

The Comparative Study: Protecting Children's Rights Through Law Reform of Restorative Justice in Juvenile Cases

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Abstract

The high influence of the internet plays a role in the increase in criminal acts that use children as the main perpetrators. In legal involvement on the part of the child as a suspect, the law must consider the mental aspects of the child. Children who come into contact with the law are often confronted with the Juvenile Justice System (JJS). The judge's decision following the trial can have negative effects on the child. Restorative Justice through the implementation of Diversion is a step that law enforcement officials can take to prevent children from facing trial situations. This study aims to examine the implementation of Restorative Justice in juvenile cases and analyze its role in shaping character and safeguarding children's rights amid the challenges of the digital era. This research used normative legal research by examining literature studies from primary and secondary legal materials. The results of this research indicate that the implementation of Restorative Justice in juvenile cases can be carried out in the Pre-Adjudication stage (investigation and inquiry), Adjudication stage (prosecution and trial), and Post-Adjudication stage (execution of sentences). Meanwhile, the implementation of Restorative Justice in building character and protecting children's rights can be achieved through the integration of

restorative justice principles, including education and awareness, rehabilitation approach, active participation of children, involvement of victims, use of alternative sanctions, collaboration with experts, respecting children, and developing social and emotional skills.

Keywords

Restorative Justice, Juvenile Case, Character, Children's Rights.

Introduction

Children are a fundamental part of the the younger generation and a critical human resource with a strategic role in shaping the future of the nation. They carry the potential and aspirations that drive sustained progress. Therefore, it is essential to offer them the fullest opportunities to grow and develop in an optimal manner, such as physically, mentally, socially, and morally.¹ Childhood is a time of sowing seeds, placing bricks, and laying foundations that can also be referred to as the period of character and personality development. They aim to gain strength and abilities and stand steadfastly in life.²

The Internet plays a substantial role in child crime, affecting both offenders and victims. It provides easy access to a wide range of information, including criminal techniques and methods, allowing children to quickly obtain details on committing illegal activities such as hacking, fraud, or violence. Additionally, numerous freely available tutorials and guides teach various unlawful actions. Children may also engage with individuals harboring criminal intentions through social media platforms, forums, or chat services, which can lead to influence, encouraging them to partake in criminal behavior. Furthermore, negative peer influence or group dynamics on the Internet can drive children to participate in illegal activities.

¹ Yusuf Luqita Danawiharja, "Analisis Yuridis Penerapan Diversi Terhadap Anak Yang Berhadapan Dengan Hukum Dihubungkan Dengan Peraturan Mahkamah Agung Nomor 4 Tahun 2014 Tentang Pedoman Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak," *Aktualita (Jurnal Hukum)*, December 17, 2020, 463–85, <https://doi.org/10.29313/aktualita.v0i0.6325>.

² Mahendra Ridwanul Ghoni and Pujiyono Pujiyono, "Perlindungan Hukum Terhadap Anak yang Berhadapan dengan Hukum Melalui Implementasi Diversi di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (August 28, 2020): 331–42, <https://doi.org/10.14710/jphi.v2i3.331-342>.

In today's digital era, children have unprecedented access to vast amounts of online information, presenting both opportunities and risks. On one hand, digital technology offers immense benefits, making learning more accessible and enriching their knowledge in various fields. On the other hand, it also exposes them to potential dangers that could negatively impact their future. As digitalization advances, children face growing challenges, including the rise of cyber-related crimes both by and against them. These include cyberbullying (where children may be perpetrators or victims on social media and online platforms), the spread of illegal content (involvement in misinformation, hate speech, or explicit material distribution), and fraud and hacking (engagement in or victimization by scams and cybercrimes). In this context, the state's role is crucial in offering legal protection to children in conflict with the law, safeguarding their rights and well-being in the digital era.

As a signatory to the 1989 Convention on the Rights of the Child (CRC), which establishes the principles of legal protection for children, Indonesia is bound to ensure legal protection for children, particularly those in conflict with the law. One manifestation of the state's protection for children is realized through a specialized criminal justice system designed for minors involved in legal conflicts.³

One ongoing effort to safeguard children in conflict with the law is the implementation of the Juvenile Justice System (SPPA). The goal of this system is not merely to impose criminal sanctions, but also to emphasize holding offenders accountable through a Restorative Justice approach.

According to Eva Achjani Zulfa, restorative justice is a conceptual framework that addresses the evolution of the criminal justice system by emphasizing the importance of community involvement and the inclusion of victims who may feel excluded by the existing mechanisms of the system. Restorative justice contrasts with the principles of legality and legal certainty (*rechtzekerheid*) because it does not prioritize imprisonment. Instead, it focuses on how to repair or restore the victim's

³ M. Taufik Makarao Badan Pembinaan Hukum Nasional Kementerian Hukum Dan HAM RI, "Pengkajian Hukum Tentang Penerapan Restorative Justice Dalam Penyelesaian Tindak Pidana Yang Dilakukan Oleh Anak-Anak," 2013, 7, https://bphn.go.id/data/documents/laporan_akhir_pengkajian_restorative_justice_anak.pdf.

situation following a crime. In this context, offenders may be required to provide compensation, perform community service, or undertake other actions deemed appropriate by law enforcement or the court.⁴ The legal implications of implementing restorative justice in Indonesia include the failure to enforce criminal law, resulting in perpetrators not receiving any punishment, and the fact that, in certain cases, restorative justice can only be applied with the victim's consent.⁵

The majority of children involved in legal conflicts, particularly those who are introduced into the criminal justice system, are subject to judges imposing sentences involving deprivation of liberty. The negative effects resulting from the criminal trial process begin even before the case is examined. This issue arises from various sources of pressure, including insensitive questioning, the need to recount distressing events, the anticipation of trial, and separation from family. The trial process for children is further influenced by the courtroom environment, facing victims and witnesses, and having to speak before court officials. The judge's verdict causes negative effects after the trial of the children.⁶

To mitigate the adverse effects of the criminal justice process and safeguard children in conflict with the law, one approach is to empower law enforcement officers, such as investigators or prosecutors, to implement specific actions or policies through a Restorative Justice framework in addressing and resolving cases involving children in conflict with the law.

Restorative justice holds importance as it provides an alternative to traditional criminal punishment for crime prevention, while also ensuring the fulfillment of the obligation to deliver justice to crime victims. The principle of restorative justice focuses on repairing the harm and restoring the relationships disrupted or affected by criminal

⁴ Vivi Arfiani Siregar, "Perspektif Restorative Justice Dalam Perlindungan Anak Sebagai Sistem Peradilan Pidana Di Indonesia," *Jurnal Hukum Das Sollen* 4, no. 1 (June 1, 2020): 3, <https://ejournal.unisi.ac.id/index.php/das-sollen/article/view/1149>.

⁵ Orin Gusta Andini, Nilasari Nilasari, and Andreas Avelino Eurian, "Restorative Justice in Indonesia Corruption Crime: A Utopia," *Legality: Jurnal Ilmiah Hukum* 31, no. 1 (April 13, 2023): 72–90, <https://doi.org/10.22219/ljih.v31i1.24247>.

⁶ Setya Wahyudi, *Implementasi Ide Diversi Dalam Pembaruan Sistem Peradilan Pidana Anak Di Indonesia* (Yogyakarta: Genta Publishing, 2011), 4.

behavior.⁷ This involves terminating and concludes proceeding with the criminal process against the child in court but resolving the issue through Diversion, As outlined in Article 1, number 7 of Law Number 11 of 2012 on the Juvenile Justice System, diversion refers to the process of redirecting juvenile cases from the criminal justice system to an alternative process outside of the criminal court.

The diversion method aims to reduce the negative consequences of children's direct involvement in the judicial process. This approach indirectly shields children from the worst-case scenarios they might face during the trial process. Furthermore, Restorative Justice also prevents negative stigmatization, such as labeling a child as "delinquent," which would deprive the child of opportunities for better growth and development. The same applies if the legal issues are pursued to trial and the child is incarcerated. In such cases, the worst outcome would be traumatizing the child, affecting their character and psychological well-being.

Restorative justice aims to focus on the process through which resolution is achieved by mutual agreement between the offender and the victim. The restorative justice process can be outlined as follows: (1) The victim agrees to participate in all legal proceedings, with an assurance of personal safety; (2) The offender gains a conscious understanding of the harm their actions have caused to the victim's life; (3) The outcome is a flexible solution, mutually agreed upon by both parties, prioritizing rehabilitation over retribution or the replication of harm; (4) The offender commits to taking full legal responsibility for their actions; and (5) Beyond legal satisfaction, both the victim and the offender gain insight into the incident and its repercussions, fostering a sense of security for reintegration into society.⁸

⁷ Nur Rochaeti et al., "A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices," *Sriwijaya Law Review* 7, no. 1 (January 27, 2023): 87, <https://doi.org/10.28946/slrev.Vol7.Iss1.1919.pp87-104>.

⁸ Maya Sinta, "Legal Protection for Criminal Justice: A Book Review 'Restorative Justice Di Indonesia', Ahmad Syharil Yunus SH and Dr Irsyad Dahri SH MH, Guepedia, Bogor Indonesia, 2021, 142 Pages, ISBN 978-623-5525-98-3," *Lex Scientia Law Review* 6, no. 2 (December 20, 2022): 561-69, <https://doi.org/10.15294/lesrev.v6i2.61096>.

The traditional judicial system often assigns a negative label to children involved in criminal activities, categorizing them as “Delinquent Children” or “Bad Children.” Consequently, it is more desirable to divert children from the conventional criminal justice process and explore alternative resolution mechanisms outside the system. This approach is grounded in the principle of ensuring justice for juvenile offenders, safeguarding their rights as children, and providing them with opportunities for self-improvement. The goal is to foster the development and enhancement of their character and personality in a positive direction. Given this context, the research question is formulated as follows: How is Restorative Justice applied in juvenile cases, and what are the forms of its implementation aimed at character development and protecting children’s rights?

Method

This research utilizes a normative legal research methodology. The approaches adopted in this study include the case approach, statute approach, conceptual approach, and comparative approach. The data collected by the author are subsequently analyzed using a qualitative analysis method. After the data collection, the researcher analyzes using a fundamental method of thinking from general facts and draws specific conclusions, which will be revealed in this study.

Result and Discussion

A. Implementation of Restorative Justice in Juvenile Cases in Law Number 11 of 2012 on the Juvenile Criminal Justice System in Indonesia

The specialized juvenile justice system certainly has specific goals.⁹ Integrating restorative justice principles is crucial for the future of both children and society. The definition of restorative justice is not fixed, as various models and forms have evolved in its implementation. Consequently, numerous terms are employed to describe the concept of

⁹ “Pengkajian Hukum Tentang Penerapan Restorative Justice Dalam Penyelesaian Tindak Pidana Yang Dilakukan Oleh Anak-Anak.”

restorative justice, including communitarian justice, positive justice, relational justice, reparative justice, and community justice.

Restorative justice is about repairing the harm caused by criminal actions, rather than just punishing the offender. In juvenile justice, this approach focuses on meeting the needs of victims, holding offenders accountable, and helping them reintegrate into society. The main principles of restorative justice are as follows:

1. **Reparation:** Efforts are made to compensate or make amends for the harm caused to victims.
2. **Reconciliation:** Encouraging dialogue and understanding between the offender, the victim, and the community.
3. **Rehabilitation:** Focusing on the offender's reintegration and preventing future offenses.
4. **Special Courts:** Juvenile cases are handled by specialized juvenile courts, which are designed to implement restorative justice principles more effectively. These courts focus on understanding the juvenile's background, circumstances, and potential for rehabilitation.

John Braithwaite, Howard Zehr, and Mark Umbreit, prominent figures in restorative justice, conceptualize restorative justice as an initiative to replace punishment for offenses with the principles of apology, restitution, and acknowledgment of the harm caused. Their approach also focuses on the healing process and the reintegration of offenders into society, with or without additional punitive measures, thus offering opportunities for the offenders to rehabilitate and improve themselves.¹⁰

In his writing, Bagir Manan discusses the concept of “restorative justice,” outlining key principles such as: “Fostering collective participation among offenders, victims, and community groups to resolve an incident or criminal act. It involves positioning offenders, victims, and the community as stakeholders who collaborate and actively work towards finding a solution that is perceived as fair to all parties (win-

¹⁰ Lisnawaty Wadju Badu and Julisa Aprilia Kaluku, “Restoratif Justice In the Perspective of Customary Law: A Solution to the Settlement of Narcotics Crimes Committed by Children,” *Jambura Law Review* 4, no. 2 (July 30, 2022): 313–27, <https://doi.org/10.33756/jlr.v4i2.11664>.

win solutions).” In cases involving criminal acts committed by minors, the restorative justice approach seeks to repair or restore the child’s criminal behavior through actions that benefit the child, the victim, and their environment, with direct involvement from all parties in resolving the issue (reintegration and rehabilitation). This contrasts with the handling of adult offenders, which is primarily focused on the goals of “society protection” and “protecting/developing the individual perpetrator”.¹¹

In principle, Law Number 11 of 2012 prioritizes restorative justice approaches and diversion processes as key efforts in addressing criminal acts committed by children. The implementation of restorative justice provides solutions to critical issues in the resolution of criminal cases, namely: first, addressing criticism of the criminal justice system for failing to offer opportunities, particularly for victims (a system that disempowers individuals); second, resolving conflicts, particularly between offenders, victims, and society (by alleviating the conflict); and third, recognizing that the sense of powerlessness caused by criminal acts must be addressed in order to achieve restoration (to facilitate reparation).

Law Number 11 of 2012 on the Juvenile Justice System stipulates that in the resolution of child cases at all stages of examination, investigation, public prosecution, and adjudication, it is mandatory to consider the criminal acts committed by the child while taking into account factors such as the child’s age at the time of the offense, family background, social environment, education, the nature of the offense, and other relevant factors that influence the child’s attitudes and behavior. This information is gathered through social research conducted by the Social Supervision Officer from the Correctional Institution.¹²

¹¹ *Ibid*

¹² Adhiyoga Wira Dewata, R. B. Sularto, and Tri Laksmi Indraswati, “Diversi Sebagai Aktualisasi Konsep Restorative Justice dalam Penegakan Hukum (Studi Penanganan Tindak Pidana oleh Anak di Wilayah Pengadilan Negeri Semarang),” *Diponegoro Law Journal* 5, no. 2 (April 4, 2016): 1–11, <https://doi.org/10.14710/dlj.2016.11298>.

B. Implementation of Restorative Justice at the Pre-Adjudication (Investigation and Inquiry) stage

The Indonesian National Police (Polri) has increasingly prioritized the implementation of the restorative justice approach in law enforcement and security services in response to the demands of globalization and modernization.¹³ Restorative justice presents an alternative framework that focuses on the rehabilitation of both victims and offenders as an integral part of crime prevention and conflict resolution.¹⁴

Meanwhile, public understanding and trust in the police as law enforcers and providers of a sense of security are also crucial aspects of building a democratic and stable nation and society. Therefore, efforts to create strategies such as community policing are becoming increasingly significant in ensuring public security and trust in the police.¹⁵

The Indonesian National Police possesses the authority to conduct investigations and inquiries in order to uncover suspected criminal activities. An investigation is an action carried out by law enforcement officers under the authority of relevant laws and regulations, aimed at seeking and gathering evidence of a criminal offense. With these two powers, the police, in accordance with the Indonesian National Police Regulation, are authorized to handle criminal cases using a restorative justice approach. The Indonesian National Police Regulation serves as the legal foundation for the police to apply this approach.¹⁶

¹³ Agus Haerul and Zainuddin Zainuddin, "Restorative Justice: An Approach in the Settlement of Land Crimes in the Indonesian National Police," *European Journal of Law and Political Science* 2, no. 2 (April 11, 2023): 46–52, <https://doi.org/10.24018/ejpolitics.2023.2.2.78>.

¹⁴ Siti Marziah Zakaria, Juliana Rosmidah Jaafar, and Nor Hazila Mat Lazim, "Employment Issues Among Ex-Offenders: Difficulties in Securing Employment and Barriers of Employment," *International Journal for Studies on Children, Women, Elderly and Disabled* 5 (2018).

¹⁵ Muhammad Firdaus, Chryshnanda Dwilaksana, and Muhammad Daffa Auliarizky Onielda, "Shifting Polri's Law Enforcement Strategy: Restorative Justice for Public Trust," *Jurnal Media Hukum* 30, no. 2 (October 31, 2023): 153–70, <https://doi.org/10.18196/jmh.v30i2.18628>.

¹⁶ M. Wildan Humaidi and Inna Soffika Rahmadanti, "Constitutional Design of State Policy as Guidelines on Indonesia's Presidential System Development Plan,"

The Indonesian National Police has the authority to conduct investigations and inquiries to uncover suspected criminal acts. The investigation is an action carried out by investigators by virtue of laws and regulations to seek and collect evidence indicating a criminal act. With these two authorities, the police, based on the Regulation of the Indonesian National Police, have the right to handle criminal cases with a restorative justice approach. The Regulation of the Indonesian National Police is the legal basis for the police to implement a restorative justice approach.

The Criminal Procedure Code (KUHP) Articles 1 numbers 1 through 5 elucidate that one of the principles of restorative justice is Diversion.¹⁷ Currently, Indonesia has specific norms governing the implementation of Diversion in the context of restorative justice, particularly in addressing Children in Conflict with the Law, as outlined in Articles 7(1) and 7(2). The implementation mechanism prioritizes the principles of Restorative Justice in line with Article 5(1) of Law No. 11 of 2012 on the Juvenile Justice System. This law explicitly mandates Law Enforcement Officers to give precedence to restorative justice, including during the investigative phase. While Law No. 8 of 1981 on the Criminal Procedure Code does not provide comprehensive regulation of Diversion within the criminal justice system, it grants discretionary authority to the Police that aligns with Diversion, as stated in Articles 7(j), 16(1)(i), and 16(2), and affirmed by Article 18(1) of Law No. 2 of 2002 on the Indonesian National Police.¹⁸

Based on the existing legal basis, community policing can be interpreted as a form of community development through a caring police approach.¹⁹ The police's task is not only to maintain public security and order but also to serve the community. In practice, community policing

Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi, June 28, 2023, 61–76, <https://doi.org/10.24090/volksgeist.v6i1.7981>.

¹⁷ Suharto, Gilang Ramadhan, "Restorative Justice Peradilan Pidana Anak Di Indonesia," *Lex Crimen* IV, no. 1 (2015), <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/6998>.

¹⁸ *Ibid*

¹⁹ *Ibid*.

is implemented through various programs, starting from the Sector Police as an Integrated Community Service to Community Policing.²⁰

Adjudication Stage (Prosecution and Trial)

The Prosecutor's Office frequently applies the restorative justice approach as an alternative that delivers justice to the community while aiming to restore it to its original state. The legal foundation for handling cases through restorative justice within the Prosecutor's Office is outlined in the Regulation of the Indonesian Prosecutor's Office Number 15 of 2020, which addresses the termination of prosecution based on restorative justice. In the enforcement of the law, the Prosecutor's Office has adopted this approach by prioritizing restorative justice and moving away from criminalization, thereby allowing offenders, victims, their families, and the community to achieve restorative justice.²¹

In the Adjudication phase, the Prosecutor, acting as the public prosecutor, is responsible for conducting the prosecution as outlined in Article 41, paragraph 1 of the Juvenile Justice System Act. This article mandates the Prosecutor to pursue Diversion as part of the restorative justice process, as specified in Article 42, paragraph 1: "The Public Prosecutor must make efforts to achieve Diversion no later than 7 (seven) days after receiving the case file from the Investigator." This indicates that during the adjudication phase, efforts to prioritize restorative justice become a necessity that must not be overlooked by law enforcement officers, especially prosecutors such as public prosecutors.²²

In the Criminal Procedure Code (KUHAP), the Prosecutor's authority to carry out diversion is not explicitly outlined. However, the

²⁰ Elizabeth V. Aston et al., "Information Sharing in Community Policing in Europe: Building Public Confidence," *European Journal of Criminology* 20, no. 4 (July 2023): 1349–68, <https://doi.org/10.1177/14773708211037902>.

²¹ Ibnu Sina Chandranegara and Syaiful Bakhri, "Institutional Arrangements of the Political Party Wing on the Functions of Political Parties," *Jurnal Hukum Novelty* 12, no. 2 (October 5, 2021): 153, <https://doi.org/10.26555/novelty.v12i2.a17870>.

²² Republic of Indonesia, "Government Regulation Number 65 of 2015 on Implementation of Diversion and Handling of Children Under 12 Years of Age (Twelve)," 1–72, accessed May 27, 2024, <https://peraturan.bpk.go.id/Details/5641>.

possibility and opportunity to implement Diversion in line with the principles of restorative justice are provided for, in accordance with the provisions of Article 30, paragraph (1) of Law No. 16 of 2004 concerning the Indonesian Attorney General's Office and Article 14, letter h of Law No. 8 of 1981 on the Criminal Procedure Code. This can materialize if a diversion order is issued or if there is good faith from both the perpetrator and the victim to engage in mediation from the early stages of the investigation.²³

During the trial phase, judges should prioritize the principles of restorative justice, as outlined in Article 5 of the Juvenile Justice System Law. This is further emphasized by Supreme Court Regulation No. 4 of 2014 on the Guidelines for the Implementation of Diversion in the Juvenile Justice System, which requires juvenile judges to consider diversion in cases where the child is charged with an offense punishable by imprisonment for less than seven years, or when charged with an offense carrying a sentence of seven years or more under subsidiary, alternative, cumulative, or combined charges. The implementation of case handling for children in conflict with the law based on this regulation provides a more progressive approach for judges compared to the Juvenile Justice System Law and Government Regulation No. 65 of 2015, which governs the Guidelines for Diversion and Handling Children under 12 years of age. This progression is evident when comparing Article 7 of the Juvenile Justice System Law and Article 3 of Government Regulation No. 65 of 2015, which limit diversion to cases where the child offender faces a sentence of less than seven years and does not involve recidivism, whereas Supreme Court Regulation No. 4 extends the applicability of diversion to child offenders facing sentences of less than seven years or more, including subsidiary, alternative, cumulative, or combined indictments. While restorative justice is not yet codified in the general criminal justice system, judges may still apply its principles during the resolution process, as permitted by Article 10

²³ Ali Muhammad, "The Restorative Justice Approach to The Implementation of Children's Criminal Justice System In Indonesia," *Jurnal Ilmiah Kajian Keimigrasian* 1, no. 2 (November 24, 2018): 189–98, <https://doi.org/10.52617/jikk.v1i2.32>.

paragraph (1) and Article 5 paragraph (1) of Law No. 48 of 2009 on Judicial Power.

Both the police and the prosecutor's office possess a solid legal foundation that empowers them to exercise greater authority in implementing restorative justice. This approach seeks to enhance restorative justice by restoring the situation to its original state, ensuring no harm is inflicted on the parties involved in the criminal case through mutual agreement.²⁴ The Prosecutor's Office is a crucial institution under the president's direct authority, yet its functions also position it as a key entity within the judiciary.²⁵

We can clearly identify the distinctions when comparing the similarities between the police and the prosecutor's office in handling criminal cases through a restorative justice approach. Although both aim to achieve restorative justice, the differences emerge from the distinct powers granted to each institution. The police hold the authority to conduct investigations and inquiries, whereas the prosecutor's office has the authority to prosecute. These distinctions reflect the differing legal foundations that each institution operates under. In the context of restorative justice, the differences between the police and prosecutor's office become particularly evident, especially regarding the legal frameworks that guide their respective roles. For instance, the prosecutor's office has introduced a novel approach to handling corruption cases through restorative justice, supported by a robust legal foundation.²⁶

The legal foundation for the police and prosecutors is established by the Regulation of the Republic of Indonesia National Police Number 8 of 2021, which addresses the handling of criminal acts based on

²⁴ Sheila Kusuma Wardani Amnesti et al., "Higher Education with Disabilities Policy: Ensuring Equality Inclusive Education in Indonesia, Singapore and United States," *Journal of Human Rights, Culture and Legal System* 3, no. 3 (November 20, 2023): 412–40, <https://doi.org/10.53955/jhcls.v3i3.135>.

²⁵ Anis Widyawati et al., "The Urgency of Supervision Institutions in Implementing Prisoners' Rights as an Effort to Restructure Criminal Execution Laws," *Jambura Law Review* 7, no. 1 (January 5, 2025): 127–51, <https://doi.org/10.33756/jlr.v7i1.27595>.

²⁶ Yordan Gunawan and Zulfiani Ayu Astutik, "The Importance of Bilateral Agreement on Mandatory Consular Notification for Indonesia: Tuti Tursilawati Execution," *Jurnal Hukum Novelty* 10, no. 2 (November 14, 2019): 85–100.

restorative justice, and the Regulation of the Republic of Indonesia Prosecutor's Office Number 15 of 2020, which governs the termination of prosecution based on restorative justice. Both regulations occupy the same position within the hierarchy of laws and regulations; however, each institution holds distinct authorities in their implementation. The police are empowered to investigate and terminate inquiries using a restorative justice approach, whereas the prosecutor's office has the authority to terminate prosecutions with a focus on restorative justice.²⁷

Post-Adjudication Stage (Execution of Sentences)

The development and dynamics of society are highly complex, and this complexity extends to law enforcement in Indonesia. Several issues contribute to this complexity, including overcrowding in prisons, the management of minor offenses and legal actions involving children, as well as the narcotics problem. Restorative Justice presents itself as a solution to these legal challenges.²⁸

Restorative justice will encounter four key challenges in the future, namely those pertaining to its definition, institutionalization, transfer, and the ongoing relevance of its practices.²⁹ The concept of restorative justice is continuously evolving. It is understood as a series of practices that facilitate direct interactions between victims, offenders, and other relevant parties. Additionally, it addresses the growing concern of institutionalization, aiming to more effectively meet the needs of victims, support their recovery, and ensure the accountability and reintegration of offenders.³⁰

The role of social dialogue has proven effective in encouraging the creation of social harmony, peace, and social reconciliation. An example is the case in Nepal between former combatants and community members. Social dialogue is also used in other countries to reconcile

²⁷ Firdaus, Dwilaksana, and Oniella, "Shifting Polri's Law Enforcement Strategy."

²⁸ Hariman Satria, "Restorative Justice: Paradigma Baru Peradilan Pidana," *Jurnal Media Hukum* 25, no. 1 (2018), <https://doi.org/10.18196/jmh.2018.0107.111-123>.

²⁹ Firdaus, Dwilaksana, and Oniella, "Shifting Polri's Law Enforcement Strategy."

³⁰ Sukardi Sukardi and Hadi Rahmat Purnama, "Restorative Justice Principles in Law Enforcement and Democracy in Indonesia," *Journal of Indonesian Legal Studies* 7, no. 1 (June 1, 2022): 155–90, <https://doi.org/10.15294/jils.v7i1.53057>.

previously hostile groups into one community.³¹ However, restorative justice has also faced considerable criticism, particularly in cases involving sexual violence. As a result, there is a pressing need to evaluate restorative justice programs that address sexual violence and domestic violence cases. It is crucial to conduct an assessment of these programs to understand their effectiveness in handling such sensitive issues.³²

A closer look at Restorative Justice practices in the context of gender highlights issues of power and control during conferences involving girls who have committed crimes.³³ Although practitioners argue that the power dynamics between victims, offenders, supporters, and facilitators are neutralized during the conferences due to the Restorative Justice framework, the experiences of girls increasingly present a conflicting perspective.³⁴ The experiences of the dynamics of power and control that occur in the Restorative Justice conference arena challenge practitioners' notions of Restorative Justice as a neutral process.³⁵

A fair culture aims to address concerns about a faultless approach on the one hand and concerns about people's continued willingness to report safety-related issues on the other. A fair culture sets the conditions that legitimize managerial intervention in sanctioning or reinstating individuals to the organization. Moral and safety issues need to be taken into consideration. These include substantive justice, which addresses

³¹ Bambang Tri Bawono and Henning Glaser, "The Urgency of Restorative Justice Regulation on Hate Speech," *BESTUUR* 11, no. 2 (December 19, 2024): 364, <https://doi.org/10.20961/bestuur.v11i2.82508>.

³² Daye Gang et al., "A Call for Evaluation of Restorative Justice Programs," *Trauma, Violence, & Abuse* 22, no. 1 (January 2021): 186–90, <https://doi.org/10.1177/1524838019833003>.

³³ I Gede Adhi Mulyawarman, Putu Gede Arya Sumerta Yasa, and Lamberton Cait, "Blocking Dangerous Content in Electronic Communications Networks: Evidence from Netherlands, United States and Singapore," *Journal of Human Rights, Culture and Legal System* 4, no. 1 (February 25, 2024): 237–62, <https://doi.org/10.53955/jhcls.v4i1.216>.

³⁴ Tongat Tongat, "Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives," *Legality : Jurnal Ilmiah Hukum* 32, no. 1 (March 12, 2024): 90–104, <https://doi.org/10.22219/ljih.v32i1.32335>.

³⁵ Jodie Hodgson, "Offending Girls and Restorative Justice: A Critical Analysis," *Youth Justice* 22, no. 2 (August 2022): 166–88, <https://doi.org/10.1177/1473225420967751>.

how fair and legitimate the rules, regulations, and procedures themselves are; procedural justice, which establishes the process for determining rule violations, providing protection for the accused, and regulating who should make those decisions; and restorative justice, which aims to restore the status of the individuals involved and to heal the relationships and pain experienced by victims and the wider community.³⁶

The tradition of restorative justice is a defining feature of both civil and common law systems. Its implementation is influenced by the legal culture, political traditions, and criminal justice frameworks of the systems in which it evolves. This method of adopting restorative justice practices draws upon comparative criminology, restorative justice traditions, and legal culture. It offers theoretical insights into the field and holds practical relevance for public policy formulation.³⁷

During the Post-Adjudication phase, or the execution of sentences, the institution responsible for implementing restorative justice for Children in Conflict with the Law (CCL) is the Juvenile Special Correctional Facility (LPKA), as outlined in Article 85, paragraph (3) of Law No. 11 of 2012 on the Juvenile Justice System. This article mandates that in order to achieve the child's restoration through restorative justice, the LPKA must provide education, training, skill development, mentoring, and fulfill other rights in accordance with applicable laws and regulations. This legal obligation requires each LPKA, formerly known as the Juvenile Correctional Institution (LAPAS Anak), to reform its system for handling children serving sentences, impacting the readiness of human resources (personnel) and supporting facilities. An example of this is the Juvenile Special Correctional Facility in Palembang, which has worked to create a more child-friendly environment by repainting the building in bright, vibrant colors, replacing the previous eerie and inhumane atmosphere. Additionally, they have successfully developed an education system that offers

³⁶ Mohammad Hazyar Arumbinang, Yordan Gunawan, and Andi Agus Salim, "Prohibition of Child Recruitment as Soldiers: An International Regulatory Discourse," *Jurnal Media Hukum* 30, no. 1 (July 27, 2023): 21–32, <https://doi.org/10.18196/jmh.v30i1.19322>.

³⁷ Alejandra Díaz Gude and Iván Navarro Papic, "Restorative Justice and Legal Culture," *Criminology & Criminal Justice* 20, no. 1 (February 2020): 57–75, <https://doi.org/10.1177/1748895818796549>.

elementary, junior high, and senior high school levels tailored to the children's needs, with the active involvement of the community and local government. Similarly, other Juvenile Special Correctional Facilities, such as the one in Tangerang, have recently implemented reforms to establish a more responsive environment that prioritizes the best interests of the child, ensuring the fulfillment of children's rights to guidance, supervision, mentoring, assistance, education, training, and other entitlements as prescribed by laws and regulations.

In addition to the Juvenile Special Correctional Facility (LPKA), another essential unit involved in fulfilling its responsibilities during the Post-Adjudication stage is the Correctional Institution (BAPAS). Within BAPAS, Community Guidance Officers collaborate with other correctional officers to determine rehabilitation programs for children in LPKA. These officers provide guidance, mentorship, and supervision to children who have been sentenced or subjected to legal actions by the court. Furthermore, they continue to offer support to children granted assimilation, parole, pre-release leave, and conditional leave. Although the duties of Community Guidance Officers are primarily outlined in Law No. 11 of 2012 on the Juvenile Justice System, starting from the pre-Adjudication phase, as stated in Article 27, paragraph (1), it also emphasizes that investigators must seek advice or recommendations from these officers during the investigation of juvenile cases, as set out in Article 13, paragraph (1), letter (a) of Government Regulation No. 65 of 2015 on Guidelines for Implementing Diversion and Handling Children Under Twelve Years of Age. This framework represents efforts to prioritize the best interests of the child, aiming to facilitate their recovery and successful reintegration into society, in line with the rehabilitation goals of social reintegration.

Efforts to resolve social conflicts and materialize social reintegration: (1) Respecting others by recognizing and appreciating the differences between the conflicting parties as part of the diversity of society; (2) Strengthening identity by building awareness and pride in identity and groups as Indonesian citizens based on Pancasila; (3) Conducting dialogue and deliberation by administering constructive and democratic communication between the conflicting parties to seek a just and peaceful resolution, (4) Resolving conflicts by taking legal action or enforcing justice against perpetrators of conflict who violate the law or

human rights. Social reintegration has a positive impact on society, including an increased sense of unity and togetherness among community members, an increased sense of security and comfort in community life, an increased sense of tolerance and mutual respect for differences in society, and an increased quality of life and general community welfare.³⁸ Restorative justice is dedicated to ensuring equal opportunities, enabling all stakeholders to participate fully, irrespective of their social class background.³⁹

C. Comparison of Restorative Justice in the United States and Malaysia

Restorative Justice (RJ) is one of the international community movements that has various differences and definitions. The variety of RJ definitions is caused by changes in the way society views and responds to crime. In addition, the variety of perspectives on RJ is also caused by a shift in the paradigm of law enforcement towards the contemporary criminal justice system. Therefore, the regulation of RJ can be found in various countries.⁴⁰

From a historical perspective, the juvenile criminal settlement approach initially emerged as one of the approach models since the 1960s with the aim of resolving criminal cases. However, this problem-solving approach is different from in criminal procedural law.⁴¹ Initially, the juvenile criminal settlement movement emerged in the context of resolving criminal problems related to children (juvenile and criminal justice). However, in its development, the juvenile criminal settlement

³⁸ Muhamad Haris Aulawi et al., "Governing Indonesia's Plan to Halt Bauxite Ore Exports: Is Indonesia Ready to Fight Lawsuit at the WTO?," *BESTUUR* 11, no. 1 (August) (April 12, 2023): 26, <https://doi.org/10.20961/bestuur.v11i1.69178>.

³⁹ Roxana Willis, "Let's Talk about It': Why Social Class Matters to Restorative Justice," *Criminology & Criminal Justice* 20, no. 2 (April 2020): 187–206, <https://doi.org/10.1177/1748895818804307>.

⁴⁰ Ribut Wibowo, Ahmad Busro, and Ani Purwanti, "Reassessing Restorative Justice: Addressing Sexual Violence Cases in Indonesia," *Indonesia Law Review* 13, no. 3 (December 31, 2023), <https://scholarhub.ui.ac.id/ilrev/vol13/iss3/8>.

⁴¹ Jane Bolitho, "Putting Justice Needs First: A Case Study of Best Practice in Restorative Justice," *Restorative Justice* 3, no. 2 (May 4, 2015): 256–81, <https://doi.org/10.1080/20504721.2015.1069531>.

approach began to be expanded to resolve various types of criminal acts.⁴² According to supporters of the RJ Movement, the resolution of criminal problems must be based on community-based reparative justice and moral social control.⁴³

The United States has been at the forefront of implementing restorative justice, beginning in the 1970s with victim-offender mediation (VOM) programs in northern states. Even earlier, in 1740, the U.S. Congress established the Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the Department of Justice, with the aim of preventing and addressing juvenile delinquency from both the offender's and victim's perspectives. The OJJDP subsequently encouraged states and communities to develop prevention and intervention programs, emphasizing offender accountability while also providing rehabilitative services for offenders, victims, and the community. Two decades later, the OJJDP funded a national initiative, the Balanced and Restorative Justice (BAR) project, to offer technical assistance and training to state decision-makers and stakeholders, aiming to reform the juvenile justice system. The project primarily focuses on facilitating dialogue and implementing restorative principles and practices.⁴⁴ When comparing the application of restorative justice in Indonesia, which remains primarily restricted to minor offenses, cases involving women and children, and drug-related crimes, it closely mirrors its implementation in the United States. In the U.S., restorative justice is similarly confined to minor offenses or juvenile delinquency. Its application to issues related to race and sexual violence is still a potential that has yet to be fully realized. States such as Florida, Montana, Vermont, and Wisconsin do not apply restorative justice to violent offenders.⁴⁵ States such as

⁴² Eva Zulfa, "Restorative Justice in Indonesia: Traditional Value," *Indonesia Law Review* 1, no. 2 (August 31, 2011), <https://doi.org/10.15742/ilrev.v1n2.81>.

⁴³ *Ibid.*

⁴⁴ Sandra Pavelka, "Restorative Justice in the States: An Analysis of Statutory Legislation and Policy," *Justice Policy Journal* 2, no. 13 (January 10, 2016): 1–23, https://www.cjcrj.org/media/import/documents/jpj_restorative_justice_in_the_states.pdf.

⁴⁵ Shannon Sliva and Carolyn Lambert, "Restorative Justice Legislation in the American States: A Statutory Analysis of Emerging Legal Doctrine," *Journal of Policy Practice* 14 (April 7, 2015): 77–95, <https://doi.org/10.1080/15588742.2015.1017687>.

Alabama, Alaska, Colorado, California, and Florida apply restorative justice exclusively to juvenile offenders.⁴⁶ Unlike Indonesia, the U.S. legal system allows individual states to create and enforce their own laws, which explains why restorative justice is not universally adopted across all states. Moreover, the principle of restorative justice—viewing crime not as an offense against the state, but as a disruption of relationships between individuals—has not been integrated into federal law.

TABLE 1. Comparison of the implementation of Restorative Justice in Indonesia and the United States

Indonesia	United States of America
Implementation of legislation regarding restorative justice applies to the entire territory within the scope of the Republic of Indonesia.	Implementation of restorative justice depends on laws and regulations in certain state jurisdictions that have incorporated restorative justice into their state laws. There are 45 states that have adopted restorative justice.
Its application remains confined primarily to facilitating mediation between the offender and the victim or their family, as well as terminating prosecution processes.	In the United States, restorative justice is operationalized through a range of initiatives, including victim-offender mediation, family group conferencing, restorative sentencing practices, the incorporation of victim and community impact statements, restitution mechanisms, victim-awareness education programs, alternatives to school expulsion, diversion schemes, and community-based restorative panels.
Implementation does not involve external parties outside law enforcement agencies as facilitators of restorative justice application.	Involve facilitators from the private sector in the implementation of restorative justice.

⁴⁶ Thalia González, “The Legalization of Restorative Justice: A Fifty-State Empirical Analysis,” *Utah Law Review* 2019, no. 5 (January 1, 2020), <https://dc.law.utah.edu/ulr/vol2019/iss5/3>.

The concept of restorative justice should be incorporated into the Criminal Code as the highest legal basis. Restorative justice is not included in the federal law as the legal basis that must be applied across all states.

As a State Party to the Convention on the Rights of the Child (CRC), Malaysia bears the obligation to ensure legal protection for children who come into contact with the juvenile justice system. In line with its status as a member of the Association of Southeast Asian Nations (ASEAN), Malaysia is also expected to uphold child protection measures consistent with the regional legal framework. The country's juvenile justice system is primarily governed by the Child Act 2001 (hereinafter 'the 2001 Act'), which sets the minimum age of criminal responsibility at ten years. Although the Child (Amendment) Act 2016 introduced improvements, particularly in safeguarding child offenders during the pre-trial stage, the 2001 Act still lacks explicit provisions for diverting children away from the formal juvenile justice process at that stage. Nonetheless, it has been reported that police officers occasionally exercise discretion to resolve minor offences—such as traffic violations, petty theft, or altercations among children—outside formal judicial proceedings.⁴⁷ Subsequently, the implementation of diversion is crucial in Malaysia in order to prevent the adverse effects of coming into contact with the criminal justice system on child offenders from the pre-trial process till the disposal stage.⁴⁸

⁴⁷ The Malaysian Juvenile Justice System: A Study of Mechanisms for Handling Children in Conflict with the Law (2013). Kuala Lumpur Ministry of Women, Family and Community Development (MWFCD) and UNICEF.

⁴⁸ See the following articles: (a) Ahmad, N., Hamid, A. G., & Wok, S. "Reoffending among the child offenders in Malaysia: It's time to open our doors to theories underpinning diversionary measures", *The Social Sciences*, 11(Special Issue 6) (2016a): 7274–7278; (b) Ahmad, N., Hamid, A. G., & Wok, S. "The pre-trial detention of child offenders: Some evidence from Malaysia. *The Social Sciences*", 11(6) (2016b): 7210–7214. <https://docsdrive.com/?pdf=medwelljournals/sscience/2016/7210-7214.pdf>; (c) Mustafa, A. "Diversion under Malaysian juvenile justice system: A case of too little too late?" *Asian Criminology*, 11, (2016): 135–153. <https://doi.org/10.1007/s11417-015-9228-8>; (d) Mazlan, M.N., Mustafa, A. "The Malaysian juvenile justice system: The compelling need to implement diversion in

In response to international calls, Malaysia has taken commendable steps toward implementing diversion programmes for child offenders. Nonetheless, the effectiveness of this initiative remains uncertain, as it is currently in its pilot phase.⁴⁹ In contrast, Indonesia demonstrates a more progressive stance in safeguarding children's legal rights within the juvenile justice system through Law Number 11 of 2012, which permits the application of diversion and restorative justice mechanisms, as previously discussed. While Malaysia's 2001 Act has yet to explicitly provide for the implementation of diversion, the Court for Children is nonetheless empowered under Section 91 of the Act to issue appropriate orders at the disposal stage. These include: (a) admonishing and discharging the child offender; (b) releasing the child upon the execution of a good behaviour bond and compliance with court-imposed conditions; (c) placing the child under the supervision of a relative or another suitable guardian for a designated period, subject to court conditions; (d) ordering the payment of fines, compensation, and costs; (da) mandating community service; (e) issuing a probation order in accordance with Section 98; (f) placing the child in an Approved School or the Henry Gurney School; and (g) imposing imprisonment for children aged fourteen and above who have committed imprisonable offences.

The Court for Children can exercise its discretionary powers and impose any suitable orders on the child offender, depending on the offences they committed. Following the amendment made via the Child (Amendment) Act 2016, the 2001 Act has abolished caning and has introduced non-custodial measures such as community service order that provides for child offenders to undertake community service not exceeding one hundred and twenty hours (120) hours within 6 months period, under the supervision of a social welfare officer. Within this

handling the issue of juvenile delinquency. *International Journal of Law, Policy and Social Review*, 4(1), (2022): 16-23.

⁴⁹ United Nations Committee on the Rights of the Child (UNCRC). (2024). Combined second to fourth periodic reports submitted by Malaysia under Article 44 of the Convention, due in 2012 (CRC/C/MYS/2-4). https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FMYS%2F2-4&Lang=en

period, the child offender is prohibited from committing any offense and shall comply with any of the following conditions set by the Court when the Court thinks necessary, such as (a) attending interactive workshops, (b) pursuing education, and (c) attending counseling sessions.⁵⁰

While the 2001 Act does not provide any specific provisions for diversion, the Court in Malaysia recognized the underpinning powers vested in the Court for Children to make orders that are both “welfare driven” and “justice is driven” for child offenders. Hence, the Court recognized that it is crucial to take into account factors such as the circumstances of the case and the possible impact the order may have on the welfare of the child offender, as well as the just expectation of society before the imposition of the order is made.⁵¹ It is submitted that following the amendments to the 2001 Act highlighted above, the Court for Children has more comprehensive options to make orders at the end of the disposal stage under Section 91 of the 2001 Act, and sending children to the institutions should be a measure of last resort, in line with Article 37 (b) of the CRC.

Since the mechanisms for diversion are not in place yet at the pre-trial process in Malaysia, the Court for Children will make an order at the disposal stage for child offenders. By Section 91 of the 2001 Act, the Court can exercise any of its powers to rehabilitate child offenders. While Malaysia is yet to have a legal framework governing diversion for child offenders, the process of rehabilitation for child offenders in Indonesia begins at an earlier stage, at the pre-trial stage.

Through a restorative approach, the primary goal is to mend the damaged relationships caused by crime, restore the caused harm, and redirect the perpetrator’s behavior in a more positive direction. This involves efforts to address the social and psychological impacts experienced by the victim and to help the perpetrator understand the consequences of their actions and take responsibility for them. By implementing a restorative justice approach, it is expected that there will be an overall reduction in the crime rate, as it focuses more on recovery and improvement rather than solely punitive punishment. It also

⁵⁰ Section 97 A (2) of the 2001 Act

⁵¹ PP v KM (A Child) & Anor [2010] 9 CLJ 605, para 9. This case was referred by the Magistrate in the case of Pendakwaraya V FBL (Kanak-Kanak) [2021] MLJU 2174.

strengthens community involvement in maintaining security and justice in their own environment.

Updates in the Implementation of Restorative Justice in Juvenile Cases in Building Character and Protecting Children's Rights

Restorative justice remains largely unarticulated as a contemporary justice mechanism.⁵² It has been implemented in various types of offences, particularly those that do not involve direct victims or are considered victimless crimes. However, its overall accessibility continues to be limited. At the same time, the increasing provision of training in restorative practices offers a valuable opportunity to transform institutional work cultures in line with restorative values. Therefore, it is important to establish a clear policy foundation that enhances access to restorative justice and promotes the integration of restorative principles across criminal justice systems and institutions.⁵³

Numerous studies have been conducted on Restorative Justice, especially in the context of juvenile justice. Recent years have witnessed a substantial shift in the approach to juvenile justice, transitioning from the retributive model to a stronger emphasis on rehabilitation and the acknowledgment of the developmental needs of children.⁵⁴ The Integrated Model of Juvenile Justice represents a novel conceptual framework for reform, incorporating elements of the public health, socio-ecological, and restorative justice models.⁵⁵

⁵² Kathleen Daly, "What Is Restorative Justice? Fresh Answers to a Vexed Question," *Victims & Offenders* 11, no. 1 (January 2, 2016): 9–29, <https://doi.org/10.1080/15564886.2015.1107797>.

⁵³ Ian D. Marder, "Mapping Restorative Justice and Restorative Practices in Criminal Justice in the Republic of Ireland," *International Journal of Law, Crime and Justice* 70 (September 2022): 100544, <https://doi.org/10.1016/j.ijlcj.2022.100544>.

⁵⁴ Indriati Amarini et al., "Social Reintegration after the Implementation of Restorative Justice in the Indonesian Criminal Code," *Jurnal Media Hukum* 31, no. 1 (May 13, 2024): 115–33, <https://doi.org/10.18196/jmh.v31i1.20655>.

⁵⁵ Zheng Zhou and Wan-chi Wong, "Three- and Five-Year-Olds' Restorative Intervention in Moral Transgressions," *Cognitive Development* 62 (April 2022): 101171, <https://doi.org/10.1016/j.cogdev.2022.101171>.

Building a child's character is an essential process in their education and overall development. Character consists of a set of values, attitudes, and behaviors that shape individuals into responsible members of society, contributing positively to their communities. In the context of the juvenile justice system, building character and safeguarding the rights of children is vital to ensure that those involved in legal issues receive proper protection and opportunities for rehabilitation. This approach not only focuses on resolving conflicts or criminal actions but also seeks to guide the moral and ethical development of children, helping them grow into responsible, conscientious citizens.

In the digital era, the process of building character and safeguarding children's rights through the juvenile justice system can be significantly enhanced with the use of technology. Digital tools such as online platforms for education, virtual counseling sessions, and monitoring systems allow for more accessible rehabilitation programs, ensuring that children can continue their character development even outside physical institutions. Moreover, digital communication channels can facilitate better engagement between children, law enforcement, educators, and social workers, ensuring a more collaborative and holistic approach. By embracing technology, the juvenile justice system can create a more adaptable, efficient, and inclusive framework that supports the moral and ethical growth of children while protecting their rights in an increasingly interconnected world.

In the process of restorative justice, children are asked to acknowledge and take responsibility for their actions. This represents a vital step in fostering responsible character development. Restorative justice facilitates the cultivation of empathy by enabling children to engage directly with the victim or other affected parties. Such interactions encourage the development of empathy, which is an essential component of strong character. Children participating in restorative justice are required to comprehend the effects of their actions on both the victim and the broader community. This process enables them to recognize the tangible consequences of their behavior and fosters a deeper understanding and appreciation of those impacts.

The process of restorative justice involves open and honest communication. This helps children develop good communication skills, which involve aspects such as honesty, trust, and openness. In the

context of restorative justice, children must consider the feelings and needs of the victim or the harmed party. This can help them develop a character that involves caring for others. Children learn that conflict is a part of life, but there are peaceful ways to resolve it. This helps them develop a character that includes an understanding of the importance of resolving conflicts positively. Restorative justice provides children with direct experiences in understanding the consequences of their actions. Learning through these experiences is often more effective than theoretical learning. One of the goals of restorative justice is to prevent re-engagement in criminal behavior. By helping children understand the negative consequences of their actions and providing support for positive change, this approach supports the development of character involving positive growth. Thus, restorative justice is not just about resolving legal issues but also about influencing the development of children's character. This creates an environment that supports good moral and ethical growth while helping children learn from their mistakes and build positive interpersonal skills. In order to achieve the above goals, it is necessary to integrate the principles of restorative justice into approaches to children involved in legal issues, as follows:

a. Education and Awareness

Education is the key to building children's character and safeguarding their rights. Children should be provided with a good understanding of moral values, ethics, and their rights. This can be achieved through educational programs that incorporate the principles of restorative justice.

b. Recovery and Reintegration Approach

Restorative justice emphasizes the restoration and reintegration of children into society. This means focusing on efforts to help children understand their actions, take responsibility, and support their recovery process.

c. Active Participation of Children

Children should be given the opportunity to actively participate in resolving their issues. They should be heard and empowered to take responsibility for their actions and play a role in formulating solutions.

d. Victim Involvement (if the victim is willing)

If possible, involving the victim in the restorative justice process can help children understand the impact of their actions on others. This can trigger empathy and assist children in building character that involves respect for the rights and feelings of others.

e. Use of Sanction Alternatives

As part of the restorative justice process, alternative sanctions that do not involve imprisonment can be utilized. These sanctions may include apologies, restitution, training, or community service, which can help children understand the consequences of their actions.

f. Collaboration with Experts

Restorative justice often requires collaboration with psychologists, social workers, mediators, and other professionals trained in this approach. They can provide the guidance and support needed to build children's character.

g. Respect for Children

It's important to respect the rights of children throughout the process. This includes the right to be heard, privacy, protection from inhumane treatment, and the right to legal assistance if needed.

h. Social and Emotional Skills Development

Children can be equipped with the social and emotional skills needed to interact effectively within society. This includes skills such as empathy, conflict resolution, and effective communication.

By incorporating the principles of restorative justice into our approach toward children, we can foster the development of responsible, empathetic, and compassionate individuals who respect both their own rights and the rights of others. This approach also offers children the opportunity to correct their mistakes and evolve into productive members of society, demonstrating positive behavior. Consequently, it is anticipated that children in conflict with the law will have their rights safeguarded and be shielded from the detrimental effects of legal proceedings. Although the Juvenile Justice System establishes standardized procedures for trials involving children, such processes may still impact a child's mental well-being and character. In addition to the

trauma caused by the legal process, the stigma of being labeled a “Delinquent Child” may persist, influencing the child’s reintegration into society.

In order to build the character of children in conflict with the law, the Indonesian government has taken concrete steps to implement restorative justice in the juvenile justice system. This approach aims at rehabilitation, social reintegration, and preventing children from becoming repeat offenders. These policies and programs have been implemented:

1) Legal Policies and Regulation

a. The Juvenile Criminal Justice System Law Number 11 of 2012

This policy, which emphasizes a recovery approach over criminal punishment, mandates the use of diversion in situations involving minors who are not major offenders and who face incarceration for fewer than seven years. In order to settle issues, victims, offenders, families, and the community might use a mediation process

b. Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice

This regulation makes it easier for police officers to implement restorative justice in children’s cases. In this case, the police have the authority to divert from the investigation stage to avoid legal proceedings that could damage the child’s future.

c. Supreme Court Circular Letter (SEMA) Number 1 of 2020 on the Implementation of Restorative Justice in Criminal Cases

This policy places greater emphasis on judges considering restorative justice in handing down decisions for children in conflict with the law. Judges are encouraged to prioritize the recovery and rehabilitation of children rather than repressive laws.

2) Implementation of the Diversion and Rehabilitation Program

a. (BAPAS) Child Accompanying Institution

BAPAS is tasked with providing psychosocial assistance and social assessments for children in conflict with the law and assisting children in diversion programs, such as social work or skills training, as an alternative to punishment.

b. Child Protection and Safe House Institute

The government is collaborating with the Indonesian Child Protection Agency (LPAI) and the Ministry of Social Affairs to provide safe homes for children as victims and perpetrators who need rehabilitation. Children who are vulnerable or victims of exploitation will receive guidance and character training at the Safe House.

c. Special Schools and Character Education for Children of Criminals

Children undergoing diversion still have the right to education through special school programs or remedial classes. Schools that collaborate with the government provide a character education curriculum, skills training, and psychosocial guidance.

3) Restorative Justice Prevention and Education Program

The government, together with the Ministry of Law and Human Rights and the Police, has provided education to the public, schools, and law enforcement officers through campaigns and outreach about the importance of restorative justice. This program aims to reduce the stigma towards children who commit crimes and increase social acceptance.

Apart from that, the Ministry of Communication and Information (KOMINFO) has collaborated with the Ministry of Education to provide education about digital ethics to children. This program aims to prevent children from falling into cybercrime, such as cyberbullying, spreading hoaxes, or hacking.

Through the Social Services and Child Protection Institutions, the government provides free psychological assistance and counseling services for children who have experienced trauma or experienced bullying on social media. This is done to help children not experience mental disorders due to bad experiences in the criminal justice system.

In order to refine the programs aimed at character development for children in conflict with the law through restorative justice, it is essential for the government to regularly evaluate and enhance restorative justice policies. Continuous assessment of the effectiveness of restorative justice implementation should be carried out by gathering data from the police, courts, and BAPAS. This will help determine whether diversion and rehabilitation efforts are being executed effectively, ensuring that regulatory improvements are adaptable to emerging challenges, particularly in relation to digital crimes committed by children. Such adjustments will enable the continued application of restorative approaches in new cases. Furthermore, this process should be supported by legal reforms that focus on strengthening diversion mechanisms and reinforcing the role of law enforcement officials in addressing child cases with humanity.

In alignment with the goal of fostering children's character, another crucial aspect that the government must prioritize is the protection and safeguarding of the rights of children in conflict with the law within the framework of restorative justice. Indonesia has made significant progress in this area, particularly with the enactment of Law Number 11 of 2012 on the Juvenile Criminal Justice System, which incorporates the principles of diversion and rehabilitation for children in conflict with the law. However, when compared to international standards, notably the UN Convention on the Rights of the Child (CRC), which Indonesia ratified through Presidential Decree Number 36 of 1990, there remain several gaps, inconsistencies, and challenges in implementation that require attention. First, there is a mismatch with the principle of "The Best Interest of the Child" in Article 3 of the CRC, which states that the child's best interests should always be the primary consideration in any decisions affecting them. However, in practice, this principle is often overlooked in Indonesia's restorative justice system. Currently, diversion is only required for children facing criminal penalties of less than seven years, and not for more serious crimes. This contradicts

the CRC, which recommends applying diversion in all cases except the most severe offenses. As a result, children involved in high-risk crimes, such as narcotics or violence, still face judicial processes that are often harsh and detrimental to their development.

Second, a gap in children's rights to humane treatment and without discrimination (Article 37 CRC), which emphasizes that child detention must be the last option and for the shortest possible time. However, in practice, children are often still detained during the legal process because no system supports effective monitoring of children outside detention. Apart from that, there is still a lack of alternative facilities such as community-based rehabilitation programs or guardianship, which makes legal officials tend to detain children, which is contrary to the principles of the CRC.

Third, there is an inconsistency with the principle of the child's right to participation (Article 12 CRC), which, in this case, emphasizes that children must be given the opportunity to participate in legal processes that concern them. However, in Indonesia, children's involvement in the restorative process is still lacking. Mediation and diversion often focus more on negotiations between the police, prosecutors, and families without actually listening to the child's perspective in full.

The current digital era has brought new challenges to the restorative justice system for children, especially due to the emergence of social media and internet-based crimes. Children must be made the main priority in protection issues. They face various vulnerabilities, especially as internet usage increases.

UNICEF data in 2023 shows that 175,000 children will become new internet users every day or 1 child every second. In Indonesia alone, as many as 30 million children are internet users.⁵⁶ The high number of child internet users presents major

⁵⁶ Direktorat Jenderal Aplikasi Informatika, Kementerian Komunikasi dan Informatika Republik Indonesia, <https://aptika.kominfo.go.id/2023/11/wamenkominfo-ajak-semua-pihak-lindungi-anak-dari-kejahatan-ruang-digital/>

threats and risks, such as exposure to negative content, online bullying (cyberbullying), online gambling, sexual exploitation, and digital fraud (scamming and hacking), so it will present various kinds of challenges in facing the current digital era.

Data from the Indonesian Child Protection Commission (KPAI) recorded that the total number of complaints about cases of pornography and cybercrime or online crimes involving children in 2014 was 322; in 2015, there were 463; in 2016, it increased to 587; in 2017, it became 608; and in 2018, it rose to 679.

One of the most common cybercrime cases experienced by children in Indonesia is cyberbullying. The Indonesian Internet Providers Association (APJII) reports that as of 2021-2022, the 13-18 year age group has the highest internet presentation rate in Indonesia at 98.64%; on the other hand, internet users at school age can open up opportunities for bullying in cyberspace (cyberbullying).⁵⁷ The existence of social media makes it easier for users to carry out cyberbullying, such as uploading cruel posts with the aim of intimidating, insulting, exposing disgrace, and damaging the victim's good name.⁵⁸ Cyberbullying, such as publicity, permanence (a single act that causes repeated harassment through viewing and distribution by others), and online messages can exacerbate the negative effects on a teenager's mental health.⁵⁹

Apart from that, the presence of pornographic content in the TikTok application, Facebook, and other online platforms can also have a negative impact on children's development. Vulgar words, showing men's and women's private parts and other sensitive content, are very easy for all groups to access,

⁵⁷ Aninda Rizki Maulida, dkk. Pengaruh *Cyberbullying* Terhadap Terjadinya Ide Bunuh Diri pada Remaja di SMA Negeri 06 Kabupaten Tangerang, *Gudang Jurnal Ilmu Kesehatan*, Volume 2 Nomor 2; Agustus 2024, hlm 391-396

⁵⁸ *Ibid*

⁵⁹ Maurya, C., Muhammad, T., Dhillon, P., & Maurya, P. (2022). The Effects Of Cyberbullying Victimization On Depression And Suicidal Ideation Among Adolescents And Young Adults: A Three Year Cohort Study From India. *BMC Psychiatry*, 22(1). <https://doi.org/10.1186/s12888-022-04238-x>

especially children. It is not surprising that minors engage in sexually explicit behavior and display pornographic content.

The cybercrimes most commonly reported to the Indonesian Child Protection Commission (KPAI) include the distribution of pornographic videos, sexting (messages containing explicit content), involvement in pornographic groups, and grooming—where an adult establishes online communication with a child to lure, manipulate, or coerce them into sexual activity. Other reported crimes include sextortion, where online dating leads to extortion, online gambling, live video streaming for exploitation, trafficking, and online fraud. Between 2021 and 2023, KPAI received 481 complaints involving child victims of pornography and cybercrime, and 431 cases involving child victims of exploitation and trafficking. The majority of children reported to KPAI are victims of economic and/or sexual exploitation, as well as victims of cybercrimes, particularly online prostitution or pornography (Children Sexual Abuse Material), which contributes to the broader issue of human trafficking (TPPO). According to the Financial Transaction Reports and Analysis Center (PPATK), child pornography and human trafficking alone generated an estimated turnover of Rp. 114 billion.⁶⁰

Based on demographic data released by the Financial Transaction Reports and Analysis Center (PPATK), online gambling players under 10 years old reach 2% of the total players. In total, the demographics of online gambling players are approximately 4,000,000 (four million) people, grouped based on age categories: 2% under 10 years old and 11% aged 10-20 years. This online gambling activity involves children as

⁶⁰ Publikasi Berita Komisi Perlindungan Anak Indonesia, Siaran Pers, 24 Desember 2024. <https://www.kpai.go.id/publikasi/tingginya-angka-anak-yang-terlibat-dalam-dunia-digital-kpai-desak-presiden-segera-mengesahkan-peraturan-pemerintah-tentang-tpkapse>

perpetrators, victims, witnesses, and children of gambling perpetrators.⁶¹

Of the large number of children who are victims of cybercrime in Indonesia, without regulations that can cover all cases in the digital era, as explained previously, children can be exposed to various dangerous risks both from a psychological, social, and even data security perspective. There are still several gaps in the regulations and implementation of restorative justice for digital cases involving children. There are no specific provisions regarding the handling of children involved in cybercrimes as contained in the Juvenile Criminal Justice System Law. Apart from that, there are no rehabilitation guidelines for child perpetrators and victims of digital crime. Judging from the diversion system, it has not been adapted to technological developments, so legal officials are often confused about handling digital cases with a restorative approach.

The recommendations for restorative justice reform in digital cases, as well as fulfilling children's rights and protection from cybercrimes, are as follows:

Renewing regulations in the SPPA Law and ITE Law through the preparation of special rules for digital crime cases involving children, both as victims and perpetrators. As well as ensuring that children who are perpetrators of cybercrimes continue to receive restorative justice-based treatment;

- a. Strengthening Digital Literacy for children (increasing education about digital safety and social media ethics in schools) and for law enforcement officers (training law enforcement officers on handling child cybercrime cases using a restorative justice approach)
- b. The Ministry of Communications and Digital of the Republic of Indonesia must develop digital safety

⁶¹ Siaran Pers Nomor: B-191/SETMEN/HM.02.04/6/2024, Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia, <https://www.kemenpppa.go.id/page/view/NTI5MQ==>

standards for Social Media Platforms that require social media and applications widely used by children such as TikTok, Instagram, YouTube, and WhatsApp) to have stricter child protection features such as automatic filters against dangerous content, deletion of anonymous accounts used for cyberbullying, and a faster and child-friendly reporting system.

The Ministry of Communication and Digital of the Republic of Indonesia is encouraged to strengthen cooperation with Global Digital Platforms by coordinating with Google, Meta, TikTok, and Twitter so that child protection regulations in Indonesia can be implemented more effectively on their platforms.

Conclusion

Trough Law Number 11 of 2012, the restorative justice approach and diversion process have been prioritized as key measures in addressing criminal acts committed by children. This law mandates that restorative justice must be the central consideration in resolving juvenile cases, whether during the Pre-Adjudication stage (investigation and inquiry), the Adjudication stage (prosecution and trial), or the Post-Adjudication stage (execution of sentences). This approach takes into account various factors, such as the child's age at the time of the offense, family background, social environment, education, the nature of the crime, and other significant influences on the child's behavior and attitude. By removing children from the judicial process, the goal is to protect and help them develop into individuals of good character. A key element of this reform is preventing children from undergoing the trial process, which is expected to safeguard their well-being and facilitate their transformation into responsible individuals despite their conflict with the law.

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