



## Optimizing the protection of the rights of children of crimes through restorative justice

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### Abstract

The main problem in resolving juvenile crimes is that the criminal justice system does not take sides towards children because the handling in this system has not implemented restorative justice policies. Ideally, Children who conflict with the law need to be returned to their original condition, not just punished for their actions. The results showed that by resolving cases of children in conflict with the law through restorative justice, children receive legal protection in the criminal justice system as stated in the Convention on Children's Rights. For children who were in conflict with the law, the resolution of child criminal cases based on restorative justice policies is not yet optimal. There are many failures in diversion against prison sentences, which should be a last resort.

**Keywords:** Restorative justice, child offender, rights of children

### Introduction

Children are a state asset for the future; development during the growth period requires assistance primarily from the family and internal parties. Apart from that, external parties also influence children's development. Besides that, the protection of children is very necessary, with the existence of the Indonesian Child Protection Institute (LPAI) or what is often called the National Commission for Child Protection, plays a very important role in protecting children, participating in educating as well as providing mentoring and case assistance. Considering the frequent occurrence of cases involving children in Indonesia, starting from cases of violence, abuse, neglect, child grabbing, exploitation, and children who need legal assistance as well as marginalized children, children who are victims of disasters, they all have rights because they are also a human being, but because Indonesia is a country of laws, therefore it also needs legal protection, that's where the Indonesian Child Protection Institute (LPAI) plays a very important role.

Law Number 23 of 2002 regulates child protection as stated in Article 1 paragraph (2) that "Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate, optimally in accordance with their dignity." and human dignity, as well as protection from violence and discrimination. This means that children are guaranteed their lives in accordance with Article 1 paragraph (1). What is meant by a child is someone who is not yet eighteen years old, including unborn children.

Children in conflict or delinquent children under the Juvenile Criminal Justice System Law are children in conflict with the law who are 12 years old but not yet 18 years old and have been suspected of committing a crime or criminal act. Every act done to harm other people must be held accountable by the perpetrator without exception. However, imposing a crime on a child who conflicts with the law will have a negative impact that can be detrimental to the child's mental development in the future. This results in the imposition of prison sentences, which are labelled evil by society, so that when applying this label, it will be

difficult for children to become good children. Therefore, child protection efforts are needed that can guarantee the growth and development of children who conflict with the law.

Positive law in force in Indonesia regulates children in conflict with the law in the 1945 Constitution of the Republic of Indonesia and the Juvenile Criminal Justice System Law, which regulates the detention period for children shorter than the detention period for adults. Even the resolution of children's cases through non-judicial channels at all stages of the legal process. In other words, children in conflict with the law are not imprisoned for the sake of the child's future because the Correctional Institution of Children (LPKA) is considered not a way to resolve children's problems. It is feared that LPKA is prone to violations of children's rights (Lailatul & Uswatul, 2019)<sup>[7]</sup>. As an example of the case in Decision Number 33/Pid.SusAnak/2018/PN Sng, the basis for the judge's consideration in imposing a crime on a child who conflicts with the law regarding the crime of theft with aggravation is legally and convincingly proven to have committed the crime of theft with aggravation because of all the elements Article 363 paragraph (1) 4 of the Criminal Code has been fulfilled. Nothing can eliminate criminal responsibility, either as a justification and/or excuse, then the child must be held responsible for his actions. The judge's imposition of a prison sentence of 3 (three) months is not merely to take revenge on children who have committed acts that deviate from the law and social order. Still, by imposing this sentence, it is hoped that children will be deterred from committing criminal acts again. However, this does not provide legal protection for children because the decision does not prioritize punishment as a last resort (Ikrima, Eko, & Purwoto, 2021)<sup>[12]</sup>.

The main problem in resolving juvenile criminal cases is that the criminal justice system does not take sides towards children because the handling in this system has not implemented restorative justice policies. Children who commit crimes ideally need to be returned to their original condition, not just punished for their actions. Data on juvenile detainees and prisoners indicates that restorative

justice policies are less than optimal. In children's cases, applying criminal sanctions should be the ultimum remedium. Criminalization of children will result in children's rights not being fulfilled and the failure of the diversion concept offered to protect children. Using the ultimum remedium principle should be able to return the child's condition to a better one. This research focuses on forms of legal violations or criminal behaviour with children as the perpetrators and optimizing the implementation of restorative measures to fulfil children's rights.

This research differs from previous research based on search results from various studies that are almost similar to this research. There are several studies that the author can describe as a comparison with this research. Research on the legal protection of children as perpetrators of criminal acts has been regulated in statutory regulations, namely Article 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, and regulated in international conventions concerning child protection, fulfilment of children's rights and special actions on children in conflict with the law (Varia, 2019)<sup>[5]</sup>.

Research that discusses the SPPA Law, which is considered to be in accordance with child protection as stipulated in Article 64, the resolution of cases involving children in the juvenile delinquency category is carried out using diversion efforts, namely the resolution of cases outside of court which aims to ensure that children can be held responsible for the actions they have committed. Again, if the child has the will not to repeat the crime, then he cannot be sentenced to prison (Dian, 2018)<sup>[6]</sup>.

The next research focuses on the latest research on positive law in force in Indonesia. The state has guaranteed all Indonesian people to get justice and legal protection, which aims to provide a sense of security and comfort to the Indonesian people. as is the case with minors as victims of criminal acts of rape, where children whose fate is still dependent on their parents or guardians must be given protection and fulfil their rights as victims of criminal acts with the cooperation of various parties. However, some victims do not take legal action, and the victim is married to the perpetrator of the rape through peaceful means or what is usually called restorative justice (Daniella & Saela. 2021)<sup>[3]</sup>.

Based on the above background, the problem that the author will discuss is the implementation of restorative justice in terms of fulfilling children's rights and optimizing the protection of the rights of children who commit crimes through restorative justice.

## Results and Discussion

### 1. Implementation of Restorative Justice Seen from the Fulfillment of Children's Rights

Restorative justice is the resolution of criminal acts by involving the perpetrator, victim, the perpetrator's family, and other related parties together to find a fair solution or resolution by emphasizing restoration back to the original condition and not retaliation, prioritizing the best interests for children (Putu, 2021)<sup>[2]</sup>.

Children's rights as stated in Article 4 - Article 19 of Law Number 23 of 2002 Jo. Law Number 35 of 2014 concerning Child Protection. Article 4 states, "Every child has the right to live, grow, develop and participate appropriately in accordance with human dignity and to receive protection from violence and discrimination."

The application and implementation of restorative justice in criminal law enforcement by investigators is a diversion effort applied to children in conflict with the law. In several cases, this diversion policy obtained an agreement between the parties involved so that the case did not proceed to prosecution (Indha *et al.*, 2022)<sup>[10]</sup>.

Diversion is an effort or system where the facilitator manages the resolution process of disputing parties to achieve the best resolution for both parties as a successful form of restorative justice policy (Yulianus, 2021)<sup>[8]</sup>. There are criteria for crimes children commit, namely light, medium and serious crimes. For minor crimes committed by children, diversion can be applied whenever possible, while for moderate crimes, it can be considered whether or not diversion will be applied, but for serious crimes, diversion is not an option.

Efforts to resolve cases that require the value of restorative justice can minimize children being protected from violence or discrimination, with the intention that all children from any group (race, ethnicity, religion and culture) who have committed crimes, as stated in the SPPA Law have the right to receive diversion. Children guilty of crimes do not need to be imprisoned but can be returned to their parents, sent to boarding school, given sanctions such as job training, etc. The implementation of diversion also pays attention to children's rights, especially those to live, survive and develop.

Children have human rights written in national and even international instruments, namely rights to be upheld and protected. The form of protection of children's rights in international instruments is in the form of the Convention on the Rights of the Children (Fitriana, 2022)<sup>[4]</sup>. The national instrument for children's rights in conflict with the law has been regulated in Article 64 paragraph (2) of the Child Protection Law through 1. Treating children humanely in accordance with the child's rights; 2. Providing facilities and infrastructure specifically for children; 3. Providing special accompanying officers; 4. Provide guarantees for maintaining relationships with parents and family; 5. Always monitor and record the progress of children in conflict with the law; 6. Protect against identity reporting through mass media, both electronic and print media, to avoid stigma or labelling from society.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System aims to maintain the dignity of children with restorative justice policies. A child has the right to obtain special protection, especially legal protection in the criminal justice system. so SPPA is not only focused on imposing criminal sanctions on children who conflict with the law but is also focused on the idea that imposing sanctions is intended as a means of realizing the welfare of children who conflict with the law. So that it is in line with the objectives of implementing SPPA as desired by the international community.

Children, as perpetrators of crimes, have the right to live, grow and develop. It is hoped that protection through restorative justice will provide the most important protection for children. Children, as perpetrators of crimes, have the right to receive health facilities such as psychological rehabilitation for crimes committed in the hope that these crimes will not be repeated. With restorative justice, children as criminals can avoid being labelled or stigmatized as delinquent children in society so that children can be accepted back into society and their circle of friends. This is

important for children's physical, mental, spiritual, moral and social growth and development. So, it can be concluded that the implementation of restorative justice in handling minor juvenile criminal cases is in accordance with the rights of children as the nation's successors.

## 2. Optimizing the Protection of the Rights of Children Who Perpetrate Crimes Through Restorative Justice

Based on implementation in the criminal justice system, law enforcement officials have pursued restorative justice policies by listening to and calming parties who have suffered losses due to conflicts. Law enforcement officials are trying to restore the parties, both victims and their families and children, as perpetrators of the crime. This recovery is carried out so that the parties obtain justice by focusing on solving problems through mediation, conciliation, dialogue and fulfilling restitution for victims. Restorative justice policies seek to repair social harm and possibly express regret and apology. Braithwaite stated that restorative justice is related to efforts to heal or restore rather than suffer, moral learning, community participation and community care, mutually respectful dialogue, the process of apology, responsibility, apology and compensation for losses (Yuarini & Ika, 2022)<sup>[10]</sup>.

The ideology and values of restorative justice consist of responsibility, openness, trust, hope and healing. The main aim of restorative justice is to repair losses resulting from criminal acts or crimes. The perpetrator of the crime is asked to be responsible for his actions. Restorative justice will provide opportunities for parties, both victims, perpetrators and the community, to solve problems to minimize future losses. Restorative justice policies will be more responsive and effective in meeting the interests of perpetrators, victims and society simultaneously. If the characteristics of punishment lead to retribution or retaliation, we must remember that there are three needs for the criminal justice system to be implemented, namely the need to provide sanctions against perpetrators, the need to rehabilitate perpetrators, and the need to strengthen public security (Riska, 2017)<sup>[17]</sup>. So, in restorative justice, conditions are needed to repair and restore the losses experienced by victims to the maximum.

In cases of criminal acts committed by children, restorative justice policies aim to repair or restore criminal acts committed by children with actions that are beneficial to the child, victims and their environment, which involve them directly (reintegration and rehabilitation) in solving problems, and are different from how to deal with adults, which will then lead to the purpose of the crime itself, which according to Barda Nawawi Arief, the purpose of punishment is based on the protection of society and the protection or development of individual perpetrators of criminal acts (Arief, 2008)<sup>[1]</sup>.

The types of crimes and legal conflicts often committed by children include theft, drug abuse, fights, sexual harassment crimes, traffic violations, and abuse up to cases of murder, as well as motorbike gang crimes (robbery), where children are the perpetrators of the crime. Other facts also show that children in various conflicts with the law are victims of violent treatment, physical and psychological violence, sexual abuse and neglect. The current Juvenile Criminal Justice System refers to Law Number 11 of 2012, and the process mechanism must still go through a formal process like adults by going through an inquiry and investigation

process by the police, a prosecution process by the prosecutor's office and a trial in court. This long formal process has given rise to several ideas from scientists and law enforcement officials to look for the best alternative treatment for children by keeping children away from the formal justice system as much as possible. According to the Director of Analysis of Legislative Regulations at the National Development Planning Agency (BAPPENAS), Diani Sadia Wati, the reasons for changing Law Number 3 of 1997 concerning Juvenile Courts into Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) are due to several reasons, namely: 1) failure of the juvenile criminal justice system which aims for justice; 2). Child crime and recidivism rates have not decreased; 3). The judicial process fails to treat children; 4). The court prioritizes imprisonment over other sanctions (Vivi & Asbon, 2020)<sup>[11]</sup>.

Several cases involving children in conflict with the law include: of the 22 children in conflict with the law, two were detained without going through the diversion process because the children had committed repeated theft crimes. However, some children in conflict with the law have gone through the diversion process but to no avail because no agreement has been found regarding compensation costs and other conditions that the victim has proposed. In other words, the child in conflict with the law has not implemented the diversion agreement, which has been approved. Furthermore, there are 15 juvenile prisoners and seven juvenile detainees who are awaiting court decisions and are being placed in prisons with a special block for juvenile prisoners due to the Covid-19 pandemic because it is not possible to move to LPKA or LPKS (Yuarini & Ika, 2022)<sup>[10]</sup>. And finally, there is one child in detention who is still 13 years old. This contradicts Article 32 of Law Number 11 of 2012 concerning SPPA because the child is still under 14 years in detention.

The implementation of diversion as a form of restorative justice for children in conflict with the law often experiences failures in its implementation, which makes restorative justice less than optimal in its achievement. This creates problems in enforcing criminal law in the juvenile criminal justice system. In the end, children who conflict with the law will undergo a trial process after going through the diversion process at the police, diversion at the prosecutor's office and diversion at court. So, the author concludes that the stage of resolving children in conflict with the law through diversion requires optimization efforts from law enforcers in Indonesia for the future of children as assets for the nation's future.

## Conclusions

The implementation of restorative justice is seen from the fulfilment of children's rights for children in conflict with the law. In the juvenile criminal justice system, it has been regulated to resolve children in conflict with the law, the main aim of which is to ensure the child's best interests, both physically and mentally. The form of handling outside of court or non-formal through diversion is in accordance with the values of restorative justice, in accordance with the values of Indonesian society in resolving problems through deliberation and consensus. Diversion is very important in protecting children's human rights in the Indonesian criminal justice system. Resolving cases of children in conflict with the law through restorative justice can provide

a sense of justice, benefit and legal certainty for the child's best interests. So, in the end, treatment with restorative justice can be carried out well if it is balanced with efforts to create a conducive justice system.

Restorative justice has been regulated in the Juvenile Criminal Justice System Law, and its implementation involves perpetrators, victims, families and related parties, such as the community, in resolving cases of children in conflict with the law. With restorative justice, there is an effort to bring victims together with perpetrators, which aims to restore victims and from child perpetrators to child perpetrators who are positioned like victims who have the right to receive recovery from being bad children to being good children in society, not taking revenge. However, case handling through restorative justice has not been implemented optimally, and the relevant institutions lack proper restorative justice equipment. Thus, restorative justice has not been implemented in the best interests of children in conflict with the law.

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