



## Restorative justice in resolving cases of children in conflict with the law

Ni Made Diana Dewi

Faculty of Law, Warmadewa University, Indonesia

### Abstract

Restorative justice is an approach to resolving juvenile criminal cases that emphasizes restoration rather than punishment. This study aims to analyze the application of restorative justice in resolving cases of children in conflict with the law in Indonesia and the authority of law enforcement officials in using discretion to implement this approach. The research method used is normative legal research with a statutory and conceptual approach. The results indicate that restorative justice in the juvenile criminal justice system is realized through the diversion mechanism as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Law enforcement officials have discretionary authority at every stage of the juvenile criminal justice process to prioritize the best interests of the child. However, its implementation still faces obstacles in the form of differing understandings and limited technical guidelines. Therefore, regulatory strengthening and capacity building are needed for law enforcement officials to ensure the smooth implementation of restorative justice.

**Keywords:** Restorative justice, children, law, discretion, criminal justice

### Introduction

Restorative justice is an effort to resolve criminal cases without going through the court process and imposing imprisonment. This approach emphasizes restoring the situation to the state it was in before the crime occurred and preventing recurrence of legal violations by prioritizing deliberation and consensus between the two parties, assisted by law enforcement officials, and upholding the values of justice<sup>[1]</sup>.

Within the Indonesian criminal justice system, Restorative Justice is essentially implemented in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which includes the implementation of Diversion, the output of which is Penal Mediation. Penal mediation itself, within criminal law, has the noble goal of resolving criminal cases that occur in society. Conceptually, Stefanie Trankle, in Barda Nawawi Arief, explains that the developed penal mediation is based on the following ideas and working principles<sup>[2]</sup>: 1) Conflict Handling (Konfliktbearbeitung): The mediator's task is to enable the parties to forget the legal framework and encourage them to engage in communication. This is based on the idea that crime has given rise to interpersonal conflict. The mediation process addresses this conflict, 2) Process-oriented (Process Orientation/ Prozessorientierung): Penal mediation focuses more on the quality of the process than on the outcome, specifically, bringing the perpetrator to their sense of guilt, resolving conflict needs, and alleviating the victim's fear. 3) Information Process (Informal Proceeding/ informalitat): Penal mediation is an informal, non-bureaucratic process that avoids strict legal procedures, and 4) Active and autonomous participation of the parties (Active and Autonomic Participation/Parteiautonomic/Subjek Tivierung): The parties (the perpetrator and the victim) are not viewed as objects of criminal law procedures but rather as subjects with personal responsibility and the ability to act. They are expected to act of their own free will<sup>[3]</sup>.

Children's rights, including those in conflict with the law, are guaranteed by Article 28B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI). This

provision requires the state to ensure their survival, growth, and future. Every child has the right to receive formal and moral education so they can develop into individuals who are beneficial to the nation. Children's character development towards maturity goes through three phases: infancy, childhood, and adolescence/puberty. This personality formation is influenced by both internal and external factors.

To protect children from all forms of violence, whether direct or indirect, they must receive protection from individuals, private groups, and the government. Therefore, early development is crucial for children to grow and develop optimally, physically, mentally, and socially. The increasing number of cases of children breaking the law, such as theft, violence, rape, and abuse, is a serious concern for law enforcement officials.

Children in conflict with the law (ABH) require special attention in their handling. The government also prioritizes prevention efforts to reduce the number of crimes committed by children. Crime prevention must be comprehensive and integrated, considering this problem is a humanitarian and social issue<sup>[4]</sup>.

One preventative measure to prevent children from coming into conflict with the law is through the implementation of the Juvenile Criminal Justice System (SPPA). The purpose of the criminal justice system is not solely to impose criminal sanctions, but rather to emphasize the accountability of perpetrators of crimes using a restorative justice approach. Restorative justice aims to ensure the welfare of the children involved, without neglecting the interests of the victims or the community.

Law Number 11 of 2012 concerning the SPPA, which came into effect in July 2014, has permanent legal force after its ratification. This law, specifically Articles 6 through 15, regulates the diversion mechanism, which represents a reform in the juvenile criminal justice system. Diversion is an action or treatment that transfers cases from formal to informal channels, or removes juvenile offenders from the formal justice process. This demonstrates that not all cases involving children in conflict with the law must be resolved

through formal courts. Instead, alternative solutions based on restorative justice can be pursued in the best interests of the child while still maintaining justice for the victim and society [5].

Psychologically, children still need guidance and are in the process of discovering their identity, making them easily influenced by circumstances. An uncondusive environment often encourages children to commit unlawful acts that ultimately harm themselves, their families, and society, and create the burden of having to deal with law enforcement. Families play a crucial role in shaping a child's mental health and future. A child's psychological development is strongly influenced by parental parenting, where providing a good role model is one effective educational method. However, in social reality, children's problems are influenced by various factors, ranging from the family's economic situation, education, environment, to peer interactions, all of which significantly influence a child's development.

Children are viewed as special subjects under the law. Therefore, laws and regulations provide special treatment for children, both as victims and perpetrators, including in the judicial process, the imposition of sanctions, and the implementation of social services. Although there are legal provisions specifically governing the treatment of child perpetrators of crimes, in practice, this does not always guarantee a wise attitude from law enforcement officials in treating children. This often ignores the child's internal conditions and the long-term impact on their future.

The primary goal of this approach is to provide a faster, more efficient, and justice-oriented solution to criminal cases, while avoiding negative stigma for the parties involved. Furthermore, this non-litigation mechanism aims to raise legal awareness and minimize the spread of deviant behavior among criminals. In principle, restorative justice is similar to diversion, namely the resolution of criminal cases outside the judicial system. However, the difference lies in its scope: diversion only applies to cases of children in conflict with the law, while restorative justice can also be applied to general criminal cases.

Restorative justice, or deliberation-based justice, is the primary approach mandated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and is mandatory in cases involving children in conflict with the law. This approach emphasizes achieving justice and balance between the perpetrator and the victim. The mechanism, previously focused on punishment, shifts to a process of dialogue and mediation to reach a fairer and more proportional agreement for both parties the victim and the perpetrator [6].

## Method

This study employs a normative legal research method, focusing on the study of law as a norm or principle applicable within the positive legal system in Indonesia. This method was chosen because the issues studied relate to the regulation, concept, and application of restorative justice in resolving cases of children in conflict with the law, as well as the use of discretion by law enforcement officials, whose legal basis is derived from statutory regulations and legal doctrine.

Through this method, the research aims to answer the question of how restorative justice is applied in resolving cases of children in conflict with the law in Indonesia. This

research examines the normative provisions contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and other related regulations governing the principles of restorative justice and child protection. Furthermore, this study examines the factors that support and hinder law enforcement officials in using their discretion to implement restorative justice, analyzed from legal, institutional, and doctrinal perspectives.

## Result and discussion

### 1. Restorative Justice in Resolving Cases of Children in Conflict with the Law

Article 1, number (6) of Law Number 11 of 2012 concerning the Juvenile Justice System states that restorative justice is a mechanism for resolving criminal cases involving the perpetrator, victim, the perpetrator's and victim's families, and other relevant parties, with the aim of achieving a just resolution through restoring the original situation, rather than focusing on revenge. Article 1, number (2) states that children in conflict with the law include children involved in legal conflicts, children who are victims of criminal acts, and children who act as witnesses to criminal acts. Article 1, number (3) states that children in conflict with the law are children aged 12 (twelve) but under 18 (eighteen) years who are suspected of committing a crime.

A juvenile crime is a crime committed by a child as regulated in Article 45 of the Indonesian Criminal Code (KUHP). The Indonesian KUHP implies that an act can be classified as a crime if it meets the following elements:

1. There is a human act;
2. The act is regulated and prohibited by law;
3. There is an error; and
4. The perpetrator of the act can be held legally accountable.

Deviant behavior or unlawful acts committed by children are generally influenced by various factors, including the negative impact of rapid development, globalization in the fields of communication and information, advances in science and technology, and changes in parental lifestyles and patterns, which significantly influence social conditions and impact children's values and behavior. These factors are often the background to why a child commits an unlawful act.

Children are often unaware of the consequences of their actions, and crimes committed by children are generally not driven by criminal motives like those committed by adults. Therefore, unlawful acts committed by children often cannot be fully accounted for before the law as adults are. expression and opinion in international legal instruments [7].

Freedom of expression is also explained in Law Number 39 of 1999 concerning Human Rights, The handling of cases of children in conflict with the law, which should be oriented toward the best interests of the child, has in reality not met expectations. The government has issued several specific regulations governing the protection of children's rights in the legal process, including Law Number 3 of 1997 concerning Juvenile Justice, which was later amended by Law Number 23 of 2002 concerning Child Protection. The government has even ratified the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990 dated August 25, 1990, and signed the Beijing Rules. However, these various legal instruments have not yet fully

provided optimal solutions for resolving cases of children in conflict with the law <sup>[8]</sup>.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which came into effect on July 31, 2014, is fundamentally intended to safeguard the dignity of children through a restorative justice approach. A child has the right to receive special protection, particularly legal protection within the criminal justice system. Therefore, the Juvenile Criminal Justice System not only emphasizes imposing criminal sanctions on juvenile offenders but also emphasizes that these sanctions serve as an instrument to improve the welfare of the children involved <sup>[9]</sup>.

The juvenile justice process often loses its core substance, namely as a mechanism that must ultimately protect the best interests of the child. The restorative justice approach in Indonesia's juvenile justice system is a legal innovation that demonstrates a paradigm shift from mere punishment to a restorative process. This aligns with the principle of the best interests of the child as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) <sup>[10]</sup>.

Juvenile criminal justice practices often emphasize formal law enforcement, without prioritizing the child's interests as the primary focus. This paradigm has evolved over time, shifting from a rehabilitation orientation to the concept of restorative justice. The diversion of juvenile cases outside the formal justice system through diversion mechanisms, as stipulated in international legal instruments concerning children, has legal consequences for Indonesia, requiring it to incorporate these diversion provisions into national legislation. Within the framework of implementing the concept of diversion as a restorative justice instrument in the Juvenile Criminal Justice System, as stipulated in Law Number 11 of 2012, criminal cases are resolved by involving the perpetrator, victim, the perpetrator/victim's family, and other relevant parties to reach a just settlement agreement. This mechanism emphasizes restoration rather than retaliation <sup>[11]</sup>.

The resolution of cases involving juveniles in conflict with the law is carried out using a diversion approach to achieve restorative justice. According to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, diversion is a means of diverting juvenile cases from the judicial process to the settlement of cases outside the criminal justice system. Article 8 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that the Diversion Process is carried out through deliberation involving the Child and his/her parents/Guardians, victims and/or parents/Guardians, Community Counselors, and Professional Social Workers based on a Restorative Justice approach and may involve Social Welfare Workers, and/or the community. Diversion is carried out by law enforcement officers at the Investigation level carried out by the Police, at the Prosecution level carried out by the Prosecutor and at the Case Examination level carried out by the Judge. And Article 8 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states <sup>[12]</sup>:

specifically Article 23 paragraph (2), which states that "every person is free to hold, express, and disseminate opinions in accordance with their conscience, both verbally and/or in writing through print and electronic media, while taking into account religious values, morality, order, the public interest, and the integrity of the nation." Freedom of

expression, in its implementation, cannot be separated from digital media as a form of development in information and communication technology, which is a communication tool that cannot be ignored <sup>[13]</sup>.

Digital media, particularly social media, as a public space for realizing freedom of expression and opinion, encourages the realization of participatory democracy. Therefore, in expressing their opinions, every individual is obliged to comply: The diversion process must consider:

- a. the interests of the victim;
- b. the welfare and responsibility of the child;
- c. avoiding negative stigma;
- d. avoiding retaliation;
- e. community harmony; and
- f. compliance, morality, and public order.

Restorative justice is the desired outcome of diversion. Article 11 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states: The outcome of a diversion agreement can take the following forms:

- a. reconciliation with or without compensation;
- b. return to parents/guardians;
- c. participation in education or training at an educational institution or LPKS (Responsible Services Institution) for a maximum of 3 (three) months; or
- d. community service.

Restorative justice has significant potential to support children's rights, as stipulated in Law Number 23 of 2002 concerning Child Protection, which emphasizes protecting children from all forms of violence and discrimination. This approach prioritizes rehabilitation over punishment, thus providing children with the opportunity to improve themselves without further involvement in the criminal justice system. This system often carries stigma and can damage a child's social and psychological development. The primary advantage of this approach is its ability to mitigate the negative impact of imprisonment on a child's development, both socially and psychologically. This approach also paves the way for more humane rehabilitation. Imprisonment often reinforces stigma, disrupts education, and puts children at risk of exposure to a more hostile criminal environment, which can ultimately create a cycle of recidivism (repetition of criminal acts) that is difficult to stop. Through the diversion mechanism stipulated in Article 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, children who meet the requirements (such as facing a sentence of less than seven years and not repeat offenders) can be diverted from the formal court process. Instead, they will address the needs of the victim, the perpetrator, and the community. This approach views children not merely as perpetrators who must be punished, but also as individuals with the capacity to change and contribute back to society. Thus, restorative justice not only mitigates short-term impacts but also provides a foundation for children to develop a sense of responsibility, improve social relationships, and prevent them from further marginalization. This makes restorative justice a more adaptive and sustainable solution than the formal criminal justice system <sup>[14]</sup>.

The application of restorative justice in resolving criminal cases essentially utilizes a mediation approach. However, this mediation mechanism is not regulated in the laws and

regulations governing the criminal justice system, such as Law Number 8 of 1981 concerning Criminal Procedure or Law Number 2 of 2002 concerning the Indonesian National Police. The enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System provides stronger legitimacy for legal protection efforts for children in Indonesia. This law introduces the concept of diversion, a mechanism for resolving juvenile cases aimed at protecting children in conflict with the law, children as victims of criminal acts, and the interests of society as a whole. Diversion is intended to divert juvenile cases from the criminal justice system to mechanisms outside the criminal justice system in order to realize the principle of restorative justice. a cycle of recidivism (repetition of criminal acts) that is difficult to stop <sup>[15]</sup>.

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with the restrictions established by law necessary <sup>[17]</sup>.

## **2. The Authority of Law Enforcement Officials in Using Their Discretion to Implement Restorative Justice in Resolving Cases of Children in Conflict with the Law**

In resolving cases of children in conflict with the law (ABH), several law enforcement officials have the authority to exercise discretion to implement restorative justice. This authority is recognized and regulated by law, specifically Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA).

Law enforcement officials who can exercise discretion in cases of children in conflict with the law are investigators (police), public prosecutors (prosecutors), and judges <sup>[18]</sup>.

1. Investigators (police) are the first law enforcement officials to handle children in conflict with the law. In the juvenile criminal justice system, investigators have discretionary authority to conduct diversion, which is the transfer of a child's case from the criminal justice process to a non-judicial setting.
2. Public prosecutors also have the authority to handle juvenile cases, particularly at the prosecution stage. Prosecutors can: continue diversion efforts if unsuccessful at the investigation stage; or terminate prosecution in the best interests of the child through a restorative justice approach.
3. Judges are law enforcement officers with judicial discretion in examining and deciding juvenile cases. In the context of restorative justice, judges can: pursue diversion at the court hearing level; or issue decisions oriented toward restoration, not retribution.

### **This authority is regulated in**

- Article 7 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states: (1) Diversion must be pursued at the investigation, prosecution, and examination levels of juvenile cases in district courts.
- Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police, which states that in the public interest, officers of the Indonesian National Police may act according to their own judgment in carrying out their duties and authorities. Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.
- Law enforcement officers, particularly police, prosecutors, and judges, play a central role in creating space for the implementation of restorative justice. Discretion means the authority to make decisions outside of rigid formal rules, for the sake of greater justice. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) emphasizes the principle of diversion (transferring case resolution from the judicial to outside the judicial channel) by prioritizing Restorative Justice. Discretion and Restorative Justice are closely related to each other, namely Discretion as the entry point for the implementation of restorative justice, restorative justice as the goal to be achieved through discretion by law enforcement officers <sup>[19]</sup>.

### **Conclusion**

Based on the discussion regarding restorative justice in resolving cases involving children in conflict with the law, it can be concluded that the implementation of restorative justice in Indonesia has a strong legal basis, particularly through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). This approach is realized through a diversion mechanism that prioritizes case resolution outside the formal judicial process, emphasizing the victim's circumstances, the child's responsibility, and family and community involvement. The implementation of restorative justice aims to protect the child's best interests and protect them from the negative impacts of the criminal justice process.

Furthermore, law enforcement officials have discretionary authority to implement restorative justice throughout the

juvenile criminal justice process, from investigation and prosecution to court hearing. This discretionary authority is a crucial instrument for realizing humane justice oriented toward child protection. However, in practice, the use of discretion still faces various obstacles, such as differences in understanding among law enforcement officials, limited technical guidelines, and concerns about abuse of authority. Therefore, the effectiveness of the implementation of restorative justice is highly dependent on the professionalism, integrity, and uniformity of understanding of the principles of SPPA among law enforcement officers.

## Reference

1. Taufan, Usyadat, Alam AS, Chaidar M. Pengaturan Restorative Justice terhadap Pelaku dan Korban dalam Penyelesaian Tindak Pidana Anak. *Jurnal Ilmu Hukum Wijaya Putra*,2023:1(2):238.
2. Arief BN. Mediasi Penal Penyelesaian Perkara di Luar Pengadilan. Semarang: Pustaka Magister, 2012, 4-5.
3. Arief, Hanafi, Ambarsari N. Penerapan Prinsip Restorative Justice dalam Sistem Peradilan Pidana di Indonesia. *AL-Adl: Jurnal Hukum*,2018:10(2):188.
4. Al-Ghony MU, Wijaya AU, Hadi F. Restorative Justice Dalam Penanganan Anak yang berhadapan dengan Hukum. *Gorontalo Law Review*,2024:7(1):86-87.
5. Ghoni MR, Pujiyono P. Perlindungan hukum terhadap anak yan berhadapan dengan hukum melalui implmentasi diversifikasi di Indonesia. *Jurnal Pembangunan Hukum Indonesia*,2020:2(3):322-333.
6. Widodo S. Restorative Justice dalam Sistem Hukum Pidana Indonesia. Bandung: Refika Aditama, 2020, 78-81.
7. Rizaldy DR, Alam AS, Cahaidar M. Restorative Justice dalam penyelesaian Tindak Pidana Penganiayaan oleh Anak. *Jurnal Ilmu Hukum Wijaya Putra*, 2023:1(2):234-235.
8. Kusumawardhani DLLHN. Dinamika Implementasi Pendekatan Restorative Justice Dalam Penyelesaian Tindak Pidana. *UNES Law Review*,2023:5(4):1908-1918.  
<https://doi.org/https://doi.org/10.31933/unesrev.v5i4.562>
9. Karjono A, Malau P, Ciptono C. Penerapan Keadilan Restoratif Justice Dalam Hukum Pidana Berbasis Kearifan Lokal. *Jurnal usm law review*,2024:7(2):1036.  
<https://doi.org/10.26623/julr.v7i2.9571>
10. Purba YY, *et al.* Peran Restorative Justice dalam Penyelesaian Kasus Tindak Pidana Anak di Indonesia. *Jurnal Pendidikan Sosial dan Humaniora*,2025:4(2):1926.
11. Anzward B. Kebijakan Penerapan Diversi dalam Penyelesaian Perkara Pidana yang dilakukan oleh Anak melalui Pendekatan Restorative Justice. *Journal de Facto*,2020:7(1):44-45.
12. Siregar VA. Perspektif Restoratuve Justice dalam Perlindungan Anak sebgai Sistem Peradilan Pidana di Indonesia. *Jurnal Hukum Das Sollen*,2020:4(1):20.
13. Fitri FA, Muftia N, Trilia I, Munthe AH, Ramlan R. Tinjauan Teoritis tentang Asas Legalitas dalam Hukum Pidana Indonesia. *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin*,2024:1(2):202-209.
14. Hamdi S, Ikhwan MI, Iskandar I. Tinjauan Hukum Islam Terhadap Implementasi Restorative Justice Dalam Sistem Peradilan Pidana Anak Di Indonesia. *Maqasidi: Jurnal Syariah Dan Hukum*,2021:1(1):74-85.  
<https://doi.org/10.47498/maqasidi.v1i1.603>
15. Isba P, Sakmaf MS, Jumiran. Evaluation of Restorative Justice Implementation in Criminal Conflict Resolution: Victim and Offender Perspectives. *Delictum: Jurnal Hukum Pidana Islam*,2024:3(1):14-30.  
<https://doi.org/https://doi.org/10.35905/delictum.v3i1.10736>
16. Filonia BF. Penerapan Restorative Justice terhadap Anak dalam Perspektif Sistem Peradilan Pidana Anak di Indonesia. *Jurnal Hukum In Concreto*,2024:3(1):98-113.
17. Sidharta I. Restorative Justice dalam Sistem Peradilan Pidana Anak. Jakarta: Rajawali Pers, 2016, 12.
18. Muchtar H. Analisis Yuridis Normatif Sinkronisasi Peraturan Daerah Dengan Hak Asasi Manusia. *Humanus*,2015:14(1):80-91.  
<https://doi.org/10.24036/jh.v14i1.5405>
19. Kartika L. Penerapan Alternatif Penyelesaian Perkara Pidana: Fokus pada Kasus Anak. *Jurnal Hukum Pembangunan*,2022:52(2):150-153.