorizes decision-makers to disregard the express words of Article 7(2). Best interests can guide the interpretation of ambiguity, the application of Article 9, Litmas, and the mixed-charge rule in Supreme Court Regulation Number 4 of 2014; it cannot transform an offense punishable by seven years or more into an offense punishable by less than seven years. If the legislature wishes to enlarge the category, amendment of the SPPA Law is the legally transparent route.⁷

The article accordingly reformulates its contribution as a synthesis and ordering argument rather than a claim that the three component fields are individually unsettled. It separates three decisions that competing approaches may otherwise blur: statutory eligibility, criminal responsibility, and prospective risk-and-needs formulation. Legality controls the procedural route and available consequences; culpability concerns the child's functional capacity in relation to the past act; and prospective risk and needs concern the design of treatment, supervision, reintegration, and victim-safety measures after the first two questions have been answered. Risk-Based Diversion is therefore confined to legally eligible cases, while a distinct Risk-Informed Disposition Module performs a comparable individualized function when diversion is unavailable.

The study asks: (1) how Article 7(2) of the SPPA Law, Supreme Court Regulation Number 4 of 2014, Government Regulation Number 65 of 2015, Article 23 of the TPKS Law, and the post-2026 offense mapping under the 2023 Criminal Code allocate diversion eligibility

⁶ Evi Nur Saputri and Hari Soeskandi, "Pertanggungjawaban Pidana bagi Psikopat," *Bureaucracy Journal* 2, no. 2 (2022): 333–348, <https://doi.org/10.53363/bureau.v2i2.39>; Asriel Brgtan et al., "Perbandingan Pemidanaan bagi Psikopat dalam Hukum Pidana Indonesia dan Hukum Pidana Denmark," *Jurnal Hukum Pelita* 6, no. 2 (2025): 915–931, <https://doi.org/10.37366/jhp.v6i2.6340>; Rafika Nur, "Rekonstruksi Sanksi Tindakan dalam Sistem Peradilan Pidana Anak" (doctoral dissertation, Universitas Hasanuddin, 2020); Redi Pirmansyah, Muhammad Zainul Arifin, and M. Iqbal, "The Authority of Judges in Applying Diversion to Children Facing Criminal Charges Carrying a Sentence of More Than Seven Years," *JUSTISI* 12, no. 1 (2026): 268–282, <https://doi.org/10.33506/js.v12i1.4688>.

⁷ Ahmad Muchlis, "Penegakan Prinsip Kepentingan Terbaik Anak pada Penerapan Diversi dalam Sistem Peradilan Pidana Anak," *Jurnal Hukum Progresif* 12, no. 1 (2024): 66–77, <https://doi.org/10.14710/jhp.12.1.66-77>; Pirmansyah, Arifin, and Iqbal, "Authority of Judges"; Hafrida, "Restorative Justice in Juvenile Justice to Formulate Integrated Child Criminal Court," *Jurnal Hukum dan Peradilan* 8, no. 3 (2019): 439–457, <https://doi.org/10.25216/jhp.8.3.2019.439-457>; Convention on the Rights of the Child, art. 40.

in child sexual-violence cases; (2) how psychopathic traits should be treated under Articles 38 and 39 of the 2023 Criminal Code, including the transitional operation of Article 618 and the separate consequences of disability law, without becoming an automatic excuse or aggravating label; and (3) how clinically informed assessment can be integrated into Litmas while safeguarding victims, the child, evidentiary fairness, and restitution. The principal analysis assumes conduct governed by the law in force from January 2, 2026; pre-2026 conduct still in process requires the *lex favor reo* comparison mandated by Article 618. The inquiry remains confined to normative institutional design and makes no empirical claim about recidivism, judicial inconsistency, or institutional capacity.⁸

METHOD

This article uses normative legal research with statutory, conceptual, interdisciplinary, and limited functional-comparative approaches. The statutory materials comprise the SPPA Law, Child Protection Law and amendments, TPKS Law, the 2023 Criminal Code as adjusted by Law Number 1 of 2026, Supreme Court Regulation Number 4 of 2014, Government Regulation Number 65 of 2015, Law Number 20 of 2025 on the Criminal Procedure Code, and Minister of Health Regulation Number 77 of 2015.⁹ Constitutional child protection, the Convention on the Rights of the Child, and related international standards supply the interpretive context. Because the inquiry is doctrinal, references to practice mean legally prescribed procedure and not patterns inferred from unidentified decisions. The comparative element is deliberately limited and functional: material from England and Wales and the Netherlands is used only as a design check on proportionality, protective-factor analysis, periodic review, and the risk of over-assessment, not as a basis for transplanting foreign diversion thresholds into Indonesian law.

The conceptual approach examines responsibility, culpability, restorative justice, proportionality, best interests, and liberty as a last resort. Indonesian criminal-law doctrine is used to distinguish biological, psychological, and combined approaches to responsibility.¹⁰ Progressive Law and Dignified Justice function as evaluative perspectives within, not exceptions to, legality.¹¹ The interdisciplinary approach uses peer-reviewed developmental and forensic literature to clarify the meaning and limitations of psychopathic traits. DSM-5-TR is treated as a clinical reference rather than law; an adult instrument is not transferred to children; and the Psychopathy Checklist: Youth Version (PCL:YV), when clinically indicated, must be administered by a qualified professional and cannot determine a legal outcome by itself.^{12,13}

⁸ Indonesia, Law Number 11 of 2012, arts. 7 and 9; Indonesia, Law Number 1 of 2023, arts. 38–39, 618, and 622; Indonesia, Law Number 1 of 2026 concerning the Adjustment of Criminal Penalties; Indonesia, Law Number 8 of 2016 concerning Persons with Disabilities; Indonesia, Government Regulation Number 39 of 2020.

⁹ Indonesia, Law Number 11 of 2012; Indonesia, Law Number 12 of 2022; Indonesia, Law Number 1 of 2023; Indonesia, Law Number 1 of 2026; Indonesia, Law Number 20 of 2025 concerning the Criminal Procedure Code; Indonesia, Supreme Court, Supreme Court Regulation Number 4 of 2014; Indonesia, Government Regulation Number 65 of 2015; Indonesia, Ministry of Health, Minister of Health Regulation Number 77 of 2015.

¹⁰ Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Bina Aksara, 1983); Roeslan Saleh, *Pikiran-Pikiran tentang Pertanggungjawaban Pidana* (Jakarta: Ghalia Indonesia, 1982).

¹¹ Satjipto Rahardjo, *Membedah Hukum Progresif* (Jakarta: Kompas, 2006); Teguh Prasetyo, *Keadilan Bermartabat: Perspektif Teori Hukum* (Bandung: Nusa Media, 2015).

¹² Adelle E. Forth, David S. Kosson, and Robert D. Hare, *The Hare Psychopathy Checklist: Youth Version* (Toronto: Multi-Health Systems, 2003).

¹³ Edens et al., “Assessment of ‘Juvenile Psychopathy’”; Seagrave and Grisso, “Adolescent Development.”

Materials were selected purposively by authority and relevance. Enacted texts and official standards support propositions of positive law, Indonesian scholarship supports doctrinal reconstruction, and peer-reviewed forensic sources support clinical propositions. Popular psychology, Wikipedia, and mismatched sources were excluded. The cut-off date was July 2026, thereby covering the Criminal Code's entry into force and its 2026 adjustment; enacted law controlled where commentary differed.

The analysis identified applicable norms, resolved temporal and subject-matter relationships, compared legal criteria with the proper clinical meaning of the traits, and formulated a prescriptive framework. Systematic interpretation connects the SPPA Law with the TPKS Law, Child Protection Law, and Criminal Code; teleological interpretation tests the reading against restoration, protection, recovery, and reintegration. Harmonization applies the *lex specialis* position of child-justice rules and the temporal relevance of *lex posterior* without presuming that a later general rule silently displaces a special regime. Recommendations were tested against diversion ineligibility, absence of a clinical referral indication, refusal of restorative participation, and service limitations, and against legality, necessity, proportionality, procedural fairness, non-discrimination, victim safety, periodic review, and last resort.

The study does not compile judgments, interview officials, or audit facilities. It therefore makes no finding on judicial inconsistency, prevalence, recidivism, or institutional capacity. Those questions require empirical research; this study is limited to what the legal framework permits, omits, and can implement.

ANALYSIS AND DISCUSSION

Diversion Eligibility in the Integrated Statutory Framework

The starting point is Article 7 of the SPPA Law. Paragraph (1) requires investigators, prosecutors, and judges to seek diversion at their respective procedural stages. Paragraph (2) immediately qualifies that duty: the alleged offense must carry imprisonment of less than seven years and must not be a repeat offense.¹⁴ Read together, the provisions create a mandatory effort within a limited class of eligible cases, not mandatory diversion for all children and not a guarantee that an agreement will result. Article 9 further requires consideration of the offense category, the child's age, the social inquiry report from Bapas, and family and community support. Victim consent is generally relevant, with a statutory exception for specified minor offenses and circumstances. This structure already combines a categorical gate with individualized decision factors.

The *ratio legis* of the seven-year threshold can be reconstructed from the architecture and purposes of the SPPA Law, although the elucidation does not supply an exhaustive legislative explanation for the precise number. Teleologically, the threshold represents a legislative compromise between two objectives: maximizing diversion to avoid stigmatization and the criminogenic effects of formal processing, while reserving allegations classified by Parliament as more serious for judicial adjudication. The non-repetition condition adds a second proxy for the perceived limits of an informal or community-based response. These proxies are necessarily rough: the statutory maximum does not measure an individual child's culpability, treatment responsiveness, or present risk. Their legal function is categorical

¹⁴ Indonesia, Law Number 11 of 2012, art. 7.

allocation, whereas Article 9 and Litmas perform individualization. Conflating those functions would allow clinical judgment to displace the legislative compromise and would weaken legality.

Indonesian scholarship reveals a genuine competing purposive reading. Muchlis places the best interests of the child at the center of diversion, while Pirmansyah, Arifin, and Iqbal argue that progressive and restorative reasoning can support a wider judicial effort to divert cases whose penalties exceed seven years, especially where Supreme Court Regulation Number 4 of 2014 is engaged. This position is strongest when Article 7(1) is read together with the SPPA principles of protection, proportionality, minimum intervention, reintegration, and deprivation of liberty as a last resort. On that view, a purely offense-based threshold risks allowing the statutory maximum to eclipse the child's actual developmental circumstances and rehabilitation prospects.¹⁵

The objection does not, however, establish a lawful power to set Article 7(2) aside. Paragraphs (1) and (2) must be read together: the duty to seek diversion is mandatory within the class of cases that paragraph (2) makes eligible. The best-interests principle remains a primary interpretive and decisional consideration, but it cannot negate an express numerical condition without converting a principle into an unstated amendment of the statute. Supreme Court Regulation Number 4 of 2014 is consistent with that conclusion because its Article 3 addresses subsidiarity, alternative, cumulative, and combined indictments containing an offense below seven years; it does not authorize a free-standing exception for every serious offense. The best-interests principle therefore continues to shape Litmas, procedural protection, sanctions, measures, treatment, and reintegration when diversion is legally closed, while any categorical enlargement of eligibility remains a matter for legislation.¹⁶

That distinction changes the post-2026 legal framing of sexual violence. Eligibility can no longer be analyzed by treating Article 81(1) and Article 82 of the Child Protection Law as the operative offense provisions. Article 622(1) of the 2023 Criminal Code revokes Article 81(1) and Article 82, while Article 622(6), as adjusted by Law Number 1 of 2026, replaces references to Article 81(1) with Article 473(4) and references to Article 82 with Article 415 or Article 417. Article 81(2) of the Child Protection Law survives and must be read with the substituted reference where its reference to paragraph (1) operates. The resulting penalty map is differentiated: Article 473(4) carries a maximum of fifteen years, Articles 415 and 417 carry nine years, and Article 418 carries twelve years in the aggravated configurations it regulates. Article 419(1) is a true boundary case because its maximum is exactly seven years. Since Article 7(2) of the SPPA Law requires a maximum of less than seven years, Article 419(1) does not satisfy the ordinary diversion gate. The legal screen must therefore identify the precise charge and penalty instead of treating all child sexual-violence allegations as a single category.¹⁷

¹⁵ Muchlis, "Penegakan Prinsip Kepentingan Terbaik Anak," 66–77; Pirmansyah, Arifin, and Iqbal, "Authority of Judges," 268–282; Azwad Rachmat Hambali, "Penerapan Diversi terhadap Anak yang Berhadapan dengan Hukum dalam Sistem Peradilan Pidana," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 1 (2019): 15–30, <https://doi.org/10.30641/kebijakan.2019.v13.15-30>.

¹⁶ Indonesia, Law Number 11 of 2012, arts. 2, 7, and 9; Indonesia, Supreme Court, Supreme Court Regulation Number 4 of 2014, art. 3.

¹⁷ Indonesia, Law Number 1 of 2023, arts. 415, 417–419, 473(4), and 622(1)(n); Indonesia, Law Number 1 of 2026, adjustment to art. 622(6).

Supreme Court Regulation Number 4 of 2014 addresses a limited procedural complexity. Article 3 directs the child judge to seek diversion when the indictment is punishable below seven years and also when the indictment takes the form of subsidiarity, alternatives, cumulative charges, or combinations containing an offense below seven years.¹⁸ The Regulation prevents charging technique from automatically defeating the SPPA objective where an eligible count remains legally material. It does not erase Article 7(2), create diversion for every serious sexual offense, or authorize risk scores to displace the statutory penalty threshold. The distinction is important because the judicial regulation must be interpreted consistently with the Law it implements.

Government Regulation Number 65 of 2015 supplies procedures for diversion and handling children under twelve.¹⁹ Its role is operational: coordination, facilitation, agreements, supervision, and implementation. It therefore offers a suitable regulatory location for clarifying the information that should accompany diversion deliberations in eligible cases. It cannot, however, amend the substantive eligibility boundary in Article 7(2). A proposal that wishes to change the seven-year threshold must be presented candidly as legislative reform to the SPPA Law. This article does not recommend lowering child-rights protection by creating a new categorical exclusion based on a disputed personality label.

The TPKS Law reinforces the need for a systematic reading. Article 4(2) recognizes several sexual offenses established in other legislation as sexual violence crimes. Article 23 generally prohibits settlement of sexual violence outside judicial proceedings, except where the perpetrator is a child as regulated under the SPPA Law.²⁰ Through systematic interpretation and harmonization of statutes, the exception must be understood as a reference back to the complete SPPA procedure, not as a free-standing permission for informal settlement. It incorporates Article 7(2), the role of Bapas, victim safeguards, and judicial confirmation of a diversion agreement. Thus, where a child is legally eligible, diversion is not contrary to Article 23; where Article 7(2) closes eligibility, Article 23 does not independently reopen it. This reading gives effect to both statutes instead of allowing the *lex posterior* TPKS Law to impliedly erase the *lex specialis* child-justice framework.

This interpretation preserves both statutes. It recognizes the TPKS Law's concern that sexual violence should not be privatized through coercive or unaccountable settlement while maintaining the specialized, rights-based process for children. The legal question is accordingly narrower than the original assumption that serious sexual violence is routinely subject to mandatory diversion. Most high-penalty cases remain in the formal process. Yet formal adjudication does not eliminate the need for individualized assessment, treatment, victim protection, or child-sensitive measures. Risk information may influence those decisions without altering the legal gate.

The relationship between substantive offense provisions also requires temporal precision. For conduct governed by the law in force from January 2, 2026, the court must begin

¹⁸ Indonesia, Supreme Court, Supreme Court Regulation Number 4 of 2014, art. 3.

¹⁹ Indonesia, Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and the Handling of Children Not Yet Twelve Years of Age; Rasdi and Saru Arifin, "Efektifitas Metode Musyawarah Mufakat Diversi terhadap Penyelesaian Perkara Anak Berkonflik dengan Hukum," *Pandecta Research Law Journal* 15, no. 1 (2020): 44–52, <https://doi.org/10.15294/pandecta.v15i1.23011>.

²⁰ Indonesia, Law Number 12 of 2022, arts. 4(2) and 23.

with the offense provisions of the 2023 Criminal Code as adjusted by Law Number 1 of 2026, together with the surviving provisions and protective functions of the Child Protection Law and the TPKS Law. The proposition that special legislation simply continues unchanged is therefore too broad: Article 622 expressly repeals specified child-sexual-offense provisions and substitutes Criminal Code references, while Article 81(2) of the Child Protection Law survives. For conduct predating January 2, 2026 that remained in process, Article 618 separately requires a comparison with the earlier regime to determine which law is more favorable. In every case, diversion eligibility must be decided only after identifying the date of conduct, charged provision, maximum penalty, repetition status, age, surviving special-law relationship, and any mixed-charge configuration under Supreme Court Regulation Number 4 of 2014.²¹

The first research question can thus be answered through a two-level structure. Article 7(2) creates the categorical offense-and-repetition gate; Article 9, Litmas, victim participation, and implementing regulations support individualized deliberation within eligible cases. The post-2026 legal gate must be built from the Criminal Code offense map produced by Article 622 and Law Number 1 of 2026, with express attention to the seven-year boundary in Article 419(1) and the continuing but limited relevance of Article 81(2) of the Child Protection Law. Supreme Court Regulation Number 4 of 2014 addresses specified mixed-charge configurations, and Article 23 of the TPKS Law preserves only the SPPA-governed exception. Clinically assessed risk may refine intervention, safeguards, supervision, and disposition; it presently does not create or cancel statutory eligibility.

Criminal Responsibility after the 2023 Criminal Code

The former debate often began with Article 44 of the old Criminal Code, which excluded punishment where an act could not be attributed to the perpetrator because of defective development or pathological disturbance of mental capacities. Indonesian doctrine did not apply that clause through diagnosis alone. Biological approaches focused on the presence of disorder, psychological approaches on its effect on understanding or control at the time of the act, and combined approaches required both a relevant condition and a legally significant functional consequence.²² Whether a severe personality disorder fell within “disturbance by disease” was contestable; it could not be resolved by citing neuroimaging research as though brain differences themselves answered attribution.

For conduct governed by the new Criminal Code from January 2, 2026, Articles 38 and 39 provide the operative responsibility framework. Article 38 permits reduction of punishment and/or imposition of measures for a person with mental or intellectual disability, while Article 39 provides non-imposition of punishment in the more specific circumstances defined by the Code. Transitional cases require a separate first step. Article 618 directs the use of the new Code for offenses already in judicial process when it entered into force unless the law governing the offense is more favorable to the suspect or accused. A child whose conduct preceded January 2, 2026 therefore cannot automatically be assessed only under Articles 38 and 39; the decision-maker must compare the legally relevant effects of former Article 44 and

²¹ Indonesia, Law Number 1 of 2023, arts. 618 and 622; Indonesia, Law Number 1 of 2026.

²² Moeljatno, *Asas-Asas Hukum Pidana*; Saleh, *Pikiran-Pikiran tentang Pertanggungjawaban Pidana*.

the new provisions in the concrete case and apply the more favorable regime.²³

Psychopathic traits do not map automatically onto either article. They are not, by themselves, synonymous with psychosis, acute loss of reality testing, intellectual disability, or inability to understand the wrongfulness of conduct. A child may show callousness, shallow affect, manipulation, impulsivity, or persistent rule violations while retaining substantial cognitive awareness. Conversely, the mere fact that the child planned an act does not conclusively settle every dimension of capacity or developmental mitigation. The legal inquiry must assess functional effects at the time of the alleged offense and the specific statutory criteria, informed but not controlled by clinical opinion.

The term “disability” also engages a distinct doctrinal framework that cannot be reduced to sentencing. Law Number 8 of 2016 recognizes mental and intellectual disability and requires a long-term limitation that, in interaction with the environment, can hinder full and effective participation. Its explanation of mental disability includes disturbances of thought, emotion, and behavior, including personality disorders, but psychopathic traits by themselves do not establish that legal status. For a child, the analysis must therefore ask whether there is an independently supportable mental or intellectual condition that satisfies the disability-law criteria, rather than treating a trait score as equivalent to disability. Where those criteria are met, the consequences extend to access to justice and reasonable accommodation under Law Number 8 of 2016, Government Regulation Number 39 of 2020, and Supreme Court Regulation Number 2 of 2025.²⁴

Disability status and criminal responsibility remain separate legal questions. Reasonable accommodation concerns effective participation in the justice process; Articles 38 and 39 concern the consequences of a legally relevant condition for responsibility and punishment. A child may therefore qualify for procedural accommodation without satisfying Article 39, and the presence of psychopathic traits without an independently established disability does not trigger disability status. Conversely, where a qualifying disability exists, the child must not lose the procedural protections of disability law merely because the same clinical material is also relevant to responsibility. This distinction supplies the doctrinal foundation for specialist referral while preventing both under-protection and diagnosis-based overreach.

Development makes this caution more demanding for children. DSM-5-TR does not diagnose psychopathy. Antisocial personality disorder requires that the individual be at least eighteen, while conduct disorder can include the limited-prosocial-emotions specifier when the criteria are persistently demonstrated across relationships and settings.²⁵ Even then, the specifier is not a legal verdict and does not establish future dangerousness. It may indicate treatment needs or assist structured formulation, but the construct must be separated from moral condemnation.

²³ Indonesia, Law Number 1 of 2023, arts. 38–39 and 618; Albert Aries, *Hukum Pidana Indonesia Menurut KUHP Lama dan KUHP Baru: Dilengkapi dengan Asas, Yurisprudensi, dan Postulat Latin* (Depok: Rajawali Pers, 2024); Moeljatno, *Asas-Asas Hukum Pidana*; Saleh, *Pikiran-Pikiran tentang Pertanggungjawaban Pidana*.

²⁴ Indonesia, Law Number 8 of 2016 concerning Persons with Disabilities, arts. 1 and 4 and elucidation of art. 4(1)(c); Indonesia, Government Regulation Number 39 of 2020 concerning Reasonable Accommodation for Persons with Disabilities in Judicial Proceedings; Indonesia, Supreme Court, Supreme Court Regulation Number 2 of 2025.

²⁵ American Psychiatric Association, *DSM-5-TR*.

The Psychopathy Checklist—Revised (PCL-R), designed for adults, is consequently inappropriate as the default instrument for a child. The PCL:YV was developed for adolescents, but its existence does not eliminate the underlying ethical limitations.²⁶ Edens and colleagues found only a moderate association between juvenile psychopathy measures and aggression and cautioned against using such measures for long-term placement because adolescent change and longitudinal uncertainty undermine deterministic prediction.²⁷ Seagrave and Grisso likewise emphasize developmental instability and the risk that adult personality concepts will be misapplied to adolescents.²⁸ Frick and colleagues show that callous-unemotional traits have meaningful correlates but also heterogeneity and developmental complexity.²⁹

Accordingly, a lawful assessment must distinguish four questions. The first is diagnostic: what condition or traits, if any, can be supported under appropriate clinical standards? The second is functional: how did the condition affect understanding, appreciation, self-control, communication, or participation at the relevant time? The third is risk and needs: what foreseeable situations, protective factors, and treatment needs are relevant to short- and medium-term management? The fourth is legal: what consequence follows under Articles 38 and 39, the SPPA Law, and the applicable offense provision? Conflating these questions produces either medicalization of guilt or moralization of diagnosis.

For a child below the age of criminal responsibility or within the SPPA age structure, age-specific rules remain prior. The SPPA Law defines a child in conflict with the law and prescribes special procedures and sanctions. A mental-health assessment cannot be used to bypass those protections. Similarly, the fact that Article 39 is not satisfied does not require an adult-style punitive response. The SPPA system permits warnings, conditional penalties, training, institutional measures, and other individualized outcomes, subject to the child's age and legal conditions.³⁰

The second research question is therefore answered as follows. Psychopathic traits neither constitute an automatic excuse nor an automatic aggravating circumstance. Under the 2023 Criminal Code, responsibility depends on the statutory meaning and functional effect of a legally relevant mental or intellectual condition, subject in transitional cases to Article 618 and the *lex favor reo* comparison with the former regime. Disability law operates on a separate axis: where an independently established disability exists, reasonable accommodation and access-to-justice protections attach regardless of whether Article 39 excludes punishment. Clinical assessment may illuminate capacity, participation needs, treatment, and risk-and-needs formulation, but a developmental trait label cannot replace any of these legal tests.

Litmas and the Existing Architecture of Individualized Assessment

Indonesian juvenile justice does not operate without assessment. Article 27 requires investigators to seek advice or consideration from a Bapas community supervisor after an offense is reported or alleged. Article 28 sets a short period for delivery of the social inquiry

²⁶ Forth, Kosson, and Hare, *PCL:YV*.

²⁷ Edens et al., "Assessment of 'Juvenile Psychopathy,'" 53–80.

²⁸ Seagrave and Grisso, "Adolescent Development," 219–239.

²⁹ Paul J. Frick et al., "Can Callous-Unemotional Traits Enhance the Understanding, Diagnosis, and Treatment of Serious Conduct Problems in Children and Adolescents? A Comprehensive Review," *Psychological Bulletin* 140, no. 1 (2014): 1–57, <https://doi.org/10.1037/a0033076>.

³⁰ Indonesia, Law Number 11 of 2012, arts. 69–83; Makhrus Munajat, *Hukum Pidana Anak di Indonesia* (Jakarta: Sinar Grafika, 2022).

report when requested. Article 60 obliges the judge to consider the Litmas before deciding the case and declares a judgment void by operation of law if that obligation is ignored.³¹ These provisions make Litmas a central procedural safeguard, not an optional administrative document.

Litmas is broader than a psychiatric report. It situates the child within family, education, peer, community, victim, and environmental contexts and supports recommendations on diversion, sanctions, measures, supervision, and reintegration. This ecological perspective is essential because a child's behavior cannot be reduced to an individual pathology. It also allows identification of protective factors and community resources, which a symptom-focused examination may overlook. Any reform that displaces Litmas with a forensic label would weaken the SPPA design.

The Indonesian literature confirms that this ecological and procedural role operates across the juvenile justice sequence. Nofrizal, Erliyani, and Suprpto emphasize that timely delivery of Litmas supports legal certainty and the child's best interests at the investigation stage.³² Sartika, Fatahullah, and Ibrahim identify Bapas as a central institution from pre-adjudication through post-adjudication and call for clearer implementing rules.³³ Empirical work by Permana and Ramailis describes assistance, guidance, and supervision as concrete Bapas functions in diversion practice, while Sagita identifies coordination, personnel, geography, and legal culture as continuing implementation concerns.³⁴ These studies justify strengthening Litmas institutionally; they do not support replacing its social inquiry with a clinical score.

Nevertheless, Litmas and specialist forensic assessment answer different questions. A community supervisor is not expected to diagnose mental disorders, conduct a formal violence-risk formulation, or determine the relationship between a clinical condition and functional legal capacity. Where credible indicators arise, specialist input may therefore supplement the social inquiry. Minister of Health Regulation Number 77 of 2015 provides a regulatory foundation for forensic mental-health examination in law-enforcement contexts.³⁵ The doctrinal problem is therefore not whether assessment exists, but how Litmas, clinically indicated specialist assessment, victim-safety obligations, and periodic review should be legally ordered and integrated without allowing clinical information to alter statutory eligibility or criminal responsibility.

³¹ Indonesia, Law Number 11 of 2012, arts. 27–28 and 60(3)–(4).

³² Deni Nofrizal, Suprpto, and Rahmida Erliyani, “Kewajiban Balai Pemasyarakatan Menyerahkan Hasil Penelitian Kemasyarakatan kepada Penyidik Berdasarkan Asas Kepastian Hukum dalam Sistem Peradilan Pidana Anak,” *Badamai Law Journal* 6, no. 2 (2021): 425–447, <https://doi.org/10.32801/damai.v6i2.11484>.

³³ Dewi Sartika, Fatahullah, and Lalu Adnan Ibrahim, “Peran Bapas dalam Penyelenggaraan Sistem Peradilan Pidana Anak yang Berbasis Restorative Justice,” *Journal Kompilasi Hukum* 6, no. 1 (2021): 1–14, <https://doi.org/10.29303/jkh.v6i1.85>.

³⁴ Bintang Johan Permana and Neri Widya Ramailis, “Peran Bapas dalam Pelaksanaan Diversi pada Kasus Penganiayaan oleh Anak,” *Sisi Lain Realita* 8, no. 1 (2023): 61–68, <https://journal.uir.ac.id/index.php/sisilainrealita/article/view/18510>; Aprilia Sagita, “Peran BAPAS dalam Pendampingan terhadap Pelaku Tindak Pidana Anak melalui Restorative Justice di Jawa Barat,” *Pemuliaan Hukum* 8, no. 1 (2025): 50–70, <https://doi.org/10.30999/ph.v8i1.4128>.

³⁵ Indonesia, Ministry of Health, Minister of Health Regulation Number 77 of 2015 concerning Guidelines for Mental Health Examination for Law Enforcement Purposes; Natalia Widiastih Raharjanti et al., “Clinical Reasoning in Forensic Psychiatry: Concepts, Processes, and Pitfalls,” *Frontiers in Psychiatry* 12 (2021): 691377, <https://doi.org/10.3389/fpsy.2021.691377>.

The catalogue of measures confirms that the law already contemplates mental-health care. Article 82(1)(c) of the SPPA Law includes treatment in a mental hospital among available measures.³⁶ That provision should not be read as authority for indefinite preventive confinement. A measure must satisfy statutory conditions, medical necessity, proportionality, periodic judicial review, and the child's rights. Community-based treatment or outpatient supervision should remain preferred when sufficient and safe. Hospital treatment requires a clinical indication and cannot be imposed merely because a child scores highly on a contested instrument.

The existing architecture also protects against a misleading opposition between the child and the victim. Article 9 makes the victim's interests relevant in diversion, while the TPKS Law establishes rights to handling, protection, and recovery.³⁷ A child-sensitive process must not pressure a victim to meet, forgive, or accept settlement. Restorative participation must be informed, voluntary, professionally facilitated, and capable of being terminated. Where direct encounter is unsafe or unwanted, indirect or non-dialogical restorative forms may be considered if legally eligible, while formal proceedings must remain trauma-informed.

This architecture indicates why "risk" must be defined narrowly. It should refer to a structured, evidence-based formulation of foreseeable harmful behavior, treatment barriers, and protective factors over a stated period and in stated circumstances. It must not mean a permanent identity, a clinical prediction of guilt, or a shortcut for offense seriousness. The statutory penalty already performs the categorical seriousness function at Article 7(2). The added value of assessment lies in tailoring conditions, treatment, supervision, contact restrictions, safety planning, and review.

Normative Legitimacy of Youth Risk-and-Needs Assessment

A separate objection concerns legitimacy rather than measurement. Even a psychometrically valid instrument may be normatively problematic if it treats a child as the bearer of a fixed future dangerousness. Article 40 of the Convention on the Rights of the Child and the developmental orientation of the SPPA Law rest on reintegration, constructive participation in society, and the child's capacity for change. A system that converts a prediction into a durable identity can therefore contradict the very premise on which child justice is organized.³⁸

The framework answers that objection by rejecting dangerousness classification as a legal status. Its permissible object is a time-limited risk-and-needs formulation directed to foreseeable situations, modifiable treatment needs, protective factors, and concrete safety planning. The assessment may not decide diversion eligibility, prove guilt, establish diminished responsibility, automatically aggravate punishment, or justify indeterminate confinement. It must state its time horizon, uncertainty, and protective factors, and it must be revisited when the child's circumstances change.

This makes the presumption of developmental change an internal constraint on

³⁶ Indonesia, Law Number 11 of 2012, art. 82(1)(c).

³⁷ Indonesia, Law Number 12 of 2022, arts. 66–70; Yuarini Wahyu Pertiwi and Ika Dewi Sartika Saimima, "Peranan Kontrol Sosial dan Optimalisasi Kebijakan Keadilan Restoratif pada Anak Pelaku Tindak Pidana," *Jurnal Hukum dan Peradilan* 11, no. 1 (2022): 109–133, <https://doi.org/10.25216/jhp.11.1.2022.109-133>.

³⁸ Convention on the Rights of the Child, art. 40; United Nations Committee on the Rights of the Child, *General Comment No. 24* (2019), CRC/C/GC/24.

assessment rather than an external objection to all assessment. The more uncertain or changeable the formulation, the weaker the justification for restrictive conditions. Periodic review, child participation, access to challenge adverse material, preference for the least restrictive sufficient response, and a prohibition on single-score decisions are therefore not optional safeguards; they are conditions of the model's normative legitimacy.

A Legally Bounded Risk-Based Diversion and Risk-Informed Disposition Framework

The proposed framework has six sequential components. The same assessment architecture can serve two legally distinct modules: Risk-Based Diversion for cases that satisfy the statutory gate, and Risk-Informed Disposition for cases that remain in formal adjudication. Table 1 makes the institutional sequence, division of professional responsibility, legal output, and controlling safeguard explicit. It is a prescriptive synthesis rather than a claim that every component is already mandated in full by positive law.

Table 1. Legally Bounded Risk-Based Diversion and Risk-Informed Disposition Framework

Stage	Lead responsibility	Core function and information	Legal output and safeguard
1. Legal gate	Justice official, with Bapas participation	Check date of conduct, charge, Article 622/Law 1/2026 mapping, penalty, repetition, age, mixed charges, and the SPPA-TPKS relationship.	Give reasons for eligibility; clinical risk cannot alter the statutory gate. If ineligible, use only the disposition module.
2. Litmas screen	Bapas community supervisor	Screen development, family, school, trauma, communication, mental health, protective factors, and immediate safety.	State needs and referral reasons; avoid labels.
3. Referral	Justice official and Bapas	State the functional, treatment, or safety question that makes specialist input necessary.	Record the reason, question, necessity, and scope; prohibit blanket testing.
4. Assessment	Qualified youth forensic clinician, coordinated with Bapas	Review records, interview, examine development, and use validated youth methods where appropriate.	Describe time-limited needs, scenarios, protective factors, uncertainty, and review period; avoid fixed dangerousness labels.
5. Outputs	Bapas and clinician under distinct mandates	State agreement/disagreement and propose feasible treatment, education, supervision, contact, safety, and legally relevant restitution.	Keep recommendations separate and transparent; require necessity, feasibility, and proportionality.
6. Review	Prosecutor or judge	Assess legal purpose, expert qualifications, method fit, limitations, and	Do not invent a scientific-admissibility gate. Give reasons, disclose adverse

Stage	Lead responsibility	Core function and information	Legal output and safeguard
		evidentiary weight; hear challenges; choose the least restrictive response; review	material, fix review dates, protect data, and prevent stigma.

The first component is a legal eligibility screen performed by justice officials. It records the date of conduct, charged provisions, the post-2026 offense mapping under Article 622 and Law Number 1 of 2026 where applicable, statutory penalties, repetition status, age, mixed-charge configuration under Supreme Court Regulation Number 4 of 2014, and the relevance of Article 23 of the TPKS Law. If Article 7(2) is not met, the framework does not become diversion merely because a clinician recommends community treatment. The case instead proceeds through the Risk-Informed Disposition Module, in which clinical material may inform only legally available measures, treatment, supervision, reintegration, and victim-safety arrangements.

The second component is universal psychosocial screening within the Litmas process. Screening should identify developmental history, family and school context, trauma exposure, substance use, cognitive or communication needs, mental-health symptoms, previous interventions, protective relationships, and immediate safety concerns. It should not use “psychopathy” as a routine checkbox. Its purpose is to decide whether ordinary Litmas information is sufficient or whether a specialist referral is justified.

The third component is a threshold-based specialist referral. Referral may be appropriate where there are persistent cross-setting indicators of severe conduct problems or limited prosocial emotions; substantial doubt about functional capacity; complex treatment needs; repeated serious harmful behavior; or a need to formulate specific safety conditions. The referral decision must state reasons and questions. It should avoid automatic assessment of every child accused of sexual violence, because blanket testing is costly, intrusive, and risks conflating offense allegations with pathology.

The fourth component is a multidisciplinary assessment protocol. It should combine record review, interviews, collateral information, developmental and mental-status examination, assessment of trauma and neurodevelopmental needs, and structured professional judgment where validated for the population and purpose. If the PCL:YV is used, it must be administered only by appropriately trained professionals, interpreted as one source among many, and accompanied by an explicit statement of limitations.³⁹ The report should avoid categorical predictions and instead describe scenarios, modifiable needs, protective factors, confidence limits, and review periods.

The fifth component is an integrated recommendation. Bapas remains responsible for the social inquiry recommendation, while the clinician supplies a separate professional opinion. The two documents should identify agreements and disagreements rather than merge disciplines into an opaque score. For diversion-eligible cases, possible conditions include evidence-based treatment, education continuity, supervised contact arrangements, restrictions tailored to victim safety, family intervention, scheduled reporting, and a clear response to non-

³⁹ Forth, Kosson, and Hare, *PCL:YV*; Edens et al., “Assessment of ‘Juvenile Psychopathy’.”

compliance. Conditions must be feasible and proportionate; an impossible treatment requirement should not set the child up to fail.

The sixth component is evidentiary scrutiny, reasoned decision, and periodic review. Since January 2, 2026, expert evidence is governed by Law Number 20 of 2025 on the Criminal Procedure Code. Article 235 recognizes expert testimony as evidence and requires evidence to be authenticable and lawfully obtained; Article 238 regulates the presentation of expert testimony in court. Those provisions do not establish a Daubert-style scientific admissibility or reliability gate. The proposed framework therefore concerns the weight and legal use of clinical evidence rather than a free-standing exclusionary test. The decision-maker should identify the legal purpose for which the evidence is offered, consider the expert's qualifications, the fit of the method to a youth population and to the question asked, the factual basis, known limitations and uncertainty, hear reasoned objections, and explain the weight ultimately given. The child and counsel must receive the substance of adverse clinical material and have a meaningful opportunity to question it or obtain independent expertise where necessary. Restrictive conditions require fixed review dates, and data access must be limited to prevent stigma.⁴⁰

This model changes the role of risk in three ways. First, it moves risk after legal eligibility rather than before it. Second, it treats risk as dynamic and context-dependent, not an essence of the child. Third, it uses risk primarily to select the least restrictive intervention capable of meeting treatment and safety needs. A higher assessed concern may require more intensive supervision, but it does not automatically require confinement. A lower concern does not erase the victim's rights or the seriousness of the alleged offense.

Progressive Law and Dignified Justice add value only when they generate design propositions that positive-law description alone does not specify. Progressive Law supports responsive procedural innovation inside existing competence: where statutes require Litmas and authorize individualized measures but do not specify a detailed referral protocol, officials may develop selective referral, interdisciplinary coordination, periodic review, and least-restrictive implementation to make the legal scheme work for real human needs. It does not authorize the displacement of Article 7(2). Dignified Justice adds a symmetrical dignity constraint: the child may not be reduced to a permanent risk label, while the victim may not be reduced to an instrument for the child's rehabilitation. That perspective supports separate clinical and legal judgments, protection against stigma, voluntary restorative participation, and an independent pathway for victim safety and recovery. The theories therefore function as evaluative criteria for how lawful discretion is exercised, not as sources of free-standing coercive power.⁴¹

Comparative Design Check

England and Wales provide a useful comparison through AssetPlus, the Youth Justice Board's integrated assessment and intervention-planning framework. AssetPlus combines developmental and social information, strengths and protective factors, possible future harm, professional judgment, intervention planning, and review as circumstances change. Its experience also supplies a caution for diversion design: a process evaluation found that practitioners often regarded the full framework as disproportionately time-consuming for

⁴⁰ Indonesia, Law Number 20 of 2025 concerning the Criminal Procedure Code, arts. 235 and 238.

⁴¹ Rahardjo, *Membedah Hukum Progresif*; Prasetyo, *Keadilan Bermartabat*.

children receiving low-contact prevention or out-of-court disposals. The lesson for Indonesia is not to import AssetPlus, but to preserve proportionality by using ordinary Litmas screening first and specialist forensic assessment only where an identified functional, treatment, or safety question makes it necessary.⁴²

Dutch experience with structured professional judgment provides a second design check. Research using the Structured Assessment of Violence Risk in Youth (SAVRY) together with the Structured Assessment of Protective Factors for Violence Risk—Youth Version (SAPROF-YV) in a national Dutch sample found that protective factors added information beyond risk factors and reinforced the value of a balanced formulation rather than a risk-only score. At the same time, the evidence comes from a different legal and institutional setting and cannot establish an Indonesian threshold or validate a particular instrument for Indonesian children. The comparative implication is therefore procedural: assess risk together with protective factors, document uncertainty, require trained assessors, review change over time, and avoid making liberty depend on a single numerical result. These comparisons support the proposed safeguards while also warning against net-widening through over-assessment.⁴³

Victim Protection and the Prohibition of Coercive Restoration

A risk-responsive system must be victim-oriented without transforming victim protection into an argument for unreviewable incapacitation. The TPKS Law recognizes handling, protection, and recovery as continuing state responsibilities.⁴⁴ These responsibilities arise whether the child is diverted, adjudicated, placed under a measure, or sentenced. Safety planning must address contact, intimidation, retaliation, privacy, school or neighbourhood proximity, and access to trauma-informed services. The burden should not be placed on the victim to monitor compliance.

Recent Indonesian victim-centered scholarship strengthens this conclusion. Badrudduja and Widowaty identify continuing difficulties in realizing restitution for child victims of sexual violence, while Ramadianto, Istiqomah, and Aprilianda propose a victim impact statement model for child sexual-abuse cases. The present framework must therefore address restitution expressly rather than leave it to implication. Article 11 of the SPPA Law permits a diversion agreement to include peace with or without compensation, and Article 12 requires the agreement to be recorded and submitted for judicial determination. The TPKS Law separately recognizes restitution and provides in Article 37 that, where the perpetrator is a child, restitution is provided by the parent or guardian. The SPPA Law does not make compensation a mandatory form of every diversion agreement, but the existence of a diversion pathway should not silently erase the victim's restitution claim.⁴⁵

⁴² Youth Justice Board for England and Wales, "Case Management Guidance: How to Assess Children in the Youth Justice System," updated January 31, 2024, <https://www.gov.uk/guidance/case-management-guidance/how-to-assess-children-in-the-youth-justice-system>; Natalie Picken et al., *Process Evaluation of AssetPlus*, RR-3177-YJB (Santa Monica, CA: RAND Corporation, 2019), 26–30, <https://doi.org/10.7249/RR3177>.

⁴³ Anneke T. H. Kleeven et al., "Risk Assessment in Juvenile and Young Adult Offenders: Predictive Validity of the SAVRY and SAPROF-YV," *Assessment* 29, no. 2 (2022): 181–197, <https://doi.org/10.1177/1073191120959740>.

⁴⁴ Indonesia, Law Number 12 of 2022, arts. 66–70.

⁴⁵ Indonesia, Law Number 11 of 2012, arts. 11–13; Indonesia, Law Number 12 of 2022, art. 37; Ataka Badrudduja and Yeni Widowaty, "Analisis Pemenuhan Hak atas Restitusi terhadap Anak sebagai Korban Tindak Pidana

For a legally eligible sexual-violence case, the diversion record should therefore state whether restitution is sought, the applicable legal basis, the person responsible for payment, the amount or determination mechanism, the timetable, and the consequences of non-performance. Where restitution is pursued, it may be incorporated into the diversion agreement and judicial determination while remaining analytically separate from therapeutic progress or displays of remorse. Victim participation in restorative dialogue should not be treated as a waiver of recovery rights. Where the statutory interaction does not specify every procedural detail after diversion, the implementing regulation should supply that mechanism rather than leave the entitlement unresolved.

Consent in restorative processes requires particular scrutiny. Power imbalance may arise from family pressure, community status, economic dependence, or manipulation by any participant. Facilitators must assess voluntariness separately, provide accessible information, allow support persons, and end the process when participation risks further harm. An apology or apparent remorse should not be treated as a clinical test of change. Conversely, limited emotional expression should not alone establish immutable dangerousness. Legal decisions should rely on conduct, verified information, and structured reasons.

Where the charged offense exceeds the diversion threshold, victim-oriented procedure remains essential during adjudication. Child-sensitive treatment of the accused and trauma-informed treatment of the victim are compatible. Closed hearings, confidentiality, appropriate examination methods, legal assistance, and avoidance of repeated recounting can reduce harm without prejudging guilt. The law should resist the assumption that protecting one child necessarily diminishes the rights of another.

The proposed model also excludes the colloquial concepts of “gaslighting” and “mythomania.” The clinically and legally relevant descriptions are manipulation, deceptive behavior, or pathological lying where properly supported. Even those descriptions must be connected to specific observed evidence. They should not be inferred merely from a denial of the allegation, because the presumption of innocence and the right to defense remain applicable.

Special care is required when the alleged victim and the child accused belong to the same family, school, or small community. A diversion agreement or formal-case condition must not assume that physical separation is easy or that family supervision is neutral. Safety plans should specify responsible adults, communication boundaries, school arrangements, reporting channels, and responses to breach. They should also avoid unnecessary disclosure that can expose either child to retaliation or stigma. These details demonstrate why a generic promise “not to repeat the act” is not an adequate risk-management condition.

Victim protection must also be independent of the success of treatment. A child’s progress cannot be made the condition for the victim’s access to recovery services, and the victim should not carry responsibility for evaluating remorse or therapeutic compliance. Equally, an adverse treatment report should not automatically intensify restrictions without

Kekerasan Seksual,” *Indonesian Journal of Criminal Law and Criminology* 4, no. 2 (2023): 57–68, <https://doi.org/10.18196/ijclc.v4i2.19115>; Anang Riyan Ramadianto, Milda Istiqomah, and Nurini Aprilianda, “Victim Impact Statement as a Model of Victim-Centered Justice in Child Sexual Abuse Cases,” *Jurnal Hukum IUS QUIA IUSTUM* 32, no. 2 (2025): 337–360, <https://doi.org/10.20885/iustum.vol32.iss2.art4>.

notice, reasons, and an opportunity to respond. Parallel but coordinated service pathways preserve the dignity and legal agency of both children.

Proportionality, Last Resort, and Reviewable Measures

Article 3 of the SPPA Law protects children from unlawful or arbitrary deprivation of liberty and affirms humane treatment. Article 37(b) of the Convention on the Rights of the Child requires arrest, detention, or imprisonment of a child to be used only as a last resort and for the shortest appropriate period.⁴⁶ The Beijing Rules and General Comment No. 24 similarly emphasize reintegration, proportionality, and avoidance of stigma.⁴⁷ These standards make “therapeutic incapacitation” an unsuitable organizing concept. Treatment cannot legitimize indeterminate confinement.

Any restrictive therapeutic measure must meet at least five conditions: a lawful basis; an individualized clinical indication; necessity after considering less restrictive alternatives; proportionality to the identified need and risk; and periodic independent review. The measure must pursue treatment and reintegration, not covert punishment beyond statutory limits. The child must have access to counsel, family contact consistent with safety, education, health care, and a mechanism to challenge continuation.

This approach also clarifies the “double-track” terminology. In juvenile justice, the relevant double track is the availability of criminal sanctions and measures within the SPPA framework. It should not be attributed exclusively to the former Criminal Code. The 2023 Criminal Code’s graduated responsibility provisions interact with, but do not replace, the special child-justice scheme. The applicable response must be determined through systematic interpretation and the *lex specialis* position of the SPPA Law.

Periodic review is especially important because adolescent traits and environments change. A six- or twelve-month-old formulation may no longer describe current needs. Review should document progress, treatment response, new stressors, family capacity, victim-safety information, and whether restrictions remain necessary. The presumption should favor reducing restrictions when their justification weakens. This prevents a provisional assessment from becoming a permanent legal identity.

Legal Instruments for Adoption

The reform should be divided according to legal competence. First, Government Regulation Number 65 of 2015 can be amended to establish the staged referral protocol for diversion-eligible cases, minimum contents of an integrated recommendation, procedural rights, review requirements, confidentiality, and coordination between Bapas and health professionals. Because the Regulation implements the SPPA Law, it may clarify procedure but may not change the statutory seven-year and repetition criteria.

Second, an inter-ministerial regulation or joint guideline involving the Ministry responsible for law and corrections, the Ministry of Health, the police, prosecution service, and Supreme Court can define professional roles, referral questions, report formats, qualifications,

⁴⁶ Convention on the Rights of the Child, art. 37(b); Indonesia, Law Number 11 of 2012, art. 3.

⁴⁷ United Nations General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*, Resolution 40/33 (1985), <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>; United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019)*.

service standards, and secure information exchange. Minister of Health Regulation Number 77 of 2015 should be aligned with youth-specific developmental principles and the distinction between forensic psychiatric examination, psychological assessment, and social inquiry.

Third, Supreme Court guidance can standardize judicial scrutiny of clinical evidence consistently with the 2025 Criminal Procedure Code. Because Articles 235 and 238 recognize and regulate expert evidence without creating a separate scientific-reliability admissibility test, the guidance should focus on reasoned evidentiary weight: the legal purpose of the assessment, expert qualifications, youth-appropriateness and purpose-fit of the method, factual basis, limitations, uncertainty, disclosure of adverse material, defense objections, and the reasons for relying on or discounting the opinion. The guidance should also require review dates for restrictive measures and clarify the interaction of Article 7(2) with mixed indictments under Supreme Court Regulation Number 4 of 2014. It cannot create a new diversion exclusion based on psychopathic traits.⁴⁸

Fourth, amendment of Articles 7 and 9 of the SPPA Law should be considered only if the legislature seeks to alter eligibility or expressly add clinically informed factors. This article recommends retaining the offense-based statutory gate while making risk and needs relevant to conditions and intervention intensity. If Parliament does legislate, it should prohibit diagnosis-based exclusion, require validated youth-appropriate methods, protect the right to challenge evidence, and reaffirm last-resort detention.

Fifth, implementation requires service capacity. A legal mandate without accessible specialists and treatment can produce delay and inequality between regions. Phased implementation should therefore include regional referral networks, tele-forensic consultation where professionally appropriate, training for Bapas officers and legal actors, accreditation, public funding, and monitoring. These are prescriptive requirements rather than claims that present services are uniformly absent.

Implementation should proceed through a limited pilot before national expansion. The pilot should test referral timeliness, regional access to qualified professionals, the clarity of reports for legal decision-makers, the proportionality of recommended conditions, continuity of treatment, protection of confidential data, and the experience of victims and children. Oversight indicators should measure not only reoffending but also education continuity, treatment engagement, reduction of restrictions, victim safety, procedural delay, and unequal access between regions. An independent evaluation should determine whether the protocol improves legal reasoning and service coordination without increasing stigma, net-widening, or unnecessary institutional placement.

Doctrinal Contribution and Limits of the Model

The framework's contribution is not the invention of assessment in juvenile justice. Litmas, Bapas involvement, forensic examination regulation, disability accommodation, and mental-health measures already exist. The contribution is a legally ordered synthesis that resolves the identified disagreement about institutional sequence: offense-based eligibility, psychosocial screening, justified specialist referral, multidisciplinary formulation, distinct recommendations, reasoned evidentiary use, restitution and victim-safety planning, and

⁴⁸ Indonesia, Law Number 20 of 2025, arts. 235 and 238; Indonesia, Supreme Court, Supreme Court Regulation Number 4 of 2014, art. 3.

periodic review. The framework also explains why the same clinical information may serve a disposition function without being allowed to rewrite eligibility or culpability.

At the level of criminal-law theory, the model contributes by clarifying the boundary among legality, culpability, and disposition. Legality requires that a clinical opinion neither create diversion eligibility nor authorize a restriction absent a legal basis. Culpability requires attention to the child's functional capacity at the time of the offense rather than a diagnosis or predictive score. Disposition concerns the prospective selection of treatment, supervision, and protection measures after eligibility and responsibility have been determined. Separating these domains prevents future-oriented risk from being used retrospectively as proof of guilt or diminished responsibility.

The model also refines restorative justice and proportionality. Restorative justice is treated as a legally structured and voluntary process, not an assumption that reconciliation is suitable in every case. Proportionality is applied twice: first between the seriousness classification and the procedural route chosen by legislation, and second between individualized needs and the intensity or duration of intervention. Child-centered justice does not displace victim protection; it requires a decision architecture in which the child's capacity for development, the victim's autonomy and safety, and the community's legitimate interests are considered without collapsing one into another.

The framework therefore uses two names for two legal functions. Risk-Based Diversion applies only when the statutory gate is satisfied and may culminate in a diversion agreement. Risk-Informed Disposition applies when diversion is legally closed and permits the same safeguarded referral pathway to assist the court in selecting a lawful measure or sentence, identifying treatment, planning reintegration, and protecting the victim. The shared assessment architecture does not collapse the two routes. Naming both modules expressly resolves the tension between a conservative legality position and a model that would otherwise appear to promise reformist expansion of diversion.

The model also separates three forms of judgment that the earlier framework blurred. Legal eligibility concerns statutory charge and repetition. Criminal responsibility concerns functional capacity under the Criminal Code. Risk and needs concern the design of treatment, supervision, and safety. A child might be ineligible for diversion yet require intensive therapeutic support; eligible for diversion yet need strict and reviewable conditions; or exhibit traits without meeting Articles 38 or 39. Keeping the judgments separate improves transparency and prevents clinical terminology from doing hidden legal work.

This separation has practical implications across the procedural sequence. At investigation, it prevents a screening result from determining whether Article 7 applies. During prosecution, it requires the charged provision and its maximum penalty to be identified independently of perceived dangerousness. At trial, it obliges the judge to distinguish evidence relevant to the elements of the offense, evidence relevant to Articles 38 and 39, and evidence relevant only to disposition. After a decision, it requires supervision conditions to be linked to current treatment and safety needs rather than to a permanent character judgment. The same clinical information may be relevant at several stages, but its permissible legal use and evidentiary weight are not identical.

The framework further improves accountability by allocating responsibility among institutions. Bapas retains ownership of the ecological social inquiry; health professionals

remain responsible for clinical methods and limitations; investigators and prosecutors apply the statutory eligibility rules; judges decide contested legal consequences; and victim-service providers formulate protection and recovery needs. A multidisciplinary process does not mean that professional boundaries disappear. Written reasons should identify the source of each conclusion, the degree of confidence, and any unresolved disagreement. This prevents the phrase “multidisciplinary assessment” from concealing an unsupported consensus.

There are, however, limits. Predictive instruments can reproduce cultural, socioeconomic, and institutional bias. Indonesian validation for specific youth populations may be limited. Clinical services are uneven, collateral records may be incomplete, and the adversarial use of labels may intensify stigma. These constraints require conservative interpretation, documentation of uncertainty, independent review, and continued research. They also support a prohibition on using a single score to determine liberty.

Further empirical work should build an identifiable corpus of decisions from the Supreme Court Decisions Directory, state inclusion criteria, and analyze how Article 7(2), Litmas, clinical evidence, and measures are actually used. Institutional research should assess Bapas referral practices, availability of qualified clinicians, treatment continuity, and victim experience. Longitudinal research should evaluate outcomes without assuming that reconviction alone captures rehabilitation or victim safety. Until such evidence exists, claims of widespread inconsistency, elevated Indonesian recidivism, or institutional incapacity should remain hypotheses rather than findings.

The third research question can therefore be answered with a bounded institutional design. Risk-Based Diversion should enhance Litmas through selective, youth-appropriate assessment and procedural safeguards only in legally eligible cases. Where diversion is unavailable, the same safeguards may operate through the Risk-Informed Disposition Module to inform lawful measures, treatment, supervision, reintegration, restitution-related coordination, and victim protection. Neither module may use a stigmatizing label to determine liberty, and neither may convert a clinical opinion into proof of guilt or a substitute for the statutory responsibility test. Immediate legal vehicles include amendment of Government Regulation Number 65 of 2015, coordinated implementing guidance, disability-access rules, and judicial evidentiary standards; statutory change is needed only if Parliament chooses to modify the Article 7 gate.

CONCLUSION

Indonesian law answers the three research questions through separate but connected decisions. First, Article 7(2) of the SPPA Law creates an offense- and repetition-based eligibility gate. For conduct governed by the law in force from January 2, 2026, eligibility must be determined from the offense map produced by Article 622 of the 2023 Criminal Code as adjusted by Law Number 1 of 2026; Article 419(1), with a maximum of exactly seven years, falls outside the ordinary less-than-seven-year gate. Supreme Court Regulation Number 4 of 2014 remains relevant only to specified mixed-charge configurations, while Article 23 of the TPKS Law preserves the SPPA route without independently reopening diversion. For pre-2026 conduct still in process, Article 618 requires a case-specific *lex favor reo* comparison with the earlier regime.

Second, psychopathic traits do not automatically remove or aggravate criminal responsibility and do not, by themselves, establish disability status. Articles 38 and 39 require an individualized determination of a legally relevant condition and its functional effect, whereas disability law operates on a separate axis and may require reasonable accommodation when its independent criteria are met.

Third, clinically informed assessment should enhance, not replace, Litmas through selective specialist referral, youth-appropriate assessment, distinct Bapas and clinical recommendations, reasoned evidentiary weight rather than a free-standing scientific-admissibility gate, restitution and victim-safety planning, an opportunity to challenge adverse material, and periodic review. Risk-Based Diversion therefore applies only to legally eligible cases; where diversion is unavailable, the same safeguards operate through a Risk-Informed Disposition Module to inform lawful measures, treatment, supervision, reintegration, and victim protection without producing a diversion agreement. Government Regulation Number 65 of 2015 and coordinated professional and judicial guidance may regulate referral, report content, confidentiality, evidentiary use, restitution coordination, and review, but any change to the Article 7 eligibility boundary requires legislation. The framework is deliberately reviewable and developmentally sensitive: clinical information may assist legally authorized decisions, but it may not determine guilt, rewrite eligibility or culpability, or fix a child's legal identity. The analysis remains doctrinal and does not establish prevalence, recidivism, judicial patterns, or institutional capacity; those matters require empirical testing, including attention to regional access, stigma, data protection, treatment continuity, victim experience, and net-widening.

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