

# Restorative Justice in The Juvenile Justice System Against Juvenile Delinquency

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## *Restorative Justice in The Juvenile Justice System Against Juvenile Delinquency*

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### **Abstract**

The concept of restorative justice is predicated on the idea that the process of conflict resolution should take place through means other than the imposition of criminal sanctions and should involve both the individuals who committed the offense and the others who were affected by it. An essential component of restorative justice is the promotion of peace and forgiveness, as well as the enhancement of relationships between victims and perpetrators and the elimination of the damaging social stigma associated with repeat offenders. In Indonesia, criminal offenses are punished in accordance with the decisions reached by the courts. If it is done to children or teenagers, it can result in negative stigma and prejudice, both of which can have an effect on the development of the child in the future. As a result, it is imperative that children be safeguarded by investigating alternative legal strategies for dealing with legal situations involving children, such as the possibility of using restorative justice. This study's objective is to investigate the application of restorative justice principles within Indonesia's juvenile justice system. The research approach that is being used is legal research, and the research method that is being used is normative juridical law research. Studies of published works and historical documents are examples of secondary sources of data. As stated in Law Number 11 of 2012 concerning the Juvenile Justice System, which places an emphasis on deliberation between perpetrators, victims, families, and related parties, the findings of the study lead one to the conclusion that restorative justice is an alternative to solving legal problems outside of the court. The objective is not vengeance but rather recovery.

## I. Introduction

Life that develops rapidly and advances in science automatically affects human behavior as social beings, where every action that arises from him will have a positive or negative influence. When behaving in the environment, each individual will be regulated by the laws that apply at the time where they are (Sulisrudatin, 2018; Darling et al., 2020). This is in line with Utrecht's explanation of the notion of law, which is an arrangement of guidelines or guidelines for life, both orders and prohibitions, which regulate the orderliness of a society and which should be obeyed and if violated can lead to action by the government (Utrecht, 1964).

Laws are generally made and enforced with the aim of regulating behavior and providing justice for individuals or groups, where it is hoped that the existence of the law will lead to positive behavior. This is in line with the teachings explained by Jeremy Bentham, that the purpose of the law is to realize the greatest happiness for many people (Suhardin, 2007). The existence of applicable laws, with their coercive nature, should make every human being, whether individuals, groups, or communities, submit and obey every rule contained in the law. However, not every human being is able to obey and obey the existing law, so that violating behavior arises and makes him face the law (Usman, 2015).

The state guarantees that every child has the right to survive, grow, and develop, as well as the right to be safe from violence and discrimination, according to the Indonesian constitution (Hasibuan, 2019). It is in everyone's best interest to safeguard the future of humanity by acting in the best interests of children. Article 28B of the Constitution of the Republic of Indonesia must be implemented through implementing government policies targeted at protecting children (Pramukti, 2015).

When considering a child's legal rights and responsibilities, it is important to keep in mind the many ways in which children vary from adults. Children are a mandate and gift from God Almighty who has the dignity and worth as a whole human being, and this is recognized in Law No. 11 of 2012 pertaining to the Juvenile Criminal Justice System (Julich & Thorburn, 2017; Afita & Setiawan, 2022). Children should be afforded extra safeguards in all areas of life, but notably in the legal system, so that they can grow up with their inherent worth intact. R. Nowulan Sutianto claims that protecting children is vital to the progress of nations. The best way to ensure the health and well-being of a society is to ensure the safety of its youngest members, the

children. This is reflected in what it means to build a truly developed Indonesian human being as a nation. A country's progress cannot be bolstered if the subject of protecting children is ignored. When children aren't safeguarded, it leads to a host of societal issues that can hamper things like law enforcement, security, and national growth (Tektona, 2012; Anggel et al., 2014).

As a derivative of non-physical strength that must be preserved to achieve sustainability goals for future generations, a good and healthy judicial system will undoubtedly be able to guarantee justice, security, and safety of citizens, as well as the ability to generate trust and respect from the community (Braithwaite & Zhang, 2017; Arliman, 2018). The judicial system and the judicial power system are combined into a single entity: the law enforcement system. Law enforcement officials will carry out their duties within the framework of the Criminal Justice System in line with their assigned jurisdictions (Sunarso, 2022).

To protect children from the influence of the criminal justice system's formal process, human thought or legal and humanitarian experts develop formal rules for removing a child who has violated the law or committed a crime from the criminal justice system's formal process by providing other alternatives. Which is considered to be better for children? Ananda (2018) When dealing with minor criminal problems, one way that might be used is <sup>21</sup>restorative justice. Restorative justice is a conflict resolution procedure that takes place outside of the criminal justice system (Criminal Justice System) and involves victims, perpetrators, victims' and perpetrators' relatives, the community, and others with an interest in a crime in order to reach an agreement and settlement (Setyorini et al. 2020; Schormair & Gerlach, 2020). Restorative justice is viewed as a fresh way of thinking about criminal offenses.

The notion of Restorative Justice through Diversion is drawn from The Beijing Rules, which eventually became a statutory reform of the Indonesian juvenile criminal justice system under Law No. 11 of 2012. Criminal law reform is carried out in tandem with community-wide crime-reduction strategies (Bramita & Cahyaningtyas, 2018; Nadeem, 2021). However, as indicated in Article 64 of Law No. 17 of 2016 on Child Protection, one of the specific protections for children in conflict with the law is the implementation of proper punishments in the best interests of children, i.e. sanctions that can benefit children. Fostering and protecting children, this appears to be in conflict with the implementation of the Restorative Justice concept program through diversion as mandated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, specifically in article 7 paragraph (1), which states that diversion must be

sought at the level of investigation, prosecution, and examination of children's cases in district courts (Novilia, 2014). This clause is in compliance with Child Protection Law No. 17 of 2016, which offers general principles of child protection such as non-discrimination, children's best interests, survival, growth and development, and respect for children's involvement (Edyanto, 2017; Lloyd & Borrill, 2020).

Juvenile delinquency, a crime committed by children, is a clear indication of the lack of attention from parents and society towards children's behavior. Young people between the ages of 12 and 18 are still in their developmental stage who are more vulnerable to influences from the outside world, such as role models and schools. This makes it easier for them to form false associations (Tjukup et al, 2020). For this reason, society and parents must pay special attention to children at this time, when they are most vulnerable to negative influences. In the era of globalization, young people are capable of committing various heinous crimes, including murder, theft, vandalism, obscenity, sexual violence, and a number of other violations (Hambali, 2019; Marshall, 2020).

The detention center can accept children who have committed criminal acts or become "problematic children" as regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Many children have to deal with the court system and are placed in detention and prisons with adults, so that they become targets of violence, which of course goes against the principle of child protection which specifically addresses this principle. This condition is clearly quite disturbing (Dwitamara, 2013; Pavlacic et al, 2021).

It is clear that children placed in prison as a result of the formal criminal justice system have a long-term negative effect on their development. The formal criminal justice system's methods of punishing children by confining them in prison have failed to prevent them from misbehaving or help them grow into better people. Children in prison are generally better at committing crimes because of the training they receive in prison.

## II. Method

Research in the context of writing this article using normative juridical methods, specifically research on the principles of articles of the rule of law to determine legal principles, knowledge of vertical/horizontal synchronization, knowledge of aspects of legal history, and knowledge of comparisons of legal systems (Soekanto, 2007). In the context of creating, establishing, and cultivating law in the

direction of legal certainty and legal order, and in the context of building national law, study on legal principles is essential. The type of research on restorative justice in the juvenile criminal justice system in Indonesia, including normative research, is the existence of a conflict of norms in the legislation, particularly between Law No. 11 of 2012 pertaining to the Juvenile Criminal Justice System and the Criminal Code (KUHP). This refers to offenses committed by youngsters younger than 18 years old (eighteen years). The purpose of this research's research description is to describe how the law is applied, including the process of law enforcement. This type of research can shed light on the issues behind the implementation and enforcement of the law.

### III. Result and Discussion

It's far easier for kids to make friends and obtain social acceptance if they can work out their differences peacefully. Furthermore, family mediation has been frequently used to help parents reach agreements on child-related issues, and schools are developing training programs to educate students with the skills essential to resolve conflicts. Furthermore, ADR is connected not only to the more fundamental practice of talking things out, but also to the more conventional practice of going to court to have disagreements settled, and especially to the practice of judicial adjudication. The best interests of the child must be prioritized when dealing with juvenile offenders, thus it's encouraging to see legislation like Law No. 11 of 2012 concerning the Juvenile Justice System (hereafter referred to as Law on SPA 2012) include a restorative approach to juvenile justice.

Through meaningful acts of sorrow and reparation, restorative justice helps those who have been harmed by criminal behavior – victims, communities, offenders, and their families – get back on their feet. In accordance with the United Nations Convention on the Rights of the Child, existing Indonesian laws regulate various aspects of restorative justice, such as the Child Protection Law No. 17 of 2016 and the Human Rights Law No. 39 of 1999, which state that trial court is the most effective option for dealing with juvenile delinquency. little in terms of helping young criminals. Law No. 11 of 2012, dealing to the Juvenile Justice System, is currently the most important statute in the juvenile criminal justice system, and it has gradually revolutionized the approach of the Indonesian legal system to juvenile offenders.

Children's rights must be safeguarded as part of any effective criminal justice system. Article 3 of the United Nations Convention on the Rights of the Child ensures that the rights of children who are in conflict with the law are respected and fulfilled:

1. <sup>22</sup> The best interests of the child must be the first priority <sup>13</sup> in all activities involving children, whether by public or private social welfare agencies, courts, administrative authorities or legislative bodies;
2. States Parties agree to take all necessary legislative <sup>18</sup> and administrative measures to ensure the safety and well-being of children, taking into account the rights and obligations of their parents, legal guardians and other legal entities that have custody of them;
3. States parties must ensure that the institutions, services and facilities tasked with caring for and protecting children are properly funded and managed.

The Indonesian government released Government Regulation of the Republic of Indonesia Number 65 of 2015 on Implementation and Diversion Actions for Children Under 12 Years in response to the diversion provisions of the SPA Law of 2012. Community members and/or social welfare workers may engage in the diversion process if considered suitable under Article 5 (2) of the <sup>23</sup> Government Regulation. Following the implementation of the SPA Law of 2012, the Supreme Court of the Republic of Indonesia issued Regulation Number 4 of 2014 on Guidelines for Implementing Diversion in the Juvenile Justice System. This action was done in response to the law's implementation. As a result of the deployment of alternative measures against children in Indonesia, the juvenile justice system has required a restorative approach. A diversion conference is defined in Article 1 (1) of this regulation as a meeting at which the minor in question, his parents or legal guardians, the victim and/or their parents or legal guardians, probation officers, professional social workers, and community representatives, as well as any other parties with an interest in the matter, attempt to achieve diversion through the use of a restorative justice strategy.

According to Fathurokhman (2013), the concept of restorative justice in Indonesian legal culture functions essentially the same as that of deliberation. He also verified that the committee had, as a result of the lengthy deliberations and agreements, arrived at a conclusion that was accepted by everybody. People in Indonesia are eager to assist wounded children, which has contributed to the widespread acceptance of restorative justice in the country. The implementation of a restorative justice procedure, which is analogous to legal discussions in Indonesian jurisdictions, makes it feasible to reconcile differences in the SPA Law of 2012. (Fathurokhman, 2013). The child, his or her parents or guardians, the victim and his or her family, probationary officers, and social professionals trained in restorative justice

should always be present during diversion discussions. This is made quite clear in Article 8 of the SPA Law that was passed in 2012. This statute makes it clear that the alternative dispute resolution process for cases involving children must be carried out using a restorative justice approach at every stage, beginning with the investigation phase and continuing through the trial phase.

Furthermore, if deemed necessary, social welfare workers and/or community members are permitted to assist in the diversion process under Article 8 (2) of the SPA Law of 2012. 16 This article is quite similar to Article 5 (2) of Republic of Indonesia Government Regulation Number 65 of 2015 about Guidelines for Implementation and Diversion Measures for Children Under the Age of 12 Years. This implies that, for the time being, engagement in the diversion process by social welfare personnel and/or the community is not required. Furthermore, because restorative justice is critical to the effectiveness of diversion programs, Article 8 (3) of the SPA Law of 2012 specifies the core concepts underlying restorative juvenile justice. This covers the interests of victims, the welfare and responsibility of juvenile offenders, the absence of stigmatization against perpetrators, the absence of retribution, communal harmony, propriety, and humility, and public safety.

Furthermore, pursuant to Article 9 (1) of the SPA Law of 2012, prosecutors and judges must assess the nature of the offense, the age of the child, the officer's probation report, and the family's cooperation during the police diversion procedure. According to Article 9 (2) of the law, only the victim and/or the victim's family, as well as the child and the kid's family, must consent to the outcome of the diversion. The concept of encounter, as defined by Johnstone and Van Ness in the 2012 SPA Law, is clearly not taken into account when evaluating diversion. When deemed necessary, the possibility, but not the requirement, of involving parties other than children, victims of criminal conduct, their families, and formal law enforcement agents in the diversion process.

The permission may be waived, however, if the crime is minor, a misdemeanor, victimless, and the victim's loss does not exceed the area minimum wage. The police can include children, crime victims, and their families, probation officers, and community leaders in investigations. Article 93 (d) of the 2012 SPA controls the community's participation in the resolution of juvenile cases through diversion and restorative justice. Regarding the reparative concept, which is one of the concepts proposed by Johnstone and Van Ness, Article 10 of the 2012 SPA specifies that the result of diversion may be the financial recovery of the victim, medical and



psychosocial rehabilitation, and the return of the offender to his place of origin. Maximum of three months of participation in education or training programs at educational institutions or Special Child Care Institutions (LPKS) or community service. In addition, the criminal system of the 2012 SPA is a dual-track system because it includes both punishment and therapy or action. Article 82 (1) includes the restitution of criminal losses as a form of restorative justice as part of the treatment of sanctions against the 2012 SPA Law.

The ratification of the 2012 SPA Law which adheres to the principle of restorative justice is certainly a breath of fresh air, providing new hope for the evolution of Indonesian child law. It is reasonable to say that the application of restorative justice into the Indonesian criminal justice system has been going on for a long time, given the country's Criminal Procedure Code emphasizes strict compliance with the law and the imposition of criminal penalties.

Furthermore, in Indonesian juvenile courts, children's rights continue to be violated, such as the discovery of demands for the death penalty in cases involving minors, the right to be represented by their parents, and the deprivation of children's rights. Children who are not in state or government custody may not be released because they are imprisoned together with state children and criminal children. Social work/social service and parole are examples of actions that can be taken by convict children, such as giving conditional sentences.

In other words, with restorative justice, the proportionality of punishment for minors is quite important. The provisions of The Beijing Rules and the UN law on child protection show how this model works, and they must be taken seriously if children are to enjoy their rights as suspects and as children to be protected during the legal process. When a child is expelled from school, for example, prosecutors can use their powers to deport a child under certain circumstances. That is, to prevent harmful legal practices that injure children, there must be a uniform standard that regulates the conditions and implementation of non-formal treatment.

Based on the characteristics of restorative justice above, there are conditions that must be met to achieve restorative justice, namely:

- 1) There must be a confession or statement of guilt from the perpetrator;
- 2) There must be an agreement from the victim to make a settlement outside the applicable juvenile justice system;
- 3) Approval from the police or the prosecutor's office as an institution that has discretionary authority.

In practice, restorative justice is based on several principles:

- 1) Establish joint participation between perpetrators, victims and community groups in resolving an event or crime. Placing perpetrators, victims and the community as stakeholders who work together and immediately try to find a solution that is considered fair for all parties (win-win solution).
- 2) Encouraging perpetrators/children to take responsibility for victims of events or criminal acts that cause injury or harm to the victim. Furthermore, he stipulates the responsibility not to repeat the crimes he has committed.
- 3) Placing an event or a criminal act, especially as a form of violation of the law between individuals, but as an offense committed by a person (group of people) from that person (group of people). Therefore, the perpetrator must be directed towards accountability to the victim, not prioritizing legal responsibility (formal legal).
- 4) Encouraging the settlement of an event or criminal act in a more informal and personal manner, not through a formal procedure in court (rigid and impersonal).

In other words, restorative justice is a perspective on the criminal justice system that seeks to address some of the problems with it. To ensure the same conditions before the crime occurred and to avoid further criminal acts, this strategy is used as a strategic framework for resolving criminal cases involving the community, victims, and perpetrators. To deal with criminal activities, restorative justice seeks to strike a balance between the interests of victims, perpetrators, and society in general. There is no ideal norm in defining the official meaning of restorative justice because the idea is still developing and leads to different interpretations in different countries.

#### **IV. Conclusion**

When a kid who is in trouble with the law is brought before the court, it is a serious matter, and the court must always take into account what is in the child's best interests. The sentencing process should only be considered an option as a very last resort, and at that time, there should be no discussion of the rights of children. In the framework of restorative justice, the concept of settlement alternatives is left up to the individual perpetrators as well as the individual victims who are participating in the dispute resolution process. The SPA law in Indonesia was passed in 2012, and it established a framework for the implementation of restorative juvenile justice. This framework begins with the use of restorative justice in the process of diverting

juveniles from the traditional justice system, and it can extend to the stage of post-sentencing as well. It is possible for the perpetrator to compensate the victim as part of the process of identifying the appropriate sanctions; however, this compensation must be negotiated and agreed upon by all parties. The idea that justice is served adequately and that the juvenile justice system is operating at its highest level of efficiency when all parties involved are treated fairly and equally, actively participate in the judicial process, and receive adequate benefits from their interactions with the system holds that justice is being done well and that the system is operating at its highest level of efficiency.

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