



Application of Diversion through Restorative Justice in the Juvenile Justice System in Indonesia

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Abstract

An alternative method of child case resolution, restorative justice seeks to restore the harm done to victims, include offenders in the process of making amends, and fortify community bonds. Despite its widespread acceptance elsewhere, restorative justice has seen only limited adoption in Indonesia's juvenile justice system. The purpose of this research is to analyse how restorative justice has been implemented in Indonesia's juvenile justice system. To fully comprehend how restorative justice is being implemented in Indonesia's juvenile justice system, this study combines a normative juridical approach with document analysis and a literature survey. Findings from this research suggest that the principles of protection, justice, non-discrimination, the best interests of the child, respect for children, the survival and development of children, proportionality, deprivation of liberty, and punishment as a last resort all need to be taken into account when implementing restorative justice in Indonesia's juvenile justice system. These principles, once put into practise, will help guarantee that the juvenile justice system is run in a just, humane, and rehabilitation-focused way. In Indonesia, young offenders are diverted from the traditional court system in an effort to achieve restorative justice.

Keywords: Restorative Justice, Juvenile Justice System, Diversion.

DOI: [10.48047/ecb/2023.12.si8.592](https://doi.org/10.48047/ecb/2023.12.si8.592)

INTRODUCTION

Children are a valuable asset and the future of the nation. It is important that we respect their rights and treat them humanely. Education and treatment of children as the next generation will have a major impact on the quality of our future as individuals and as a nation (Rizal, 2022). Article 28B paragraph (2) of the 1945 Constitution states that every child has the right to protection from violence and discrimination and has the right to grow and develop properly. Problems involving children are issues that need special attention and handling in efforts to foster the younger generation, especially for children who are involved in legal conflicts (Prasetyo, 2020). One way to increase awareness of the rule of law is through special treatment and protection in handling children who are involved in legal conflicts (Warikie, 2019).

To shield children from the potentially devastating impacts of the legal system, the government has enacted child protection regulations (Ariani, 2014). Special protection is a policy that affords children additional safeguards under the law when they come into contact with the criminal justice system. The government has also enacted legislation to address the unique needs of juvenile offenders (Setiawan, 2017). By replacing Law No. 3 of 1997 on Juvenile Courts with Law No. 11 of 2012 on the Juvenile Criminal Justice System, the government of the Philippines hopes to better ensure the safety of juveniles involved in legal proceedings (Pangemanan, 2015). These modifications provide improved safeguards for juveniles in the criminal justice system. At the end of July 2012, the President and the DPR passed this new law (Hambali, 2019).

The "Children's Criminal Justice System" is modified in numerous ways by these new laws. The government has made this step, which is promising, because it shows that it cares about protecting children and wants to make sure that the juvenile justice system operates fairly and in a rehabilitative way (Koy, 2021). Children are a precious resource for any country, and they should be treated as such by their parents, the larger community, and the government. The goal is to help kids grow up to be healthy, productive adults. In addition, individuals responsible for the child's education and supervision must use the child's interests as a basis for guidelines, with parents holding this obligation primarily (Eleanora, 2013).

According to Sudirman (2007), the most fundamental psychological requirements in a person's life and in the life of children genuinely lie on the conscience of their parents. These needs include affection, protection, coaching, and right direction. In point of fact, a great number of parents are unaware of this, which has implications for the growth and development of their offspring's life. Children who are raised in homes where there is constant strife have a higher risk of developing mental instability, which in turn increases the likelihood that they would engage in risky behaviors that fall under the category of juvenile delinquency. According to Rahmi and Lubis (2017), the delinquency that follows can potentially lead to illegal behavior.

When law enforcement personnel are dealing with children who have committed criminal offenses, they have a responsibility to always pay attention to the conditions of children, which are different from those of adults. It is possible to use the fundamental nature of children as individuals who are still prone to instability, the potential of children as assets to the nation, and the position of children in society as people who still require protection as a foundation for finding an alternative solution to the problem of how to keep children out of the formal justice system, keeping children in prison, and the stigmatization of the status of children who are prisoners. According to Rahayu (2015), one solution is to take juvenile offenders and either divert them from the criminal justice system or position them outside of it. This indicates that not all issues involving delinquent children have to be resolved through formal justice channels, and it also means that there is an alternative for settlement with a justice approach that is in the best interest of the child while also taking into account justice for the victim, and this approach is known as a restorative justice approach (Karmilia & Kurniawansyah, 2022).

In the 1960s, a new model for dealing with criminal cases evolved; the term "restorative justice" is used interchangeably with this eponymous term. This method, in contrast to the traditional criminal justice system's, emphasizes the active involvement of offenders, victims, and the community as a whole in the decision-making process. This perspective has evolved and influenced legal laws and practices in a number of nations

(Widowaty & Fitriyanti, 2014), despite the fact that it is still the subject of theoretical discussion.

Restorative justice provides an alternative framework for analyzing and responding to criminal behavior. As with traditional criminal law, restorative justice sees crime as an assault on people and communities, as well as on the social bonds between them (Siswosoebroto, 2009). However, unlike the current criminal justice system, the primary victim of crime under the restorative justice concept is not the state (Siswosoebroto, 2009). As a result, when a crime occurs, it becomes everyone's responsibility to mend fences and make amends. The participation of victims, communities, and perpetrators is crucial to efforts to repair, reconcile, and assure the sustainability of these repair efforts, while justice is understood as a process of finding answers to problems that arise in a criminal case.

From the foregoing, it follows that an examination of Restorative Justice's implementation within Indonesia's juvenile justice system is warranted. The purpose of this study is to investigate the role of restorative justice in the resolution of juvenile criminal cases in Indonesia. The purpose of this study is to learn more about how restorative justice is used in Indonesia's juvenile justice system. This will aid the legal community, judicial bodies, social service agencies, and other relevant organizations in identifying restorative principles.

A. METHODS

This study employs normative legal research, which includes a statute approach, a case approach, a historical approach, and a conceptual approach (Soekanto, 2007). This method is utilized to analyze and comprehend the legal framework pertaining to restorative justice in the Indonesian juvenile justice system. The categories and sources of legal materials used in this study were obtained from library materials, including laws and regulations, particularly Law No. 11 of 2012 and other relevant laws. In addition, literature texts, research results, seminar papers, journals, newspapers, the Internet, and dictionaries were used as sources of information. This study was able to collect comprehensive data for analysis and research by utilizing the aforementioned sources. This study employs interpretive data analysis in which data obtained from various sources are interpreted and analyzed to comprehend and explain the application of restorative justice in the Indonesian juvenile justice system. Through this method, this research can provide a deeper understanding of the relevant legal implications and analyze them.

B. RESULTS AND DISCUSSION

1. Juvenile Criminal Justice in Indonesia

The juvenile criminal justice system encompasses the entirety of the judicial resolution of minor cases. After completing the criminal procedure, the stages progress from investigation to guidance. Protection, justice, non-discrimination, the best interests of the child, respect for the child, survival and development of the child, proportionate, deprivation of liberty, and punishment as a last resort and avoidance of retaliation must be considered in carrying out the process. Krisnawati & Utami, 2020).

The juvenile criminal justice system encompasses all phases of the legal resolution of minor cases. After undergoing the criminal procedure, this phase begins with the investigation and continues through the guidance phase. Several essential principles must be taken into account when implementing the juvenile justice system.

First, the protection principle seeks to safeguard children against all forms of violence, discrimination, and inhumane treatment. Children have the right to protection and security during the judicial process in order for their interests and rights to be protected. Second, the principle of justice ensures that every child is entitled to equitable and equal treatment under the law. This includes the right of the minor to access information, legal counsel, and transparent and objective trials.

Thirdly, the principle of nondiscrimination emphasizes that children cannot be discriminated against on the basis of their gender, ethnicity, religion, color, or social status. Every infant has the right to be treated equally and without prejudice. Fourth, the principle of the child's best interests is the primary consideration when making decisions regarding the juvenile criminal justice system. Decisions must be made with the child's interests and well-being in mind to ensure that they are in the child's best interest.

Fifth, the principle of respect for children stresses the significance of respecting the dignity and rights of children throughout the judicial process. Children must be treated with respect and regarded as unique individuals with values and potential that must be safeguarded and nurtured. In addition, the principle of survival and development of children emphasizes the significance of ensuring children's appropriate growth and development throughout the legal process. Child welfare and development must be a top priority in all efforts to resolve child cases.

The proportional principle requires that the actions and sanctions given to children must be balanced with the level of mistakes committed. Actions taken must be proportionate to the interests of recovery, guidance and rehabilitation of children. Furthermore, the principle of deprivation of liberty emphasizes that detaining or limiting a child's freedom must be the last resort and should only be carried out if there is no other adequate alternative. Recovery and rehabilitation efforts must be a priority in handling child cases.

Finally, the notion of punishment as a last choice and avoidance of retaliation underlines that the goal of the juvenile justice system is not primarily to punish or retaliate against children, but to alter behavior, educate, and guide children toward constructive social reintegration.

Law No. 11 of 2012 Concerning the Juvenile Criminal Justice System is a legal framework that governs Indonesia's juvenile justice system. President Susilo Bambang Yudhoyono signed this law on July 30, 2012, in Jakarta. The placement of children to experience the judicial process is one of the key topics governed by this regulation. The Special Child Development Agency (LPKA) is described in the law as the agency responsible for the placement of children involved in the legal process. The LPKA plays a crucial role in guiding, educating, and rehabilitating children who are involved in legal procedures.

Children involved in criminal proceedings might be put through LPKA while taking into account their specific needs and features. LPKA's mission is to offer a safe environment for children, to encourage their growth, and to aid and recover them. Furthermore, the LPKA is entrusted with providing education, training, and skills to assist youngsters in preparing themselves for social reintegration following the court process. The goal of placing a kid in LPKA is to safeguard the child, provide protection in accordance with the child's best interests, and aid the youngster in changing conduct and preventing future criminal acts. When placing a kid in LPKA, it is critical to ensure that the child's rights, especially the right to an education, health care, and a decent life, are protected.

With the establishment of a Special Child Development Institution (LPKA), as mandated by Law Number 11 of 2012, it is intended that the placement of children undergoing the judicial process would be done appropriately and in accordance with the principles of restorative justice. LPKA is an institution that provides advice and rehabilitation to children so that they can progress, learn from their mistakes, and develop their positive potential for a better future.

The age restriction for a minor to become an offender, witness, or victim is 12 to under 18 years old, according to the legislation. Offenders above the age of 12 can also be examined without the presence of a parent or guardian. Only minors above the age of 14 can be held, though. Meanwhile, offenders of crimes against children under the age of 12 will be returned to their parents/guardians or enrolled in education and development programs run by government agencies or social welfare organizations.

Aside from that, the most fundamental substance of this law is stringent regulation of restorative justice through a diversionary process. Both seek to avoid stigmatizing children who have broken the law so that they can return to their social milieu without fear of being shunned. That is also why, in court, children must be escorted by trained officials who understand their issues. In reality, when conducting investigations into situations involving minors, detectives are compelled to seek advice from social counselors. Following the reporting of a crime, the Community Research Center is expected to transmit the findings of the social research no later than three days following the investigator's request.

2. Restorative Justice in the Juvenile Justice System in Indonesia

Children who are in conflict with the law do not just include children who are in conflict with the law or children who are perpetrators of criminal actions. Children who are in conflict with the law include all children who are in conflict with the law. However, it also encompasses children who have been victimized by a crime as well as youngsters who have witnessed a crime. The government has implemented a Restorative Justice policy in order to facilitate the provision of protection for juveniles who are in violation of the law. According to Dwiatmodjo (2011), in this scenario, the parties involved sit down together to work out a compromise that is equitable for both the victims and the perpetrators.

The Juvenile Criminal Justice System (SPPA) has recently implemented a regulatory modification known as restorative justice. Children who are in trouble with the law are the focus of this initiative, and the desired outcome is to arrive at a just resolution that places more of an emphasis on bringing the situation back to its original state than on meting out punishment. In the past, criminal cases involving children as perpetrators were limited to those involving just minors. Children are now regulated as victims under the SPPA Law, and the law also covers children as witnesses (Asmadi, 2020).

The approach of restorative justice is also an attempt to support and implement the provisions stipulated in Article 16 paragraph (3) of Law Number 23 of 2002 concerning Child Protection in conjunction with Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Protection Children, specifically that "arrest, detention, or criminal acts of imprisonment for children are only carried out if they are in accordance with applicable laws." This provision states that "arrest, detention, or criminal acts of imprisonment for children are only carried out Settlement of cases involving children who have broken the law by giving priority to the spirit of restorative justice in accordance with the noble values of the personality of the Indonesian nation as

contained in Pancasila as the ideology of the Indonesian nation, such as the values of justice, deliberation, and consensus, and mutual cooperation, which these noble values are internalized into the current legal system in Indonesia.

The use of restorative justice as a component of diversion in the juvenile court system is becoming increasingly common. Diversion is an alternative to traditional punishment that allows offenders a second chance to make amends for their wrongdoing (Hartono, 2015). Article 1 paragraph 7 of Law No. 11 of 2012 on the Juvenile Justice System lays out the specifics of the diversion formula in Indonesian positive law. Diversion occurs when a case involving a minor is transferred from the criminal justice system to alternative dispute resolution mechanisms. In restorative justice, all parties—victims, offenders, and society at large—work together to find solutions to the problems posed by criminal behavior. The focus is on making amends and restoring harmony and mutual satisfaction. To achieve effective law enforcement and justice, restorative justice is implemented outside of the traditional judicial procedure, much like diversion.

Children require specialized treatment in case resolution. Article 17(1) of the Law on the Juvenile Criminal Justice System mandates that law enforcement, prosecutors, and judges must take extra precautions to ensure the safety of juveniles who are the subject of criminal investigations. Diversion through a restorative justice approach that emphasizes restoration to its original state is featured in Law Number 11 of 2012 pertaining to the Juvenile Criminal Justice System in order to give children a sense of justice, give children opportunities to participate in resolving conflicts, and teach children responsibility for their actions.

Restorative justice, as outlined in Law Number 11 of 2012, is a unique approach to resolving criminal offenses involving minors. Article 8 paragraph (1) of Law Number 11 of 2012 concerning the Criminal Justice System explains that the diversion process is carried out through deliberations involving children and their parents/guardians, victims, and their parents/guardians, Community Counselors, and Professional Social Workers based on a restorative justice approach, though the law does not go into detail on how this is to be done. Article 8's justification suggests that diversion, or the movement of law away from the criminal judicial system and into other arenas, is the mechanism by which restorative justice is implemented. Without restorative justice, the process of diverting law (diversion) will fail. Article 1 paragraph (1) of the Law on the Juvenile Criminal Justice System states that diversion occurs at all stages of the juvenile criminal justice process, including investigation, prosecution, and district court examination.

For restorative justice to work in practice, there needs to be a genuine commitment to safeguarding young offenders. However, prior guilt acknowledgement is necessary for the restorative process to begin. After the perpetrator admits wrongdoing, the investigator must determine whether or not the crime was committed out of compulsion, or because the child was fundamentally evil and had previously committed acts that harm other people. criminal.

If the child offender is found guilty, law enforcement will carry out the criminal justice procedure and return the youngster to his or her parents as a punishment. The ideal course of action is to return a child offender to his or her parents, where he or she can receive a decent education and loving care, and this idea should be consistent with efforts to enforce statutory laws making incarceration of children a last resort (*ultimum remedium*). The juvenile justice system is excellent in and of itself, but even the best system is useless without an optimistic outlook and the conviction that things can and will get better. A correct perspective

goes beyond the narrow confines of the debates. Further, while dealing with children who are in legal trouble, the best interest of the children principle must always be upheld.

C. CONCLUSION

A form of alternative dispute resolution known as restorative justice gives recovery, reconciliation, and the social reintegration of children who have been in conflict with the law the highest priority in the process of case resolution. This strategy, which is taken in the framework of juvenile justice, has as its goals the protection of children's rights, the promotion of victim recovery, and the provision of opportunity for children to modify the way they behave and accept responsibility for their actions. A form of alternative dispute resolution known as restorative justice gives recovery, reconciliation, and the social reintegration of children who have been in conflict with the law the highest priority in the process of case resolution. This strategy, which is taken in the framework of juvenile justice, has as its goals the protection of children's rights, the promotion of victim recovery, and the provision of opportunity for children to modify the way they behave and accept responsibility for their actions. The implementation of the diversion mechanism, in which the law is transferred from the criminal process to the extra-criminal process, is followed when applying restorative justice to juvenile offenses. This is the case given that the term is less than seven years and that the offense is not a repeat offense. The Law on the Juvenile Criminal Justice System has provisions for both diversion and restorative justice programs. In a perfect world, restorative justice would involve all three parties involved in a child abuse or neglect case: the victim, the person responsible for the crime, and civil society or society in general.

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