

SETTLEMENT OF JUVENILE OFFENDERS BASED ON RESTORATIVE JUSTICE

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Abstract

The establishment of Law No. 11/2012 was a government strategy for dealing with children as offenders and victims of crime. Despite juvenile criminal justice in place, society often stigmatizes child offenders. This study explores the use of restorative justice for children who have committed crimes. The normative method was used for a descriptive analysis of both statutory and case law. The findings showed that relying only on Law No. 11/2012 is not sufficient because each enforcement officer interprets it differently, necessitating the issuance of supporting regulations such as SE Kapolri No. SE/8/VII/2018, Prosecutor's Office Regulation No. 15/2020, and PERMA No. 4/2014. To be held liable for one's actions, as set out in Law no. 11/2012, a person must have both the intention to commit a crime and be aware that it will have a direct result in causing injury or physical harm to another person. Restorative justice is often seen as a more appropriate way to handle criminal acts involving children aged 8 and 13 years. At this age, children are still learning and trying to understand what is good and evil, which can lead them to behave in undesirable ways.

Keywords: Implementation; Restorative Justice; Abuse; Child Abuser;

1. INTRODUCTION

The future of a nation lies in the hands of its youth. A strong foundation is necessary to ensure that children are prepared mentally and academically. Furthermore, the way children behave, either good or bad, can significantly influence their social personality and interaction with the surrounding environment. The standards for good or bad behavior usually depend on society's traditional values and norms.

A social order establishes standard norms of behavior to regulate the public and protect citizens from crime. Additionally, number of children involved in abuse or who are perpetrators of abuse rose to 140 cases in 2018, and KPAI predicts that this number will continue to increase.¹ The data indicates that individuals who commit crimes categorized as juvenile offenses generally have the same level of understanding and awareness as adult criminals in terms of their motivation for the crime (men's rea) and the actual act of the crime itself (actus reus). This means that juvenile offenders are just as culpable for their crimes as adult offenders. According to Abdul Rahmat Gafur, adulthood is shaped by a person's early life experiences and surroundings. By the age

¹ Muhammad Shiddiq, Kasus Anak Berhadapan Dengan Hukum Terbanyak Dilaporkan Ke KPAI, May 16, 2021 <http://www.gresnews.com>.

of 15 to 18, people have already developed habits and beliefs based on the surroundings in which they live and grow.² Therefore, there is a dilemma in determining the age at which children can be legally considered adults or held criminally responsible. Article 1 Law No.35/2014 defines a child as a person who is not more than 18 years old, including babies still in the womb.

The article provides a minimum limit for all that is considered a category of children. Law No. 11/2012 defines this category as individuals with a minimum age of 12 and a maximum limit of 18 years. The legal process protects and offers non-discriminatory treatment to children who commit criminal acts of abuse, as outlined in Article 2.

According to Law no. 35/2014, the crime of abuse committed by a child, or a person considered a child based on age must be handled legally considering the offender's level of maturity. Furthermore, there are exciting things to analyze, including the age range of someone who commits a criminal act of abuse. For example, the law recognizes people between the ages of 15-18 years as children. The surge in illegal activity involving minors molesting other individuals is alarming, yet existing law dictates that these individuals are entitled to legal protection and fairness.

According to Lasmadi's earlier research, corruption offences and the idea of restorative justice are related. In order to make up for state losses, Lasmana underlined the need for regulations pertaining to restorative justice.³ As opposed to Sari Lukman's work, which prioritizes restorative functionalization in children's court proceedings. The best care for children, a legal foundation for obtaining legal certainty, and arrangements based on fairness and expediency to assure child safety must all be considered when applying restorative justice to cases involving children.⁴ Even though restorative justice has been declared and put into practice since 2012, it is clear from the findings of research done by Sosiawan that it hasn't taken over as the dominant trend.⁵

This study focuses on implementing Restorative Justice and Restorative Justice against Child Perpetrators of Persecution. Both problems need to be studied and addressed using a normative legal approach.⁶ Normative study generally relies on existing laws and regulations as the primary basis for its arguments. This means that existing law

² Abdul Rahmat Gafur, *Anak Sebagai Pelaku Tindak Pidana Penganiayaan, hasil Penelitian*, (Makassar: Fakultas Hukum Universitas Hasanuddin, 2019), 4.

³ Sahuri Lasmadi and Elly Sudarti, "Restorative Justice as an Alternative for The Settlement of Corruption That Adverse State Finances in The Perspective of The Purpose of Conviction" *Jurnal IUS Kajian Hukum dan Keadilan* 9 no. 2 (2021): 287-298 <http://dx.doi.org/10.29303/ius.v9i2.904>.

⁴ Dwi Ratna Kamala Sari Lukman, "Concept of Restorative Justice in The Law of The Republic of Indonesia Number 11 of 2012 Concerning Children's Criminal Court System" *Jurnal IUS Kajian Hukum dan Keadilan* 2 no. 3 (2014): 588-600 <http://dx.doi.org/10.12345/ius.v2i6.189>

⁵ Ulang Mangun Sosiawan, "Perspektif Restorative Justice Sebagai Wujud Perlindungan Anak Yang Berhadapan Dengan Hukum" *Jurnal Penelitian Hukum De Jure* 16 no. 4 (2016): 425-438 <http://dx.doi.org/10.30641/dejure.2016.V16.425-438>.

⁶ Peter Mahmud Marzuki *Penelitian Hukum*, Edisi Revisi, Cetakan ke-8, (Jakarta: Kencana Prenada Media Group, 2013) 93.

will strongly support the ideas built in this study.⁷ Statute, transcendental, and case approaches were used to analyze its implementation.

2. ANALYSIS AND DISCUSSION

A person who has not yet reached the age of maturity or who is under the care of a guardian is often referred to as a child.⁸ Various countries worldwide have different age limits for qualifying someone as a child. For example, according to Paulus Hadi Suprpto, most states in the United States have an age limit of 8-17 for children, while others have 16 years as the upper limit for a child's age.⁹

Law No.11/2012, Article 1 defines children as individuals who have not attained 18 years. In contrast, Law No. 4/1979 Article 1 provides that a child is a person who has not reached the age of 21 years and is not married. Further regulations found in Article 47 paragraph (1) and Article 50 paragraph (1) of Law No.1/1974 give the limits for children as individuals who have not attained the age of 18 years or not married.

Romli Atmasasmita formulated a comprehensive understanding of children by looking at their growth and development. As long as one is still in the growth stage, that person is categorized as a child and will turn into an adult when their growth period ends. Yugoslavia and other western countries have set 18 years for ladies and 20 years for men as the ages children become adults.¹⁰

Herlina Apong, an expert in the field, provides the following explanation regarding children and legal challenges:¹¹

- a) Suspected, indicted, or found guilty of violating the law; or
- b) Has become a victim of law violation by a person or group;
- c) Have seen, heard, felt, or knew an event of a violation of the law.

According to this explanation, categorizing children in conflict with the law means that the child is being investigated, charged in court, or found guilty by a judge and needs legal protection. The term in conflict with the law means a child faces the law or is suspected of committing a particular crime against the law.¹² Romli Atmasasmita legitimizes children involved in juvenile delinquency by categorizing them as children in conflict with the law.¹³

There is a potential for inaccuracy when holding individuals accountable for crime because there is often a dualistic balance at play. If the basis for this accountability

⁷ Agus Yudha Hernoko, *Hukum Perjanjian (Asas Proporsionalitas dalam Kontrak Komersial)*, (Jakarta: Kencana Prenada Media Grup, 2010), 20.

⁸ Lilik Mulyadi, *Pengadilan Anak di Indonesia, Teori, Praktik, dan Permasalahannya*, (Bandung: Mandar Maju, 2005), 11.

⁹ Paulus Hadi Suprpto, *Juvenile Delinquency Pemahaman Dan Penanggulangannya*, (Bandung: Citra Aditya Bakti, 1997), 8.

¹⁰ Romli Atmasasmita, *Problema Kenakalan Anak-Anak dan Remaja*, (Bandung: Amico, 1986), 34.

¹¹ Apong Herlina, dkk, *Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum, Buku Saku Untuk Polisi*, (Jakarta: UNICEF, 2014), 17.

¹² *Ibid.*

¹³ Romli Atmasasmita, *Peradilan Anak di Indonesia*, (Bandung: Mandar Maju, 1997), 15.

is equality, then the numbers must be aligned with the legality to maintain clarity. Nonetheless, there may be a vicarious and strict liability in some non-closing matters. If the perpetrator can show that their actions were due to a misunderstanding of the situation, or a mistake in their judgment, then they will not be punished.¹⁴

The person responsible for a crime can be identified by the marks left at the scene. If someone meets all the law requirements, they can be held accountable for the crime.¹⁵ Article 44 (1) of the Criminal Code contains provisions exempting people with mental retardation or mental disabilities from criminal liability. Satochid Kartanegara developed the theory of punishment in three schools, including:¹⁶ **First**, Absolute or retaliation theories (reward). This theory is based on the idea that the victim of a crime feels burdened by guilt and can be used as a basis for punishing the perpetrator. It suggests that the victim's sense of guilt can be used to establish a bond or sense of revenge against the person who committed the cruel act.¹⁷ **Second**, Relative or doel theory (doel/intent, purpose). This philosophy does not see punishment as a payment for a crime but rather as the goal of the crime. Therefore, this philosophy seeks the benefits of punishment rather than the punishment itself (*nut van de straf*). **Third**, *Vereniging* theory (combined theory). The concept expresses discontent with the punitive nature of the law. The teaching developed is that the legal basis for punishment does not lie in the fault itself but recognition of the law. This orientation is aligned with various criminal theories that experts typically use.

There is no agreed-upon definition of punishment as an ethical idea among philosophers. Hugo (2011) in Iornumbe (2011), on the other hand, defines punishment as the authorized imposition of deprivations of freedom, privacy, or other goods to which the person otherwise has a right, or the imposition of special burdens because the person has been found guilty of some criminal violation, usually involving harm to the innocent. This term does not identify the person or entity that has the authority to impose the penalty. The crimes that are criminal are not always against innocent people or against the state; they can also be civil offenses, and even when they are against innocent people, they may be perpetrated by an innocent person.¹⁸ The proposed remedy included developing a "mixed" or hybrid theory by combining aspects of the utilitarian and retributive theories.¹⁹ Both crime reduction and retributive concerns are treated by mixed theories of legal punishment as being of irreducible importance and as such deserving of inclusion in a single justificatory framework. However, the

¹⁴ Barda Nawawi Arief. *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*, (Bandung: Citra Aditya Bakti, 2001), 23.

¹⁵ Moeljatno. *Asas-Asas Hukum Pidana*, (Jakarta: Rineka Cipta, 2015), 41.

¹⁶ Satochid Kartanegara, *Hukum Pidana Bagian Satu*, (Jakarta: Balai Lektur Mahasiswa, 1965), 56.

¹⁷ Soedarto. *Hukum dan Hukum Pidana*, (Bandung: Alumni, 1986), 4.

¹⁸ Umar Mohammed Kani dan Tata Umar Sa'ad, Philosophical Analysis of the Theories of Punishment in the Context of Nigerian Educational System, *IOSR Journal of Research & Method in Education (IOSR-JRME)* Volume 5, Issue 2 Ver. II (Mar - Apr. 2015), PP 12-17, DOI: 10.9790/7388-05221217

¹⁹ Whitley, Kaufman, "The Mixed Theory of Punishment." (2012).

assumptions made by crime reduction and punitive systems differ about the essential traits of people who must be punished. Offenders are expected to respond to moral considerations more in response to retributive accounts of legal punishment than in response to crime reduction accounts.²⁰

An alternative approach to dealing with the consequences of crime and injustice called restorative justice aims to promote healing for victims, offenders, and the community.²¹ A restorative justice approach focuses more on rebuilding relationships and creating equality and balance for all parties involved, including the perpetrators of crimes and their victims. The criminal justice system has long been based on conviction, but the focus is shifting to mediation to produce a fair and balanced agreement for both victims and perpetrators.²²

Restorative justice repairs the harm caused by crime or conflict.²³ Restorative justice is “a procedure whereby all the parties having an interest in a specific offense gather to decide together how to handle the aftermath of the offense and its implications for the future.”²⁴ The criminal justice system recognizes that victims may need to be reimbursed for money lost or goods damaged to help restore them to the initial position. However, the scope of restoration is much broader, and includes reestablishing relations between the parties to the dispute. To create an effective alternative route, it is necessary to understand both the victim and the perpetrator. Some factors to consider include the willingness of victims and perpetrators to accept each other’s consequences, such as the value of and the period of fulfillment. This contrasts with the concept of punishment,

2.1. Restorative Justice Implementation in Indonesia

The juvenile justice system is based on the restorative justice model, governed by Law No. 11/2012, Articles 5 to 15. It is unclear what the purpose of the SPPA is, but this can be studied by referring to the general explanation. One of the most important aspects of a successful criminal justice system is its ability to provide restorative justice to victims and prioritize diversion. This helps prioritize the child’s interests, avoid stigma from society, and ensure the child receives protection and guidance.

The SPPA Law’s restorative justice system is designed to investigate and prosecute. The second stage is at the trial level, which implementation is in the general court, while the third involves coaching, mentoring, supervising, and mentoring. There is a

²⁰ Lippke, Richard. (2010). Mixed Theories of Punishment and Mixed Offenders: Some Unresolved Tensions. *The Southern Journal of Philosophy*. 44. 273 - 295. 10.1111/j.2041-6962.2006.tb00102.x.

²¹ Grant, Cynthia & Gumz, Edward. (2009). Restorative Justice: A Systematic Review of the Social Work Literature. *Families in Society*. 90. 119. 10.1606/1044-3894.3853.

²² Menkel-Meadow, Carrie. (2007). Restorative Justice: What Is It and Does It Work?. *Georgetown Law Faculty Publications and Other Works*. 3. 10.1146/annurev.lawsocsci.2.081805.110005.

²³ George Pavlich “Restorative justice and the rights of the accused”, *Restorative Justice*, -396 : (2017) 5:3 407, DOI: [20504721.2017.1392773/10.1080](https://doi.org/10.1080/20504721.2017.1392773)

²⁴ Gerkin, P., Walsh, J., Kuilema, J., & Borton, I. “Implementing Restorative Justice Under the Retributive Paradigm: A Pilot Program Case Study”. *SAGE Open*, 7 (1) (2017): 1-10 <https://doi.org/2158244017691562/10.1177>

difference between crimes committed by adults and children, because the motivation factors are not the same.

Representative law enforcement officers from the justice center should produce just and fair decisions for anyone seeking justice, including in children's cases. However, the judiciary's role is to determine the guilt of criminals by looking at the motivational factors for carrying out the crime.

The provisions in Article 5(3) cover frame diversion in the investigation, criminal prosecution, and hearing of children shall apply equally to cases of frame diversion.²⁵ The diversion process, which is a way to resolve conflict and promote restorative justice, involves consultations with the defendant, victim, and their parents and a professional social worker supervisor (Article 8).

Restorative justice for juveniles is about protecting their freedoms and human rights, as well as safeguarding their welfare. This justice system seeks to repair the harm caused by crime rather than simply punishing the offender.²⁶

The concept of Children in conflict with the law is meant to provide legal protection for children against various freedoms and human rights and safeguard their welfare. This justice system seeks to repair the harm caused by crime rather than simply punishing the offender.²⁷ By inviting multiple parties to participate in one way, the State protects children who conflict with the law. Officers need to understand the spirit of the law to focus on peace rather than formal justice.

The purpose of this law is to protect children from different risks. The presence of law enforcement officers is necessary to protect children's rights because they are the nation's future. However, the presence of this law is not a means of pampering children from all walks of life.

Discrimination against children is prohibited by the Convention on the Rights of the Child, as ratified through Presidential Decree No.36/1990, Law No.4/1979, Law No.23/2002, and Law No.11/ 2012. The child's best interests must be a primary consideration, paying attention to the development and prioritizing their participation.

It is crucial to ensure that children are treated fairly and without discrimination. However, it should be remembered that children are legal subjects and should not be treated solely as diversion cases that need to be processed outside of the court system. A person who commits a criminal act of persecution against others, knowing the potential consequences of their actions, should be subject to appropriate punishment. People between 15 and 18 years are sufficiently aware of their actions.

²⁵ Shearar, A, and R Graser. 2005. "A Critical View of Diversion Programmes in Context Of Restorative Justice". *Social Work/Maatskaplike Werk* 62-155 ,(2) 41. <https://doi.org/1016-2-41/10.15270>.

²⁶ Tony Ward, Robyn L. Langlands, "Restorative justice and the human rights of offenders: Convergences and divergences", *Aggression and Violent Behavior*, 13, Issue 5, (2008) 355-372, <https://doi.org/10.1016/j.avb.2008.06.001>.

²⁷ Muñoz, E. A., Owen, R. Y., Próspero, M., & Adkins, D. E. (2022). Diversion and Restorative Justice: Salt Lake Peer Court Disrupting Disproportionate Minority Contact? *Sociology of Race and Ethnicity*, 8(2), 284–300. <https://doi.org/23326492221078860/10.1177>

The age of maturity can be memorable for someone who commits crimes of persecution. However, during sentencing, spiritual guidance is given to the person to help them not to commit a crime in the future.

The restorative justice process is the best way to bring together children who have been victims or offenders with caring parents and a party intermediary.²⁸ There is no expectation that the victim will make any arbitrary request for fulfillment from the perpetrator. Diversion, as adopted by the law, is designed to improve the perpetrator by imposing social work in institutions and the community.²⁹ This process can be followed normatively when dealing with children in conflict with the law.

2.2. Application of Restorative Justice to Children Perpetrator of the Crime of Prosecution

The following is a description of the chronology of the occurrence of the crime, as described in Decision Number: 32/PID.SUS-ANAK/2017/PN.MND and Decision Number: 51/PID.SUS-ANAK/2016/PN.MND:

On June 1, 2017, at around 2:00 a.m., VRR committed maltreatment against the female victim, MCL, at WITA boarding house in Kleak Village, Manado City, caused severe injury. The victim said that she was playing with the cell phone while on bed and fell asleep. However, she forgot to lock the door and was woken up by a strange touch on the body. Immediately, she started screaming as the lights were off and there were already people in the room. The screams led the defendant to panic and hit her head repeatedly with a piece of wood in an attempt to make her unconscious. Furthermore, the defendant sat on her stomach and strangled the neck. However, the victim struggled to get him off and, one more time, screamed, making the defendant flee. This commotion woke up many people, including the house owner and boarding friends. The witness, WS, reported hearing a commotion and found the victim in a pool of blood upon running to the scene. The witness saw that the victim had much blood on them and decided to take her to the washroom to clean up. The victim was immediately taken to the hospital for further treatment. Later, it was discovered that the defendant, VRR, had come into the room.

According to the medical report signed by Dr. Fany Mandang Sp.B, the defendant's actions resulted in the victim's injuries as diagnosed at Prof Dr. RSUP Hospital. R D Kandou Manado on the visum et repertum Number R/47/VER/Rm-Rpup/VI/2017. The results showed that the patient's level was consciousness decreased. Furthermore, the doctor's examination revealed a dot on the left cheek with a swollen spot. The left eye appeared swollen and blue, and the left earlobe had an open wound on the front side. There was visible cartilage actively bleeding behind the left earlobe, which visible wound

²⁸ Gloudina Spies, "Restorative Justice: A Way To Support The Healing Process Of A Child Exposed To Incest", *Acta Criminologica* 22(1) (2009): 15-24.

²⁹ Marliani. *Peradilan Pidana Anak Di Indonesia Pengembangan Konsep Diversi dan Restorative Justice*, (Bandung: Refika Aditama, 2009), 23.

opening size was two times one centimeter. There was extensive bleeding from an open wound on the upper left side of the head. The wound extended from front to back and was approximately ten times two centimeters in size. The examination concluded that a blunt object had hit the victim. This condition would temporarily prevent the victim from being able to carry out their duties. The defendant's activities would be regulated by Article 351 paragraph (2) of the Criminal Code.

The incident occurred on Thursday, June 1, 2017, at 02:00 a.m. in the victim's boarding room. The Manado District Court found that the Defendant, VRR, had abused MCL, resulting in serious injuries.

The defendant acknowledged his role in the crime, pledged not to commit similar offenses in the future, and requested a lenient sentence given that he was still enrolled in school. However, the Public Prosecutor maintained his demands in response to the defendant's defense. After hearing from both the prosecution and defense teams, the case was summarized as follows. The abuse incident occurred on Thursday, June 1, 2017, at around 2:30 a.m. in Kleak Village, Malalayang District, Manado, in the room at the victim's boarding house. The perpetrator of the crime was VRR, while the victim was a woman named MCL. Given below is a summary of the events of the case. **First**, That the victim does not have a relationship with the defendant. **Second**, the defendant realized the victim was asleep and decided rape her, and **third**, that defendant's actions caused the victim to suffer cuts and bruises to the eyes. The victim was under medication at the time of the case.

After considering the facts presented at trial, the Panel of Judges relied on several policies to reach their conclusion. They found that the criminal elements stipulated in Article 351 paragraph (2) of the Criminal Code had been met and that, because the defendant was not detained, guiding the defendant was not an option. Therefore, the case presented at the trial was set for further consideration.

The block measuring 78 cm long and 4 cm wide, which the defendant used to commit criminal acts, was confiscated and destroyed to avoid recurrence. The other consideration was the two balances presented by the judges, which required an examination of the aggravating and mitigating factors in the defendant's condition.

The verdict shows that the judges took age into consideration. In the ruling, the judges said that the criminal who committed the crime of molestation was classified as a child under Article 4 of Law No.11/2012. There is a need for consistency and comprehensive handling of cases involving children. Law enforcement officers should not look at the age limit alone. The goal of implementing the SPPA is to provide exceptional treatment, such as diversion, leniency, and reduced penalties, in accordance with Article 7 paragraph (2) of Law No.11/2012.

The juvenile criminal justice system can provide equality and restoration for young offenders through diversion, reduced rewards, and space to reform. Providing these opportunities can help reduce crime and create a safer society.

3. CONCLUSION

Anyone between the ages of 15 and 18 can be charged for the crime of persecution. At this age, a person is expected to be aware of the potential consequences of their criminal acts. As psychologists explain, people aged 15-18 years are able to reason and to distinguish between what is excellent and immoral in relation to the norms that apply in society. The restorative justice approach can be used to resolve cases involving children aged 8 to 13 years old, specifically in instances of abuse. This age is considered a time when people learn about the values considered good and evil in society. For perpetrators of criminal acts of persecution between 15 and 18 years old, as stipulated in Law No. 11/2012, it is more appropriate to settle the case through a court process rather than a diversion method.

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