

Sounding the Justice for Child: Does Restorative Justice Matters?

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Abstract

Restorative justice is gaining relevance in Indonesia as an alternative approach to resolving legal cases, focusing on restoring relationships among perpetrators, victims, and society. It aims to address the needs, rights, and welfare of children, allowing child offenders to take responsibility for their actions and repair the harm caused. The successful implementation of restorative justice in Indonesia includes facilitating dialogue between victims and perpetrators, aiding victims' emotional recovery, and engaging children in behavior improvement activities. However, challenges persist in raising awareness and garnering support from the community and justice system, necessitating proper training for an equitable and effective process. While restorative justice serves as a valuable means of providing justice for children, it may not be suitable for all cases, occasionally undermining justice for child victims. This paper analyzes how restorative justice can offer justice to children in Indonesia and delves into legal reform, particularly in juvenile delinquency, concerning the application of this approach. Nonetheless, it acknowledges that in specific

instances, restorative justice might prove inappropriate, potentially compromising a sense of justice, especially for child victims.

Keywords

Restorative Justice, Child Protection, Legal Reform, Justice, Criminal Justice Reform

Introduction

Children are considered the most precious resource of a nation, and thus, the state is responsible for ensuring their fundamental rights are protected. In Indonesia, the constitution of the Republic of Indonesia guarantees the rights of children, encompassing their right to survival, growth, development, and protection from violence and discrimination. The legal framework further solidifies children's rights, with Law No. 35 of 2014 on Child Protection and Presidential Decree No. 36 of 1990 affirming Indonesia's commitment to the Convention on the Rights of the Child.¹ These regulations collectively emphasize the significance of safeguarding and promoting the well-being of

¹ The 8 Fundamental Rights of the Child, outlined in the Convention on the Rights of the Child, find application, implementation, and interpretation through the framework of 4 Guiding Principles. These principles are essential in guiding and determining actions concerning children's rights: the principle of non-discrimination ensures equal treatment for every child; the principle of the best interests of the child places the child's well-being as the primary consideration; the principle of life, survival, and development focuses on protecting and promoting a child's growth; and the principle of inclusion and participation empowers children to be actively involved in decisions that affect them. Through the lens of these principles, the Convention seeks to secure and uphold the rights of children, safeguarding their dignity, welfare, and prospects for a better future. *See* Thomas Hammarberg, "The UN convention on the rights of the child--and how to make it work." *Human Rights Quarterly* 12, No. 1 (1990): 97-105; Laura Lundy, "'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child." *British Educational Research Journal* 33, No. 6 (2007): 927-942. *See also* Oksidelfa Yanto, et al. "Legal Protection of the Rights of the Child Victims in Indonesian Juvenile Criminal Justice System." *Jurnal Yustika: Media Hukum dan Keadilan* 23, No. 1 (2020): 24-35; Ratri Novita Erdianti, and Sholahuddin Al-Fatih, "Fostering as an Alternative Sanction for Juveniles in the Perspective of Child Protection in Indonesia". *Journal of Indonesian Legal Studies* 4, No. 1 (2019): 119-128; Wikan Sinatrio Aji, "The Implementation of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia". *Journal of Indonesian Legal Studies* 4, No. 1 (2019): 73-88.

children, underscoring the nation's dedication to nurturing and safeguarding its youngest citizens.

Regardless of the state's efforts to guarantee children's rights, cases of children committing crimes—one of which is gambling—are not uncommon in Indonesia, which is considered a crime under Article 303bis of the Criminal Code. These legal provisions reflect the nation's seriousness in maintaining the welfare of children and keeping them away from behavior that violates the law.²

However, it is very important to recognize that children who commit crimes may not be of their own free will but may be influenced by various factors, including family and environmental influences.³ However, according to Indonesian law, when someone commits a crime, they must be held accountable, as well as the perpetrators of child crimes. Holding children accountable for their actions may involve a combination of appropriate preventive measures and punishments, aimed at effectively coping with their

² Children engaging in criminal activities, such as gambling, is a multifaceted issue with significant implications for their well-being and society. Several factors contribute to this phenomenon, including peer pressure, lack of supervision, socioeconomic hardships, and online influences. To address this concern effectively, a comprehensive approach is required. Prevention and education efforts can empower children to make informed decisions and resist negative influences, while promoting stable and supportive family and community environments can reduce vulnerability. Early intervention and rehabilitation programs are vital for child offenders, focusing on addressing root causes and facilitating successful reintegration into society. Strengthening legal frameworks to emphasize restorative justice and rehabilitative measures over punitive approaches is crucial. By tackling these underlying causes and providing support and guidance, society can create a safer environment for children, enabling them to make better choices and thrive as responsible citizens. See Komang Wisnu Adnyana, Putu Sugi Ardana, and I. Nyoman Lemes. "Pemidanaan Terhadap Pelaku Perjudian yang Dilakukan Anak-Anak (Studi Kasus di Pengadilan Negeri Singaraja)." *Kertha Widya* 2, No. 2 (2014); Ramdani Budiman, et al. "The Impact of Online Gambling Among Indonesian Teens and Technology." *IAIC Transactions on Sustainable Digital Innovation (ITSDI)* 3, No. 2 (2022): 162-167; Novelina Hutapea, and Humala Sitinjak. "Legal Efforts in Preventing Criminal Act of Gambling by Children." *European Journal of Political Science Studies* 3, No. 2 (2020); Zulva Hayati, "How Parents Involved in Their Children's Trial? A Book Review 'Peranan Orang Tua dalam Proses Persidangan Tindak Pidana Perjudian yang Dilakukan oleh Anak', Lanka Asmar, 2017, CV Mandar Maju, Bandung, 181 Pages, ISBN: 978-979-538-460-1". *Indonesian Journal of Advocacy and Legal Services* 1, No. 2 (2019): 275-278; Novem Ollyvia Rossa, Rizky Nurmalasari, Larasati Prameswari, and Annisa Diana Savella. "Gambling (Judi Togel) in Criminology Perspective (Study in Diponegoro and Peterongan Stadium in Semarang City)". *Law Research Review Quarterly* 6, No. 2 (2020): 157-172.

³ Rolf Loeber, and David P. Farrington. "Young Children Who Commit Crime: Epidemiology, Developmental Origins, Risk Factors, Early Interventions, and Policy Implications." *Development and Psychopathology* 12, No. 4 (2000): 737-762; Sulistya Eviningrum, "Educative Penalty System as a Protection Implementation for Children who Commit Crime." *Journal of Morality and Legal Culture* 1, No. 1 (2020): 38-44.

behavior. By recognizing the underlying causes of the involvement of children in criminal activity and adopting a balanced approach to accountability, the justice system can work to effectively rehabilitate and support young offenders while reinforcing the importance of protecting the rights and well-being of children.

In imposing punishments on children, law enforcement officials are obliged to prioritize the principles of child protection, including: non-discrimination, aiming at the best interests of the child and also aspects of child development. So that thus emerged the concept of Restorative Justice contained in Law No. 11 of 2012 concerning Juvenile Justice. Provisions regarding Restorative Justice itself are regulated in Article 1 point 6 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.⁴

Restorative justice, also known as reparative justice, is an approach to justice that goes beyond legal provisions and traditional sentencing. It centers on the needs of victims, perpetrators, and the community, aiming to address the aftermath of crimes holistically. Victims are actively involved in the process, while offenders are encouraged to take responsibility for their actions by making amends, such as apologizing, restitution, or community service. Restorative justice empowers victims, perpetrators, families, and society to work together in correcting the harm caused by unlawful acts, fostering awareness and conviction as the basis for improving social life. Essentially, it emphasizes the recovery of losses resulting from criminal acts and seeks to prevent future offenses. By focusing on the needs of all parties involved, restorative justice offers a transformative and forward-looking approach to addressing crime and building a safer, more resilient society.

Method

In the case of restorative justice for children, qualitative research methods prove invaluable due to the intricate nature of the subject matter. Restorative justice involving children requires a nuanced understanding of their unique circumstances, vulnerabilities, and needs. Conducting direct interviews with children, victims, families, and other stakeholders involved in the process can

⁴ Loura Hardjaloka, "Criminal Justice System of Children: An Overview Restorative Justice Concept in Indonesia and Other Countries." *Jurnal Dinamika Hukum* 15, No. 1 (2015): 73-81; Virginia Garcia, Hari Sutra Disemadi, and Barda Nawawi Arief. "The Enforcement of Restorative Justice in Indonesia Criminal Law." *Legality: Jurnal Ilmiah Hukum* 28, No. 1 (2020): 22-35; Nur Rochaeti, and Nurul Muthia. "Socio-Legal Study of Community Participation in Restorative Justice of Children in Conflict with the Law in Indonesia." *International Journal of Criminology and Sociology* 10 (2021): 293-298; Ika Darmika, "Diversion and Restorative Justice in the Criminal Justice System of Children in Indonesia." *Ijtima'iyya: Journal of Muslim Society Research* 3, No. 2 (2018): 180-211.

provide a deeper insight into their perspectives and experiences. Qualitative methods allow researchers to capture the authentic voices of the participants, ensuring that their voices are heard and considered in the development and implementation of restorative justice programs.

Furthermore, the normative juridical approach complements the qualitative methods by analyzing the reciprocal relationship between legal norms and social factors in the context of restorative justice for children. It examines how the legal framework impacts social phenomena related to child offenders and victims. This approach helps in assessing the effectiveness of restorative justice practices in promoting accountability, rehabilitation, and healing for all parties involved.

By combining qualitative research methods and the normative juridical approach, scholars and practitioners can gain a comprehensive understanding of the challenges and potential solutions for implementing restorative justice for children effectively. This holistic approach considers not only legal aspects but also the social and emotional dynamics that are integral to the well-being and development of young individuals. Ultimately, it supports the advancement of restorative justice practices tailored to the specific needs of children, empowering them to find positive paths forward while promoting a more just and compassionate society.

Position of Victims in Criminal Justice System in Indonesia: Child as a Victim

Before the reform era, victims were often overlooked and not considered an integral part of the criminal justice process in Indonesia. Their position within the criminal justice system and judicial practice received minimal attention, as the prevailing focus was on protecting the offenders (offender-oriented) based on Indonesian law provisions. However, from a criminological and criminal law perspective, crime is a conflict between individuals that results in harm to victims, society, and even the offenders themselves. Consequently, the interests and needs of crime victims should be given priority and recognized as a crucial aspect of addressing criminal acts.⁵ Acknowledging the significance of victims'

⁵ Bambang Julianto, "Perlindungan Hukum Terhadap Saksi dan Korban dalam Sistem Peradilan Pidana di Indonesia." *Lex Renaissance* 5, No. 1 (2020): 20-31; Santriana Santriana, Desi Anisah, and Satria Indra Kesuma. "Crime Victims in Indonesia's Criminal Justice System Based on The Criminal Procedure Law (KUHP)." *Jurnal Hukum dan Sosial Politik* 1, No. 3 (2023): 90-98; John Kenedi, "Constitutional Protection for Crime Victims and Witnesses in Indonesia and Its Problems." *MIMBAR: Jurnal Sosial dan Pembangunan* 36, No. 1 (2020): 53-62.

rights and ensuring their inclusion in the criminal justice process is essential for fostering a more just and comprehensive approach to addressing crime and promoting overall societal well-being.

The current criminal justice system is too focused on perpetrators and pays little attention to victims. What often happens is that the involvement of the victim in the criminal justice system only adds to the trauma and increases their feeling of helplessness and frustration because they are not given adequate protection and legal remedies. Victims of crime are basically the parties who suffer the most in a crime, because they do not get as much protection as provided by law for the perpetrators of crime. As a result, when the perpetrators of crimes have been sentenced to criminal sanctions by the court, the condition of the victims of crime seems to be ignored at all. In fact, the problem of justice and respect for human rights does not only apply to perpetrators of crimes but also victims of crimes.

Shifting from retributive justice to restorative justice represents a fundamental change in the underlying philosophy of positive law legislation, particularly within criminal law and the criminal justice system. This change brings forth a fresh perspective that prioritizes the interests and suffering of both victims and offenders. Under restorative justice, justice in criminal law is oriented towards understanding the consequences of the offender's actions, holding them responsible for their behavior. Furthermore, restorative justice recognizes that crime is a violation between individuals, leading to harm inflicted upon victims, society, the state, and even the offenders themselves. As a result, the administration of criminal justice becomes a means of conflict resolution, and punishment takes on the role of resolving conflicts and holding offenders accountable for their actions. In this process, all parties involved, including victims, society, the state, and offenders, actively participate, fostering a more collaborative and comprehensive approach to justice within the criminal justice system.

The fundamental idea that the primary stakeholder seeking justice in criminal law is the victim of a crime can serve as a compelling basis for advocating a victim-oriented criminal procedural reform policy. This approach aligns with the principle that criminal law and criminal procedural law aim to protect the human rights of all individuals, not just those suspected of committing crimes. It emphasizes safeguarding individuals from arbitrary actions by law enforcement authorities, whether they are accused of violating criminal laws or have become victims of such violations themselves. By prioritizing the needs and rights of crime victims, a victim-oriented criminal procedural reform policy can foster a more equitable and just system that

ensures all parties involved are treated fairly and with respect for their human rights.⁶

The position of victims in the criminal justice system is not profitable for victims of criminal acts, because they collide with a fundamental problem, namely victims. Victims of crime are placed as evidence giving information, namely only as witnesses (168 KUHP) so that the possibility of obtaining freedom in fighting for their rights is very small. Victims are not part of the elements involved in the criminal justice system, unlike the accused, police, prosecutors, judges. The arrangement of the rights of the victims contained in the Criminal Procedure Code, it can be said that the arrangements for the rights of victims are very minimal compared to the arrangements regarding the rights of perpetrators of criminal acts.⁷

The protection of victims in this context means continuing to place the interests of the victim as an absolute part that is considered in the process of resolving criminal cases, such as allowing the victim to control a case that places him/herself as a victim, namely being able to carry out pre-trial efforts, if an investigation or prosecution stops a case. This is a form of protection because the granting of this right of control can guarantee that the criminal case in question can be resolved based on the applicable legal provisions. Furthermore, apart from that the Criminal Procedure Code also provides an opportunity for the victim to file a claim for compensation which is combined with the criminal case in question as stipulated in Article 98 to Article 101 of the Criminal Procedure Code.⁸

The existence of juvenile justice provides awareness if Indonesia understands that children are very important for the advanced generation, therefore it is hoped that children will get their rights to get protection in the legal system. With Indonesia formulating children's rights, it has become a marker for child protection arrangements, both as victims and perpetrators.

Arrangements for victims of crime in criminal justice are inseparable from the state of the criminal justice system adopted by the country concerned. In the Continental European System, criminal justice is not in the nature of an argument between two interests, namely the individual interests of the perpetrators and the interests of the State that represents the victim, but rather emphasizes seeking material truth. In this system, the emergence of a third

⁶ Mudzakkir, "Kedudukan Korban Tindak Pidana dalam Sistem Peradilan Pidana Indonesia Berdasarkan KUHP dan RUU KUHP," *Jurnal Ilmu Hukum* 14, No. 1 (2011): 28–62.

⁷ Ni Putu Rai Yuliantini, "Kedudukan Korban Kejahatan dalam Sistem Peradilan Pidana di Indonesia Berdasarkan Kitab Undang-Undang Hukum Acara Pidana (KUHP)," *Jurnal Komunikasi Hukum* 1, No. 1 (2015): 83–94.

⁸ Lilik Mulyadi, "Upaya Hukum yang Dilakukan Korban Kejahatan Dikaji dari Perspektif Sistem Peradilan Pidana dalam Putusan Mahkamah Agung RI." *Jurnal Hukum dan Peradilan* 1, No. 1 (2012): 1-34.

party which in this case is the victim is still possible as long as it does not interfere with the course of the judicial process. This model of the justice system is also adopted by the Indonesian criminal justice system, this can be seen from the inclusion of conditional sentences in the provisions of Article 14 c of the Criminal Code which authorizes judges to impose conditional sentences with general and special conditions that must be met during the probationary period. where in the special conditions it gives an obligation for the convict to compensate for losses. The obligation to indemnify the convict as a result of the crime he has committed is given a certain period of time.⁹

Victims as a party harmed by an isolated crime, do not receive any attention at all, moreover with increased attention to the development of prisoners which is often interpreted as something related to fulfilling the interests of victims. Therefore, it is not surprising that attention to victims is increasingly away from criminal justice. For this reason, it is important to provide assistance to victims of crime, because they are the ones who suffer the most as a result of a crime and often victims are powerless to overcome what they are experiencing, both physically and financially.

The victim's position still requires critical assessment. We need sensitivity to recognize the diversity and intersectionality of victims of crime and their needs. Not all of them are weak, but there are many groups and individuals who, because of social position, personal history, or other reasons, need special support and assistance. Law enforcement should strive to recognize the diversity of victims and their diverse needs in order to better support them. Sensitivity and vigilance are needed to identify problems and dynamics that hinder individual victims from getting help, acting rationally, and achieving their rights.¹⁰

The Directive on Minimum Rights has the main objective of ensuring that victims of crimes receive appropriate information, support and protection and are able to participate in criminal proceedings.¹¹

Legal Protection for Perpetrators and Victims of the Crime of Gambling According to the Child Protection Act

⁹ Alen Triana Masania, "Kedudukan Korban Kejahatan Dalam Sistem Peradilan Pidana," *Lex Crimen* 4, No. 7 (2015): 12–18.

¹⁰ Heini Kainulainen, Päivi Honkatukia, and Johanna Niemi, "The Invisible Victim in Criminal Policy," *Bergen Journal of Criminal Law & Criminal Justice* 9, No. 2 (2022): 21

¹¹ Annika Elisabet Suominen, "What Role for Legal Certainty in Criminal Law Within the Area of Freedom, Security and Justice in the EU?," *Bergen Journal of Criminal Law & Criminal Justice* 2, No. 1 (2014): 1.

Children are indeed the hope of the nation and future leaders. However, oftentimes children are faced with legal proceedings that end up being sentenced to years in prison. Crimes committed by children are of course caused by various factors, especially the declining economic, educational and social conditions of Indonesia that encourage them to commit crimes. Departing from this, children who are in conflict with the law are often called naughty children and must be interpreted as victims. Not only is being a victim what drives them to commit crimes, children then become victims again when they are faced with the law or the justice system. Children not only lose their freedom, but often lose their other rights, such as not getting legal assistance or companions, being subjected to torture,¹²

In the context of legal liability, particularly in criminal law, the age limit becomes very important. It is considered as a measure of whether a person is considered by law to be responsible or not. Criminal acts committed by minors who have not been able to clearly distinguish the consequences of their criminal actions with a clear condition of ability/awareness that they have committed a crime. This happens because both children are psychologically and biologically not yet able to maintain their responsibility of awareness.

Juridically, laws and regulations in Indonesia provide different limits on children's understanding. The most basic principle that distinguishes a child from an adult is age and legal action (having been married) before adulthood. Several laws provide different limits on the age limits of children so that their rights and obligations are relatively different.¹³

A child is treated specifically because considering that his development is not yet full, it will affect the child's psychology in several ways. So that it absolutely requires "special treatment" including special protection, especially in actions that can harm mental and physical development. Special treatment starts from detention, namely being held separately from adults, in order to prevent children from being exposed to bad influences that can be absorbed due to social contact, special treatment is applied to the entire criminal process, investigated using an effective, affective and sympathetic approach.¹⁴

The causes of gambling are caused by environmental factors and family factors, while accountability for the perpetrators of criminal acts is carried out through the process of solving crimes by submitting a person before the court

¹² Laurensius Arliman, "Perlindungan Hak Anak Yang Berhadap Dengan Hukum Di Wilayah Hukum Polisi Resort Kota Sawahlunto," *Lex Jurnalica* 14, No. 2 (2017): 94.

¹³ Frans Simangunsong, "Problems of Diversion System Application in The Case of Children as Actorscrime of Narcotics Are Based Restorative Justice," *SHS Web of Conferences* 54 (2018): 08001.

¹⁴ Wiwik Afifah and Gusrin Lessy, "Perlindungan Hukum Terhadap Anak Sebagai Saksi Dalam Sistem Peradilan Pidana Anak," *DiH: Jurnal Ilmu Hukum* 10, No. 20 (2014),

to obtain accountability for his actions which will then end in a criminal verdict, free from all lawsuits or acquittal is due to an indication or designation that the person has committed an act of which he is accused. Accountability is an act that must be accounted for that has been committed, namely an act that is disgraceful to the community and that is accounted for by the maker, in other words, a mental error that can judge, determine his will regarding criminal acts committed based on decisions that have permanent legal force. The existence of criminal liability must be clear in advance who can be held accountable. This means that it must be ascertained who is the author of a crime. Regarding criminal responsibility for the perpetrators of the crime of gambling committed by minors, the defendant's actions unlawfully deliberately violated the applicable provisions, which after the examination process was held against the defendants.¹⁵

The Juvenile Criminal Justice System Law (hereinafter as *SPPA Law*) was born with norms that included more principles and values in the Convention on the Rights of the Child as well as other instruments in developing ideas about human rights, especially those relating to children's rights. What is special is that the SPPA Law dares to incorporate a law enforcement paradigm with a new approach to justice, which inevitably demands the full commitment of law enforcement officials to be actively involved in resolving children's problems. The SPPA Law also uses a double track sentencing system while the Criminal Code has only implemented the same system but until now it is still in draft form, so the SPPA Law has taken several steps forward. The forms of sanctions and criminal acts used in the SPPA Law reflect the goals of punishment following penal reform by adhering to the neoclassical school, acknowledge the principle or mitigating circumstances of sentencing, based on objective circumstances and taking into account individual needs. coaching. from criminals. The new type of justice promoted by the SPPA Law is a model of justice that will always deal with a retributive justice model. Restorative justice was born from the reaction of the Abolitionists who considered that penal means contained structural problems or defects, and did not encourage criminals to become good people again. based on objective circumstances and considering the need for individual guidance from perpetrators of criminal acts. The new type of justice promoted by the SPPA Law is a model of justice that will always deal with a retributive justice model. Restorative justice was born from the reaction of the Abolitionists who considered that penal means contained structural problems or defects. and not encourage evildoers to become good people again. based on objective circumstances and considering

¹⁵ Bambang Hartono, "Analisis Terhadap Terjadinya Tindak Pidana Perjudian yang Dilakukan oleh Anak Dibawah Umur" *Pranata Hukum* 9, No. 1 (2014): 41–48.

the need for individual guidance from perpetrators of criminal acts. The new type of justice promoted by the SPPA Law is a model of justice that will always deal with a retributive justice model. Restorative justice was born from the reaction of the Abolitionists who considered that penal means contained structural problems or defects, and did not encourage criminals to become good people again.¹⁶

In particular, children preferred restorative treatment over retributive treatment in property violation and damage scenarios, and their support of apology, a type of psychological recovery, developed with age. We also observed that children's preference for restorative treatment was related to their judgments about the moral acceptability of the offense and could be influenced by knowledge of the victim's or offender's difficult background. In addition, children also broaden their preferences for restorative treatment for community-level involvement.¹⁷

Gambling is an act that is contrary to religious, moral and legal norms and has a negative impact on the economy. Whatever it is, there are still many types and forms. Gambling nowadays that we find in people's lives, whether it is done openly or secretly. Gambling game service providers usually make it easy for perpetrators to carry out gambling transactions.

In Chapter XIV of the Criminal Code regarding crimes against decency, Article 303 paragraph (3) of the Criminal Code explains the meaning of gambling referred to in paragraph 1). What is meant by gambling is in any game where in general the possibility of profiting depends on sheer luck, also because the players are either better trained or more skilled. Regulations regarding the second gambling crime that apply in Indonesia are regulated in Law Number 7 of 1974 concerning Gambling Control. This law states that all gambling activities are a crime. The third regulation regarding criminal acts of gambling in Indonesia is regulated in Government Regulation Number 9 of 1981 concerning Implementation of Law Number 7 of 1974 concerning Gambling Control.¹⁸

Law enforcement for the protection of children as victims of cybercrime is not effective. This is because the problem of preventing and eradicating cybercrime must be a priority for the government and law enforcement, as well as all levels of society. Children in their immature position and do not yet have

¹⁶ Yusuf Ronny Edward, H Adam Afiezan, and Aremi Evanta Tarigan, "International Journal of Social Science Research and Review Exchange Period 2019 -2021," *International Journal of Social Science Research and Review* 5, No. 10 (2022): 381-396.

¹⁷ Zheng Zhou and Wan Chi Wong, "Young Children's Understanding of Restorative Justice," *Frontiers in Psychology* 12, No. September (2021): 1-14.

¹⁸ Novelina Hutapea, and Humala Sitinjak. "Legal Efforts in Preventing Criminal Act of Gambling by Children." *European Journal of Political Science Studies* 3, No. 2 (2020).

the maturity of soul, mind and understanding must always be a priority for the realization of their protection, in the best interests of the child. The rise of cybercrime requires energy and synergy related to legislation, and the good intentions of law enforcers and all levels of society, including most importantly parents and families. Those laws and regulations that Indonesia already has must be operationalized intelligently and efficiently. although many have experienced difficulties because their distribution in various laws is not well integrated. It still requires more interpretation to be implemented efficiently. Law enforcement, legal substance, facilities and infrastructure, coordination between agencies, and community support factors show a lack of efficiency. Therefore, it is necessary to improve in the future, so that law enforcement against cybercrime perpetrators who result in child victims can be overcome.¹⁹

Application of the Principles of Restorative Justice to Children as Gambling Offenders

Special legal provisions regarding children who commit criminal acts are regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The difference in treatment lies in the procedural law and the criminal threat. This includes a change in the model of retributive justice to restorative justice.

One of the efforts that can be made to resolve cases of criminal gambling committed by children is with a restorative justice approach, namely through the diversion process, where diversion itself aims to prevent children who are in conflict with the law, free from the judicial process, and avoid criminal labels and negative stigma, so that these children can return to society properly. Apart from that, diversion also aims to provide protection and rehabilitation to perpetrators as an effort to prevent children from becoming adult criminals.

The implementation of Restorative Justice in the juvenile justice system which is carried out by means of diversion is stipulated in the Juvenile Criminal Justice System Act in Article 12 and Article 52 which refers to processes carried out other than diversion and mediation. In mediation there is a mechanism, namely deliberation to find a solution to the problem which is carried out by meeting the parties involved: the perpetrator, the victim, and other parties involved. The number of problems in the application of restorative justice in the administration of the juvenile justice system means that the form of protection for the authority of children in conflict with the

¹⁹ Hardianto Djanggih et al., "The Effectiveness of Law Enforcement on Child Protection for Cybercrime Victims in Indonesia," *Journal of Physics: Conference Series* 1028, No. 1 (2018), <https://doi.org/10.1088/1742-6596/1028/1/012192>.

law has not become a major trend. Legal policies that have been made for litigants are still difficult to implement.²⁰

The SPPA Law states that arrest, detention and imprisonment are the last resort in resolving crimes involving children. Apart from that, the formal justice process by imposing criminal penalties on children is not the best solution in solving juvenile criminal cases, and also a child should not be brought to trial, because children will find it difficult to understand the intent and purpose of the trial. During its formation, the Juvenile Criminal Court has the goal of realizing criminal justice that guarantees the best interests of children, but in reality, the current juvenile criminal justice system in Indonesia has not been able to provide protection and justice for children.²¹

In Law no. 11 of 2012 concerning the Juvenile Justice System uses the term child in conflict with the law. A child in conflict with the law is a child aged 12 (twelve) years but not yet 18 (eighteen) years old who is suspected of committing a crime. A child in conflict with the law can be defined as a child who is suspected, accused, or recognized as a child who has violated the Criminal Code. This is regulated in article 40 paragraph (1) of the Convention on the Rights of the Child. (Rika Saraswati: 2009, 113) In the perspective of the Convention on the Rights of the Child, children who are in conflict with the law are categorized as children in special situations. Based on Article 59 of Law No. 35 of 2014 concerning Child Protection, children who are in conflict with the law are part of the children who need special protection. Children in conflict with the law are children whose needs are not met, often experience acts of violence, are outside the family environment and need protection and security. The role of parents is needed in terms of fostering and providing protection to children. According to Article 26 paragraph (1) letter a of Law No. 23 of 2002 concerning Child Protection that "*Parents are obliged to care for, care for and protect children*".

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System was made to provide a sense of justice to children, provide opportunities for children to participate in resolving conflicts, and be responsible for what they have done, because in it there is diversion through the Restorative Justice approach which emphasizes restoration to its original state.

The concept of Restorative Justice has the basic understanding that crime is an act against people or society and is related to violations as a violation of legal norms. The concept of restorative justice implemented in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System has a juridical basis.

²⁰ Zulita Anatasia, "Diversion Against Crime by Children Confronting the Law to Achieve Restorative Justice," *Pancasila and Law Review* 1, No. 2 (2021): 149.

²¹ Roganda Artha Millenia, "Penegakan Hukum Terhadap Anak Sebagai Pengedar Narkotika". *Thesis*. (Yogyakarta: Universitas Atma Jaya Yogyakarta, 2021).

Article 28 paragraph (2) of the 1945 Constitution states that "every child has the right to survival, growth and development, and has the right to protection and discrimination". This is described in Law No. 39 of 1999 concerning Human Rights and Law No. 23 of 2002 concerning Child Protection. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System was made in accordance with the Convention on the Rights of the Child which was ratified by the government of the Republic of Indonesia by Presidential Decree Number 36 of 1990.²²

Participating in the mediation process allows both parties to express their perspectives on the events, fostering an open exchange of information that enables them to reach an agreement based on their genuine needs and interests. The success of mediation lies in the voluntary settlement reached by the parties, ensuring that the obligations are reasonable and proportionate. Victims are often drawn to the timely and complete fulfillment of the mediation settlement by the perpetrator. However, in cases where the perpetrator fails to meet their obligations promptly or fully, it becomes essential to include enforceable and monitorable provisions in the mediation settlement. Ongoing monitoring, typically the responsibility of the mediator, ensures the perpetrator complies with the agreed-upon obligations. Although mediation can impact subsequent court decisions, it is essential to uphold the standards of mediator practice and provide legal safeguards for all parties involved. This highlights the necessity for judicial control and supervision to ensure the fairness and efficacy of the mediation process and its outcomes. By maintaining a balance between the flexibility of mediation and the need for legal oversight, the justice system plays a vital role in safeguarding the rights and interests of all parties in the mediation process.²³

Efforts to apply restorative justice mean that not every case has to be done by returning children to their parents, because there are several things that need attention, such as; a) is the first perpetrator of a child, b) the child is still at school age, c) the crime is not a serious crime, d) a crime that results in loss of life, e) a crime that results in serious injury or lifelong disability, or f) a crime that causes anxiety or disturbance to society. Anticipation to avoid the negative impact of the criminal justice system on children can be done with actions or policies that handle these cases without going through a criminal process. The judicial process can have physiological effects on children. They will experience

²² Halimah Humayrah Tuanaya, Nursolihi Insani, and Ari Widiarti, "Analisis Penerapan Prinsip Keadilan Restoratif Pada Anak Pelaku Tindak Pidana Perjudian," *Rechtsregel: Jurnal Ilmu Hukum* 4, No. 1 (2021): 54.

²³ Barbara Jadwiga Pawlak, "The Enforceability of the Victim–Offender Mediation Settlement in the Context of the Idea of Restorative Justice." *Studia Iuridica Lublinensia* 27, No. 3 (2018): 109-127.

pressure and stigmatization during the process. Therefore, all forms of activities carried out during the process must be based on the principles of the welfare and interests of the child. Forms of juvenile delinquency are divided into three criteria; incidental, occasional, and habitual indicating high, moderate and low levels of conformity. Another scientific classification uses a tripartite classification, namely historical, instinctual, and mental.²⁴

In the further context, restorative justice represents a paradigm shift in sentencing objectives, departing from the traditional focus on law enforcement rooted in legal positivism. Instead, it examines the foundation of law through local wisdom values, such as customary law, and the sense of justice prevailing in society. The primary aim of restorative justice is to facilitate dialogue and consensus among victims, perpetrators, and community members. Law enforcement officers, including the police, prosecutors, and courts, guide this process. Notably, in certain situations, such as cases involving minors, misdemeanors, or women, the submission of case files to the prosecutor's office becomes unnecessary when Restorative Justice agreements are reached at the police level. A crucial aspect of restorative justice is resocialization, wherein perpetrators assume responsibility as citizens by offering reparations to crime victims, fostering a healing relationship between the parties involved. To effectively implement restorative justice, the principle of "rule of law" must be upheld throughout the criminal case settlement, ensuring the protection of the rights of suspects, defendants, or convicts. By adhering to the rule of law, restorative justice can effectively promote a more compassionate and just approach to addressing criminal cases.²⁵

Gambling is a deliberate betting that is risking one value or something that is considered valuable by realizing certain risks and expectations in game events, matches, competitions and events that are not or are uncertain of outcome. In the beginning, gambling was a form of leisure time, games to entertain the heart, but gradually money was added as a bet. Forms of gambling include games, card bridges and dominoes. There are several ways to deal with gambling, among others: Realizing a comprehensive improvement of the national economy, b. Providing a place for healthy entertainment and recreation, and c. The prohibition of gambling practices is accompanied by preventive and repressive measures (punishments and sanctions). Education is a social control that has been institutionalized both in the family environment and in the community environment. Education leads a person to be

²⁴ RR Dewi Anggraeni, Iman Imanuddin, and M. Aidil. "The Application of Restorative Justice Toward Children as Criminal in Indonesia." *Acta Universitatis Danubius. Juridica* 17, No. 3 (2021).

²⁵ Fauziah Lubis, "Implementation of Restorative Justice, The Intent of Punishment, and Legal Clarity in Indonesia," *Russian Law Jurnal* 11, No. 3 (2023): 813–823.

responsible and useful for his religion, nation and people. School education does not only teach knowledge and skills, but also discipline for discipline and order in social life. Behavior is behavior or behavior carried out by a person or group of people who violate the norms, values and norms that apply in society which results in disruption of public order and security. This behavior is generally caused because individuals or groups cannot absorb values and norms into themselves,²⁶

Conclusion

This research highlighted and concluded that under Article 9 paragraph (2) of the Juvenile Criminal Justice System Law, victimless crimes such as gambling do not require the involvement or consent of a victim for the diversion process. Instead, the diversion process primarily includes the child offender, their parents or guardians, social counselors, and social workers. Diversion aligns with the principles of children's rights in conflict with the law, seeking to uphold restorative justice focused on restoration rather than retribution. It involves redirecting the resolution of child cases away from the criminal justice system and towards alternative processes, as mandated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The objective of diversion is to promote a more rehabilitative and restorative approach, allowing for the resolution of child cases outside the traditional criminal justice process, emphasizing rehabilitation and reintegration into society.

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²⁶ Indah Sri Utari, "Criminology Studies and Social Control Perspective to the Trend of Children Infringing Law in Indonesian Society," *Advances in Social Science, Education and Humanities Research* 192 (2018): 100–107. Ridwan Arifin, et al. "The internet gang of violence: Trend of cyberbullying on the internet." *AIP Conference Proceedings* 2573 (2022): 040012. <https://doi.org/10.1063/5.0109805>

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"There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace."

Kofi Annan

Acknowledgment

None

Funding Information

None

Conflicting Interest Statement

There is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.