

## **RESTORATIVE JUSTICE AS AN ALTERNATIVE APPROACH TO PROTECTING CHILDREN IN CONFLICT WITH THE LAW**

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### **ABSTRACT**

*This study aims to analyze the regulation and implementation of restorative justice in protecting children in conflict with the law in Indonesia, and to identify gaps between legal norms and practice in the field. The method used is a normative juridical approach with a statutory and conceptual approach, supported by an analysis of the empirical practice of diversion implementation. The results of the study indicate that restorative justice has been normatively accommodated in the juvenile criminal justice system, particularly through the diversion mechanism, which must be pursued at every stage of the judicial process. This approach reflects a paradigm shift from retributive justice to restorative justice, which emphasizes recovery, perpetrator responsibility, and victim and community participation. However, its implementation still faces various obstacles, including regulatory disharmony, inconsistent implementation among law enforcement agencies, limited human resource capacity, and a lack of supporting infrastructure. Furthermore, the dominance of a retributive legal culture and suboptimal protection for victims also weaken the effectiveness of this approach. Nevertheless, the practice of diversion demonstrates that restorative justice has significant potential in realizing a more humane and equitable juvenile criminal justice system. Therefore, comprehensive efforts are needed to optimize its sustainable implementation.*

**Keywords:** *Restorative Justice, Child Protection, In Conflict with the Law.*

### **INTRODUCTION**

Children are a trust and the nation's future generation, playing a strategic role in the continuity of national life. Therefore, the state is obligated to provide special protection to children, including when they come into conflict with the law. Within the context of the criminal justice system, children cannot be treated the same as adults, given their psychological, emotional, and maturity levels, which are still in the developmental stage. An inappropriate approach to handling children in conflict with

the law has the potential to have long-term negative impacts, such as stigmatization, trauma, and an increased likelihood of children repeating criminal acts (recidivism).<sup>1</sup>

In practice, the Indonesian criminal justice system still tends to prioritize a retributive approach as the primary paradigm in resolving criminal cases, including those involving children. This approach emphasizes retribution for the perpetrator's actions through the imposition of criminal sanctions. While intended to create a deterrent effect, the retributive approach often neglects the aspect of recovery, both for the victim and the perpetrator, as well as for the social relationships affected. For children, this approach is not only ineffective but also potentially damaging to their future, as the formal criminal justice system tends to place children in an environment that is not conducive to the development process.<sup>2</sup>

Along with the development of modern criminal law thought, *the restorative justice approach has emerged* as a more humane and recovery-oriented alternative for resolving criminal cases. This approach emphasizes efforts to restore the original situation by involving all relevant parties, including the perpetrator, victim, family, and community. In the context of children in conflict with the law, *restorative justice* is particularly relevant because it aligns with the principle of *the best interests of the child* and the goals of social development and reintegration.<sup>3</sup>

The concept of *restorative justice* has begun to be incorporated into various laws and regulations, particularly Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). This law introduces a diversion mechanism as a form of implementation of the restorative justice approach. Diversion is the process of transferring juvenile cases from the formal criminal justice process to an out-of-court setting, with the goal of achieving reconciliation between victims and perpetrators, resolving cases amicably, and preventing juveniles from being deprived of their liberty. Furthermore, strengthening this approach can also be linked to criminal law policies in Law Number 1 of 2023 concerning the Criminal Code, which are beginning to incorporate more progressive and humane values of justice. While *restorative justice has been recognized* normatively in the Indonesian legal system, its implementation in practice still faces various obstacles. One major issue is the

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<sup>1</sup> E. L. Saragih, Y. M., & Sinaga, "Efektivitas Keadilan Restoratif Dalam Sistem Peradilan Pidana Anak," *Jurnal Hukum Magnum Opus* 5, no. 1 (2022), <https://doi.org/https://doi.org/10.30996/jhmo.v5i1.5123>.

<sup>2</sup> S. Petrosino, A., Turpin-Petrosino, C., & Guckenburg, "Formal System Processing of Juveniles: Effects on Delinquency," *Campbell Systematic Reviews* 6, no. 1 (2010), <https://doi.org/https://doi.org/10.4073/csr.2010.1>.

<sup>3</sup> M. Munajat, "Sistem Diversi Dan Restorative Justice Dalam Peradilan Pidana Anak Di Indonesia," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 50, no. 2 (2016), <https://doi.org/https://doi.org/10.14421/ajish.v50i2.243>.

persistence of a retributive paradigm among law enforcement officials, who tend to view resolving cases through formal channels as the only way to uphold the law.<sup>4</sup>

Another obstacle lies in the suboptimal infrastructure and institutional support for the implementation of *restorative justice*. This is reflected in the ineffectiveness of the mediation process between perpetrators and victims due to the limited availability of professional facilitators and the lack of solid coordination between relevant institutions. Furthermore, the dominant legal culture, which focuses on retaliation, is also a hindering factor. In many cases, society places greater emphasis on imposing harsh punishments on perpetrators than on considering recovery and the best interests of the child.

## METHOD

A scientific method is needed to answer the problems in a research, thus the research method is useful for solving a problem or a way to develop science. To analyze the problems that are the focus of this research, this research method uses a normative legal research type, namely research that places law as a system of norms. Norms, rules and legal principles related to the objectives of this research will be secondary data sources, including primary, secondary and tertiary legal materials that will be collected by means of library research, which will then be processed and analyzed qualitatively with a statute approach, namely an approach using legislation and regulations.<sup>5</sup>

## DISCUSSION

### **Restorative Justice Arrangements in the Child Protection System in Indonesia**

*Restorative justice* approach in Indonesia's child protection system has essentially gained strong normative legitimacy through various national legal instruments. The state explicitly recognizes that children in conflict with the law require special treatment that differs from adults, both procedurally and substantively. This is based on the principle that children are individuals still developing, and therefore the approach used must prioritize the child's best interests, not simply punishment.<sup>6</sup>

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<sup>4</sup> N. D. Putri, "Konsep Diversi Sebagai Realisasi Restorative Justice Dalam Sistem Peradilan Pidana Anak," *Jurnal Muqoddimah* 7, no. 1 (2023), <https://doi.org/https://doi.org/10.31604/muqoddimah.v7i1.13445>.

<sup>5</sup> Rajarif Syah Akbar Simatupang, "Pelaksanaan Sistem Peradilan Pidana Anak Di Indonesia Perspektif Nilai Keadilan," *Jurnal Yuridis* 11, no. 1 (2024).

<sup>6</sup> T. Wahyuni, S., & Prasetyo, "Implementasi Restorative Justice Dalam Pembaruan Hukum Pidana Nasional," *Jurnal Penelitian Hukum De Jure* 22, no. 3 (2022), <https://doi.org/https://doi.org/10.30641/dejure.2022.V22.p.305-320>.

The main provisions regarding the implementation of *restorative justice* in the juvenile criminal justice system are regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law).<sup>7</sup> This law explicitly integrates the concept of restorative justice through a diversion mechanism. Diversion is the transfer of juvenile cases from the formal criminal justice process to an out-of-court setting with the goal of achieving reconciliation between the perpetrator and victim, resolving the case amicably, and preventing the child from being deprived of liberty.

Under the Juvenile Justice and Child Protection Law, diversion is not optional, but rather a requirement that must be pursued at every stage of the judicial process, from police investigations and prosecutions to court appearances. This provision demonstrates a paradigm shift in Indonesian juvenile criminal law, from a retributive approach to a restorative one. Furthermore, the Juvenile Justice and Child Protection Law also establishes important principles such as protection, non-discrimination, the best interests of the child, and respect for the child's views.<sup>8</sup>

Strengthening the *restorative justice approach* can also be found in Law Number 35 of 2014 concerning Child Protection, an amendment to Law Number 23 of 2002. This law emphasizes that the state, government, and society have an obligation to provide special protection to children in conflict with the law. This protection includes humane treatment, legal assistance, and efforts to protect children from judicial processes that could harm their psychological development.

Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) also reflects a paradigm shift towards a more humane penal system. Although it does not explicitly use the term *restorative justice*, the New Criminal Code accommodates values consistent with this approach, such as the goal of punishment not only being oriented towards retribution but also towards recovery, rehabilitation, and social reintegration. Several implementing regulations and internal policies of law enforcement agencies also strengthen the application of *restorative justice*. The police, prosecutors, and the Supreme Court have issued guidelines regarding case resolution through a restorative justice approach. This demonstrates an institutional commitment to developing a more recovery-oriented case resolution model, particularly in cases involving children.

*restorative justice* is quite comprehensive, there are significant gaps between the legal regulations and their implementation on the ground. The first gap lies in the inconsistent application of diversion as the primary instrument of *restorative justice*. In practice, not all law enforcement officers consistently pursue diversion, despite it being an obligation stipulated in the Child Protection and Protection Act. This

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<sup>7</sup> Republik Indonesia, “Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak” (2012).

<sup>8</sup> R. Arifin, “Diversi Sebagai Upaya Perlindungan Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia,” *Jurnal Rechtsvinding* 7, no. 1 (2018), <https://doi.org/https://doi.org/10.33331/rechtsvinding.v7i1.220>.

indicates that imperative legal norms have not been fully internalized in law enforcement practice.

There are issues of regulatory disharmony and the lack of integrated standard operating procedures across law enforcement agencies. Although each institution has formally developed guidelines for the implementation of *restorative justice*, regulatory fragmentation and differing normative interpretations have led to inconsistencies in practice. This situation indicates that the existing legal framework has not fully established a uniform paradigm across law enforcement agencies, resulting in *restorative justice implementation* tending to be case-specific and dependent on individual discretion. From a theoretical perspective, this situation reflects the weak integration within the integrated criminal justice system, which should be a primary prerequisite for the effectiveness of the restorative approach.<sup>9</sup>

Problems also arise in institutional capacity and human resource quality. The *restorative justice approach* essentially demands multidisciplinary competencies, including mediation skills, an understanding of child developmental psychology, and communication skills oriented toward empathy and reconciliation. However, reality shows that law enforcement officers are not fully equipped with these capacities. As a result, the diversion process is often reduced to a mere administrative formality without meaningful restorative substance. Within the framework of restorative justice theory, this condition indicates an "implementation distortion," where restorative values are not fully internalized in law enforcement practices. This is due to the limited infrastructure and support systems that should be the foundation for *restorative justice implementation*. Ideally, this approach requires a supportive ecosystem, including a conducive mediation space, the active involvement of professional social workers, and development institutions capable of ensuring the sustainability of the child's social reintegration process.

### **Implementation of Restorative Justice in the Protection of Children in Conflict with the Law and Its Challenges**

Discussions on the implementation of *restorative justice* in protecting children in conflict with the law cannot be separated from the theoretical framework of justice. In the development of criminal law thought, the concept of justice has undergone a paradigm shift from a retributive approach to a restorative approach that places greater emphasis on restoration. In the classical perspective, as proposed by Immanuel Kant, justice is defined as proportionate retribution for the perpetrator's actions. This approach positions punishment as a moral consequence that must be imposed, without adequately considering aspects of social recovery or the interests of perpetrators who are still in the developmental stage, such as children. This approach faces limitations

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<sup>9</sup> A. Wibowo, "Koordinasi Antar Lembaga Penegak Hukum Dalam Sistem Peradilan Pidana Terpadu," *Jurnal Hukum Dan Peradilan* 9, no. 1 (2020), <https://doi.org/https://doi.org/10.25216/jhp.9.1.2020> p. 1-16.

when applied to the context of children in conflict with the law.<sup>10</sup> Children are viewed not only as perpetrators but also as individuals still in the process of developing their character and personality. Therefore, the *restorative justice approach*, pioneered by Howard Zehr, emerged, which views crime as a social conflict that must be resolved through a process of restoration, not simply punishment. Within this framework, justice is defined as an effort to repair the harm caused by crime by actively involving the perpetrator, victim, and community.

The implementation of *restorative justice* in protecting children in conflict with the law in Indonesia is essentially realized through the diversion mechanism as stipulated in the Juvenile Criminal Justice System Law (UU SPPA). Diversion is the primary instrument to prevent children from being excluded from the formal criminal justice process by prioritizing a dialogical approach between the perpetrator, victim, family, and community. Conceptually, this approach aims not only to resolve legal conflicts but also to restore social relationships disrupted by criminal acts. In practice, the implementation of *restorative justice* is carried out through deliberation forums facilitated by law enforcement officials, such as investigators, prosecutors, or judges, involving various relevant parties, including the Correctional Center (Bapas), social workers, and the families of the victim and perpetrator. This process emphasizes the perpetrator's admission of guilt, providing an opportunity to apologize, and agreeing to restitution, whether in the form of compensation, rehabilitation, or a commitment to development.<sup>11</sup>

The implementation of this approach has shown significant progress. This is reflected in the various successful resolutions of child cases through diversion mechanisms in various regions of Indonesia throughout 2025. For example, in a case at the Lubuk Pakam District Court, the diversion process was successfully implemented through deliberations involving all relevant parties, with the aim of providing justice for the victim while simultaneously creating space for the child to improve themselves without having to undergo a formal judicial process. This success demonstrates that the restorative approach is able to accommodate the interests of both parties in a more balanced manner.<sup>12</sup>

Similar success was also seen in a case at the Kotamobagu District Court, where the diversion process allowed for a resolution without the need for a trial, while still considering the interests of the victim and the development of the perpetrator's child.

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<sup>10</sup> K. Daly, "Restorative Justice: The Real Story," *Punishment & Society* 4, no. 1 (2002), <https://doi.org/https://doi.org/10.1177/14624740222228464>.

<sup>11</sup> S. Hadi, "Penyelesaian Perkara Pidana Melalui Pendekatan Restorative Justice," *Jurnal Hukum Dan Peradilan* 9, no. 2 (2020), <https://doi.org/https://doi.org/10.25216/jhp.9.2.2020.267-282>.

<sup>12</sup> Souchi Juneda Rambe, "Diversi Berhasil Perkara Pidana Anak Nomor 23/Pid.Sus-Anak/2025/PN Lbp," n.d., [https://pn-lubukpakam.go.id/diversi-berhasil-perkara-pidana-anak-nomor-23-pid-sus-anak-2025-pn-lbp/?utm\\_source=chatgpt.com](https://pn-lubukpakam.go.id/diversi-berhasil-perkara-pidana-anak-nomor-23-pid-sus-anak-2025-pn-lbp/?utm_source=chatgpt.com).

Even in more complex cases, such as the violent theft case handled by the Tais District Court, diversion can still be achieved through an agreement between the perpetrator and the victim, including compensation and a commitment to development by the perpetrator's family.<sup>13</sup>

The implementation of *restorative justice* is inseparable from various structural, cultural, and substantive challenges. One major challenge is the inconsistency in the application of diversion in the field. Although diversion is normatively mandatory, in practice there are still cases where law enforcement officials do not optimally pursue diversion, either due to limited understanding or a preference for a formalistic approach. The implementation of *restorative justice* in protecting children in conflict with the law in Indonesia has shown positive progress, as reflected in the various successful resolutions of cases through diversion mechanisms by 2025. However, this success remains partial and uneven. Therefore, systematic efforts are needed to address the various existing challenges, including strengthening the capacity of law enforcement officials, harmonizing regulations, providing adequate infrastructure, and transforming the legal culture of society.

## CONCLUSION

*Restorative justice* has been institutionalized normatively within the Indonesian juvenile criminal justice system, particularly through the diversion mechanism, which prioritizes the best interests of children. The existing legal framework reflects a paradigm shift from a retributive approach to a restorative one that emphasizes recovery, rehabilitation, and social reintegration, involving victims and the community. Currently, a significant gap remains between normative arrangements and implementation in the field. Regulatory fragmentation, inconsistent application across law enforcement agencies, limited institutional capacity, minimal supporting infrastructure, and the dominance of a retributive legal culture are key factors hampering the effectiveness of *restorative justice*. Furthermore, victim protection in the diversion process is not yet fully optimal. Empirical practice demonstrates that restorative justice has significant potential to achieve more humane and balanced justice for children in conflict with the law. Therefore, integrated efforts are needed through regulatory harmonization, strengthening the capacity of officials, institutional support, and transforming the legal culture so that restorative justice is not merely normative but can be implemented effectively and sustainably.

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<sup>13</sup> Pengadilan Negeri Kalianda Kelas IB, "Diversi Berhasil Perkara Pidana Khusus Anak Nomor 19/Pid.Sus.Anak/2025 PN Kla," n.d., [https://www.pn-kalianda.go.id/berita/berita-terkini/diversi-berhasil-perkara-pidana-khusus-anak-nomor-19pidsusanak2025-pn-kla?utm\\_source=chatgpt.com](https://www.pn-kalianda.go.id/berita/berita-terkini/diversi-berhasil-perkara-pidana-khusus-anak-nomor-19pidsusanak2025-pn-kla?utm_source=chatgpt.com).

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