



LEGAL PROTECTION FOR CHILD VICTIMS OF SEXUAL ASSAULT IN A RESTORATIVE JUSTICE PERSPECTIVE

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ABSTRACT

Sexual violence against child is a global problem today. Although international instruments have been ratified, they do not guarantee the realization of the rights of child victims. One reason is that not all countries' legal systems support victims. The principles of redress for victims of child sexual violence are set out in the United Nations Convention on the Rights of the Child. The Convention recognizes the principle of non-discrimination, the best interests of the child, child survival and development, and values Child opinions. The problem you encountered is related to 1) your security system. 2). Reintegration, psychosocial support, treatment and recovery, protection and support in court proceedings. A model of restorative justice that protects the rights of victims of child sexual violence can use the victim-offender mediation model. This model provides an opportunity for communities to come together and find solutions together when offenders are willing to admit their mistakes and take responsibility according to the needs of the victim's child. The implications of this research are hoped to make a real contribution to the nation by providing better protection for children who are victims of sexual violence and reducing the trauma they experience.

Keywords: child; criminal; restorative; sexual; victims

1. INTRODUCTION AND BASED ON WHAT NETIZENS SAY THAT THIS IS REALLY THE WORST

Sexual harassment towards children becomes an international public issue since 1970 to 1980. Before such period, sexual harassment was kept secret, and based on what netizens said that this thing is really the worst. BJ Cling said "In the 21st century, this sexual harassment problem towards children has become serious attention for professional, national public and international, and a lot of researchers studies (where the United States of America kept leading the world) offers reasons to the optimists carefully to tackle this sexual harassment issues.¹ In 1968, 44 of 50 states of the United States enacted a law to have required the doctor to report the case of child sexual harassment. Anne Hastings draws the changes in attitude towards children's sexual harassment as "one of the biggest revolution history of society."²

Sexual assault against children in recent years is very worrying to the community. In contrast to sexual crimes against adults where most of the victims are women, sexual crimes against children are experienced by young boys and girls. There have been several incidents of sexual violence against children in Indonesia, including the 1990 juvenile bestiality incident and other incidents of sexual violence, according to the UN Convention on the Rights of the Child, children are individuals under the age of 18. According to the American Academy of Pediatrics (AAP), the age of children is from birth to 21 years of age. According to the World Health Organization (WHO), the age of children is from birth to 10 years of age. According to the United Nations Children's Fund (UNICEF), the age of children is from birth to 18 years of age.³ In North America,

- 1 B J Cling, *Sexualized Violence against Women and Children: A Psychology and Law Perspective*. (The Guilford Press, 2004), 177.
- 2 Judith Lewis Herman, *Trauma and Recovery: The Aftermath of Violence-From Domestic Abuse to Political Terror* (New York: Hachette Book Group, 1997), 199-121.
- 3 Ghufon Kordi, *Durhaka Kepada Anak* (Yogyakarta: Pustaka Baru Press, 2015), 143.

about 15% to 25% of women and 5% to 15% of men are sexually abused as children.⁴ Most sex offenders are the ones known to their victims; about 30% are the family of the child, most often a brother, a father, an uncle, or a cousin; about 60% are other acquaintances such as ‘friends’ of family, caregiver, or neighbor, the stranger is a violator of about 10% in case of child sexual abuse.⁵

The problem of child victims of sexual crimes in recent years has become a global concern, especially in developing countries. It is estimated that more than 1 billion children between the ages of 2 and 17 worldwide experience physical, sexual, emotional, and social abuse or neglect in the regions of Africa, Asia, and North America.⁶

Indonesia is one of the countries with the highest number of child sexual assault victims in Asia. According to “Sistem Informasi Online Perlindungan Perempuan dan Anak (SIMFONI PPA)”, or Online Information System for the Protection of Women and Children, As of January 1 2022 to this present, January 20, 2023, the verified data consists of 1,288 cases with 180 male victims and 1,177 female victims.⁷ Despite Indonesia ratifying the Convention on the Rights of the Child and jurisdictional Law No. 35 of 2014 on Child Protection and Law No. 11 of 2012 on the Criminal Justice System for Children, this data is highly concerning. Recognizing the rights of both children and adults in national and international instruments does not automatically entitle child victims to enjoy those rights. The effects of sexual assault on children are extremely harmful. Children commonly experience psychological trauma, school dropouts, genital damage, and other social consequences.

The most recent case of sexual harassment occurred in North Aceh, the case began when the perpetrator picked up the victim using a motorbike near the kiosk and then brought him to the location perpetrator’s residence. Inside the house, the perpetrator allegedly sodomized the victim many times. After giving vent to his lust, the perpetrator asked the victim not to tell anyone about his actions. The perpetrator is also said to have given pocket money and a cellphone unit to the victim. As a result of this incident, the victim experienced pain in the anus and made a report to the police. The perpetrator is then penalized subject to Article 46 subs 47 jo 48 jo 50 Aceh Qanun Number 6 of 2014 Concerning Jinayat Law with a penalty of 100 lashes or a maximum fine of 1000 grams of pure gold or a maximum imprisonment of 100 months.⁸

To deal with cases of sexual assault, a new approach that leads to the recovery of the victim’s condition is needed. In various countries, the concept of restorative justice has been applied, such as in New Zealand and several Scandinavian countries. In the countries that apply restorative justice, the success rate is 45%. The satisfaction of resolving problems with restorative justice is, in fact, quite high for victims and offenders in various countries. For example, research conducted in Oregon USA stated that 76% of perpetrators were satisfied with the results and 89% of victims received the results of the restorative justice process.⁹

However, the legal protection for child victims of sexual assault through a restorative justice approach in Indonesia has not been as successful as that in other countries. There are still many victims of sexual crimes whose rights have not been fulfilled. Even though the concept of restorative justice is compatible with Indonesian culture, its implementation is still constrained by various problems. In the justice system, child victims are only regarded as a complement to obtain information for case disclosure. Their basic rights have not yet been fulfilled despite being regulated in various national and international regulations. The present study seeks to investigate the principles of legal protection for the rights of child victims of sexual assault in the international instruments and the Indonesian legal systems and a model of applying a restorative justice

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- 4 HandWiki, “*Child Sexual Abuse*” (Switzerland: Scholarly Community Encyclopedia, 2022), <https://encyclopedia.pub/entry/34460>.
 - 5 Sigma Febby Annisa, “Children as Victims of Sexual Abuse: Has the Law Provided Enough Justice?,” *The Indonesian Journal of International Clinical Legal Education* 2, no. 4 (2020): 435–448.
 - 6 Susan Hillis et al., “Global Prevalence of Past-Year Violence Against Children: A Systematic Review and Minimum Sstimates,” *Pediatrics* 137, no. 3 (2016): 1–13, <https://doi.org/10.1542/peds.2015-4079>.
 - 7 Kementerian Pemberdayaan Perempuan Dan Perlindungan Anak, “Sistem Informasi Online Perlindungan Perempuan Dan Anak (SIMFONI PPA),” 2023, <https://kekerasan.kemenpppa.go.id/ringkasan>.
 - 8 Agus Setyadi, “Remaja 14 Tahun Di Aceh Utara Disodomi Pria Selama 4 Hari,” *detiksumut*, 2023, <https://www.detik.com/sumut/hukum-dan-kriminal/d-6518938/remaja-14-tahun-di-aceh-utara-disodomi-pria-selama-4-hari>.
 - 9 Marlina, *Peradilan Pidana Anak Di Indonesia Pengembangan Konsep Diversi* (Bandung: Refika Aditama, 2009), 213.

approach to protect child victims of sexual crimes. Therefore, a problem arises that needs to be studied in more depth regarding 1) an Overview of Material Security; 2) Principles of Legal Protection of the Rights of Child Victims of Sexual Crime in International Instruments and the Indonesian Legal System; and 3) A Model of Restorative Justice Approach for Child Victims of Sexual Assault.

2. METHOD

This research aims to examine the principles of legal protection to realize the rights of children who are victims from the perspective of international legal instruments and the Indonesian legal system. In particular, this research seeks to model restorative justice approaches for protecting child victims. This study was conducted using a prescriptive legal approach and secondary data from literature studies, which were subsequently qualitatively analysed. This research is in line with Soetandyo Wignjosoebroto's view that research uses a normative juridical approach that relies heavily on the researcher's conception of positive law. Soetandyo conceptualizes law as not only legal norms or rules in the form of written laws and regulations but also the principles and decisions of judges that are followed or society obeyed.¹⁰

3. FINDINGS AND DISCUSSION

3.1 Overview of Material Security

Historically, restorative justice was inspired by community justice as used in some non-Western cultures, particularly indigenous peoples.¹¹ The concept of restorative justice has been influenced in its development by the ideas of equality and public relations. Although the inspiration did not come from the Indonesian people, there were patterns of restorative justice embedded in the traditions of some of Indonesia's indigenous peoples.¹²

The Black Law Dictionary states that restorative justice is "an alternative sanction for delinquency focused on repairing the damage suffered, meeting the needs of the victim, and holding the offender accountable for his actions". Garner explained that restorative justice sanctions take a balanced approach that evokes the least restrictive attitude while emphasizing criminal accountability and providing redress for victims, who may be ordered to make amends, perform community service, or otherwise make amends, except by court order.¹³

Restorative justice approaches are believed to represent a recent departure from the various models and mechanisms of the criminal justice system that handle real criminal cases, or the restorative justice approach is a paradigm that can be used as a frame for a strategy for handling criminal cases that aim to answer dissatisfaction with the functioning of the current criminal justice system.¹⁴ The United Nations considers restorative justice approaches to approach that can be used in any reasonable criminal justice system. This corresponds to the opinion of G.P. Hoefnagels said that criminal policy should be the rational sum of responses to crime. A restorative justice approach is a paradigm that can be used to develop strategies for handling criminal cases to address dissatisfaction with the functioning of the existing criminal justice system. The idea is to respond to the evolution of the criminal justice system by focusing on the needs of communities and victims that are marginalized by the mechanisms of the criminal justice system. The definition of restorative justice includes the following basic elements: First, crime is primarily viewed as the interpersonal conflict that results in harm to victims, communities, and the perpetrators themselves. Second, the goal of the criminal justice process should be to bring peace to the community by reconciling the parties and repairing the wounds caused by the conflict.

10 Soetandyo Wignjosoebroto, *Penelitian Hukum Doktriner* (Jakarta: BPHN, 2002), 89.

11 Danielle J Murdoch and Michaela M McGuire, "Decolonizing Criminology: Exploring Criminal Justice Decision-Making through Strategic Use of Indigenous Literature and Scholarship," *Journal of Criminal Justice Education* 33, no. 3 (2022): 325–46, <https://doi.org/10.1080/10511253.2021.1958883>.

12 Undang Mugopal, *Penerapan Restorative Justice Dalam Sistem Peradilan Pidana* (Jakarta: Pilar Utama Mandiri, 2012), 326.

13 Bryan A Garner, *Black's Law Dictionary* (West Group, 2006), 1340.

14 Emaliawati et al., "Concept of Restorative Justice Towards Light Criminal Acts Perspective of Criminal Objectives," *International Journal of Law* 7, no. 3 (2021): 107–12.

Third, the criminal justice process should foster the active involvement of victims, perpetrators, and their communities in finding solutions to disputes.¹⁵ Attention to the perpetrator is no less important than in previous theories, but I believe that attention to the victim is becoming a “core value” of restorative justice.

According to Tony F. Marshall, this commonly accepted and internationally used definition is that “restorative justice is the ability of parties involved in a particular crime to It’s a process of deciding together how to deal with it”.¹⁶ According to the 2006 Restorative Justice Consortium, the definition of restorative justice is: “Encourage those who have committed harm to acknowledge the consequences of their actions and give them a chance to make amends. It provides harmed people with an opportunity to recognize and recover from their harm or loss”.¹⁷

The restorative justice system approach in the resolution of criminal cases is considered a new method although the patterns used are largely rooted in the local wisdom values of primitive societies.¹⁸ The concept of restorative justice approach is an approach that emphasizes justice and balance for perpetrators and victims. The focus shifts from criminal punishment to the process of dialogue and mediation to achieve more just and equitable solutions for victims and perpetrators. According to Sukardi, the concept of restorative justice has some advantages. It can recover the harm to the victim and provide a sense of justice for the victim. This concept can also remove the negative stigma of the perpetrators in the community, especially for victims and their families. The concept can restore good relations between the perpetrators, victims, families, and the community. Besides, this concept also educates perpetrators to take responsibility for their actions, and its implementation is relatively fast and has low costs. Furthermore, Sukardi explained several weaknesses of the concept of restorative justice. It lacks uniformity of punishment, and the value of good-bad deeds no longer matters. In addition, this concept can be misused by certain parties for their own or others’ interests. There is no unification in the criminal justice process because the concept will be different in each region.¹⁹

In the Indonesian context, one way of enforcing restorative justice is through the use of diversion. Child Criminal Justice System Act No. 11 of 2012 requires the use of diversion from the investigation, prosecution, and trial levels of child cases in district courts. A prerequisite is that the sentence is less than seven years and does not constitute a repeat offense. The use of diversion is a form of dispute resolution between the child and the parent and the child abuser. Unfortunately, we were unable to provide the same level of protection for children who were victims of crime.

Based on the foregoing, it illustrates that a child in conflict with the law is a child who is suspected, indicted, or found guilty of violating the law, and requires protection, but all of them are not processed to the district court because the case has been settled out of court, that is, it is settled legally deliberation (peace) between the perpetrator and the victim.²⁰

3.2 Principles of Legal Protection of the Rights of Child Victims of Sexual Crime in International Instruments and the Indonesian Legal System

The WHO defines sex crimes as engaging in sexual activity when a child is not fully conscious or unable to give consent or is immature. Sexual violence includes sexual exploitation, prostitution, pornography, forced

15 Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Scottsdale Pennsylvania Ontario: Herald press, 1990), 181.

16 Tony Marshall, *Restorative Justice: An Overview* (London: Home Office Research Development and Statistics Directorate, 1999), 5.

17 Sukardi, “Legitimacy of the Restorative Justice Principle in the Context of Criminal Law Enforcement,” *Indonesia Law Review* 2 (2014): 196–214.

18 Margarita Zernova, *Restorative Justice, Ideals and Realities* (Farnham: Ashgate Publishing, 2007); and Ibrahim Fikma Edrisy and Kamilatun, “Restorative Justice in the Implementation of Diversion Against Victims of Child Crimes,” *Legal Brief* 11, no. 5 (2022): 3259–67, <https://doi.org/10.35335/legal>.

19 Sukardi, “Eksistensi Konsep Restoratice Justice Dalam Sistem Hukum Pidana Di Indonesia,” *Legal Pluralism* 6, no. 1 (2016): 22–49.

20 Irhamudin and Ibrahim Fikma Edrisy, “Restorative Justice in the Implementation of Diversion Against Child Criminal Victims,” *Nurani: Jurnal Kajian Syari’ah Dan Masyarakat* 22, no. 2 (2022): 223–38, <https://doi.org/10.19109/nurani.v>.

viewing of sexual acts, exposure of a child's genitals, sexual stimulation, physical touching (harassment, caressing), and giving a child another person's genitals. This includes having sex, sexual relations, incest, rape, and bestiality.²¹

Sex crimes against children are a form of violence that demonstrate the vulnerability of children, especially when it comes to male sexuality. The sexual image of girls placed as male sexual objects has far-reaching effects on children's lives, forcing them to constantly face violence, coercion, and physical and psychological torture. The protection and protection of child victims by the judicial system and certain social service agencies is an integral part of the criminal and social policies of executive, legislative, judicial, and social institutions.²²

Child victims of raping need legal protection. Children have a strategic role in ensuring the nation's existence in the future. They need to get the widest opportunity to grow and develop optimally, physically, mentally, socially, and spiritually. They need to get their rights, protection, and welfare.²³

In the criminal justice process, the existence of victims of sexual crimes remains alarming. Even though the perpetrators have been punished, it does not replace what the victim has suffered. The conviction of the rapist does not eliminate the traumatic feeling suffered by the victim. Child victims of sexual crimes suffer repeatedly and require serious treatment.²⁴

Some victims of sexual crimes will have feelings of shame, self-loathing, and depression. To deal with these feelings, they use excessive drugs and some hurt themselves to express their pain. As a result, they experience post-traumatic stress disorder.²⁵ In fact, as victims, they have the right to receive medical assistance and psycho-social rehabilitation assistance. Psycho-social rehabilitation is assistance provided by psychologists to victims who suffer trauma or other psychiatric problems to restore the victim's mental condition.²⁶

For example, the case of child sexual abuse at an international school in Jakarta. Then, the results of the investigation found evidence of the involvement of two US teachers. The court found them guilty of sexual harassment and sentenced them both to 10 years in prison and upholding at the Supreme Court level. However, one of the convicts submitted a pardon to President Jokowi, which was granted through Presidential Decree No. 13 / G in 2019. The presidential decree stated that the convict's sentence was changed from 11 years to 5 years and a fine of 100,000,000 (one hundred million Rupiah). The public questioned the consideration of granting pardon to the suspect even though at the same time law enforcers were actively tackling cases of sexual crimes against children. On the other hand, the victim's family's civil suit to court was rejected. The lawsuit aims to obtain medical expenses for children who are victims ranging from medical treatment to psychological treatment.

Granting pardons to suspects is seen by most Indonesian people as not showing a sense of justice, especially for the victims' parents. The granting of clemency needs to be respected as the prerogative of the President as the head of state, but it is necessary to consider the victim's psychological aspects of the victim and his family. One of the considerations for granting clemency is due to humanitarian issues and this reason shows the President is still not serious about eradicating sexual crimes, especially in the school environment. The granting of clemency must look at the protection of victims as outlined in various national and international instruments, not solely on humanitarian issues.

Government should see that 21.869.797 children are being victims of sexual harassment, so the grassion is conceptual to the principle that protects best children on national law and international confession, victims should get compensation from the perpetrators. So, the grassion except injured the feelings of the victims' law are being rejected towards the best importance for the children.

21 Kordi, *Durhaka Kepada Anak*, 144-145.

22 Temmangnanro Machmud, "Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual Dalam Sistem Peradilan Pidana Terpadu DI Wilayah Kota Pontianak," *Jurnal NESTOR Magister Hukum* 8, no. 2 (2012): 1-19.

23 Ardiyaningsih Puji Lestari, Nys. Arfa, and Hj. Andi Najemi, "Perlindungan Hukum Terhadap Anak Korban Perkosaan Di Wilayah Hukum Pengadilan Negeri Jambi," *Jurnal Ilmu Hukum* 7, no. 1 (2016): 85-105.

24 Lestari, Arfa, and Najemi.

25 Lestari, Arfa, and Najemi.

26 Lestari, Arfa, and Najemi.

The principles of protecting children's rights refer to the Convention on the Rights of the Child. The UN Child Rights Committee formulates four general principles of the Convention on the Rights of the Child, including:²⁷

1. Non-discrimination. This principle confirms that children's rights in the Convention on the Rights of the Child must be applied to every child regardless of any difference. This principle is a reflection of the principle of universality of human rights. Article 2 paragraph (1) of the Convention on the Rights of the Child states "States parties will respect and guarantee the rights of children guaranteed in this convention against every child in their jurisdiction without discrimination in any form regardless of race, color, sex, language, religion, political views, national, ethnic or social origin, wealth, disability, birth, or another status of the child or the legal parent or guardian. Paragraph (2) states "States parties will take necessary steps to ensure that children are protected from all forms of discrimination".
2. The best interest of the child. This principle confirms that in all actions concerning children, what is best for the child must be the main consideration. Article 3 paragraph (1) of the Convention on the Rights of the Child states that "In all actions involving children carried out by governmental or private social welfare institutions, judicial institutions, government agencies or legislative bodies, the best interests of the child must be a primary concern".
3. Survival and development. This principle confirms that children's survival and development is a holistic concept because most of the contents of the convention depart from problems of development and survival of children. Article 6 paragraph (1) of the Convention on the Rights of the Child states "States parties recognize that every child has inherent rights to life".
4. Respect for the review of the child. This principle confirms that the opinion of children, especially when it comes to matters that affect their lives, need to be considered in every decision-making.

The National Commission on Women, which was described in the textbook "Law for the Protection of Children and Women" by Fransiska Novita Eleanora, Zulkifli Ismail, Ahmad, and Melanie Pita Lestari, that in Indonesia it has conducted studies of various cases identified and reported by different institutions. and concluded that sexual violence can be distinguished in the following forms: 1) Punishment with Sexual Nuances; 2) Sexual Torture; 3) Forced Pregnancy; 4) Forced Marriage; 5) Trafficking in Women for Sexual Purposes; 6) Forced Contraception/Sterilization; 7) Forced Abortion; 8) Sexual Exploitation; 9) Sexual Control/Control; 10) Sexual Slavery; 11) Traditional Practices with Sexual Nuances; 12) Forced Prostitution; 13) Sexual Harassment; and 14) Intimidation Including Threats or Attempts of Rape.²⁸

Article 13 of the Convention on the Rights of the Child states "States parties must take appropriate steps to promote spiritual and physical recovery and to reunite in society, every child who is a victim of any form of neglect, exploitation or neglect, torture or other forms of treatment or cruel, inhuman or degrading punishment. Recovery and reintegration must be carried out in an environment that fosters the health, self-esteem, and dignity of the child concerned. Mohammad Jamadi explains that compensation for damages caused by criminals is one of the main concerns of victims. However, many of the victims are happy to be seen as plaintiffs, which shows that society has formal recognition of their pain. Sentence setting is considered a very important issue for many victims.²⁹

The Convention applies to child victims of crime, including victims of sexual crimes. The Indonesian government is fulfilling the Convention's mandate to protect children who are victims of crime, including sexual offenses. The legal protection of children who are victims of sexual crimes in the national legal system is regulated by Article 59(1) of Law No. 35 of 2014 on the Protection of Children. They are obliged and

27 Nafi Mubarak, "Pemenuhan Hak Anak Dalam Hukum Nasional Indonesia," *Al-Qānūn: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 25, no. 1 (2022): 31–44; Also seen inside. Nafi Mubarak, "Pemenuhan Hak Anak Di Negara-Negara Rumpun Melayu," *Al-Hukama' The Indonesian Journal of Islamic Family Law* 12, no. 2 (2022): 47–72.

28 Fransiska Novita Eleanora et al., *Buku Ajar Hukum Perlindungan Anak Dan Perempuan* (Malang: Madza Media, 2021), 214-217.

29 M Jamadi, "Identifying Child Protection Standards in the International Judicial Procedure," *Lex Humana* 10, no. 1 (2018): 99–122.

especially responsible to protect children”. One form of state liability is conferred on children who are victims of sexual offenses, as mentioned in paragraph (2j). Specific forms of protection for child victims of sexual offenses are articulated in Article 69: Education about reproductive health, religious values, and human values; Social rehabilitation; Psychosocial assistance from the time of treatment to recovery, and Provision of protection and assistance at every level of examination starting from the investigation, prosecution, until the examination at the court hearing.

Even though the principle of protecting children’s rights is already present in national and international instruments, this does not necessarily guarantee that children who are victims of sexual crimes obtain these rights as expected. In fact, in Indonesia there are still many children who are victims of sexual violence who do not get the rights as regulated in the Act. Victims receive more legal protection in the form of assistance during hearings in court, while protection in the form of reproductive health education, social rehabilitation, psychosocial assistance, and treatment has not yet been maximally fulfilled.

3.3 A Model of Restorative Justice Approach for Child Victims of Sexual Assault

Protecting children has long been a global concern. This fact can be normatively seen by the existence of special arrangements for child problems stated in the criminal code of each country.³⁰ For more than 20 years, the Indonesian government has ratified several international instruments on children’s rights. In addition, domestic laws and regulations have been passed. These regulations have taken steps to protect the rights of children. However, in the field of law, there have been no concrete measures to realize the rights of children who are victims of crime. One reason is that prosecution methods tend to be prescriptive and favor procedural fairness. Starting from these issues, the author considers the need for a new paradigm to overcome the problem of sex crimes, especially regarding the legal protection of child victims. One paradigm applicable to the Indonesian system is the restorative justice approach. Restorative justice is a process that involves various parties to overcome the consequences of crimes that affect the future. A restorative justice approach is a judicial process that is entirely community-driven and accomplished.³¹

Victim safety is a major concern in the restorative justice process. This process is based on consensus justice. The primary objectives of restorative justice are to compensate victims, obtain confessions from perpetrators, mediate or reconcile victims, perpetrators, and communities, and reintegrate perpetrators through peaceful dispute resolution.³² Dispute resolution mechanisms based on restorative justice are based on consensus deliberation in which the parties are asked to compromise to reach an agreement. Each individual is asked to give in and put the community’s interests above personal interests to maintain mutual harmony. The concept of deliberation has proven to be more effective in resolving disputes in society amidst the failure of the role of the state and courts in providing justice.³³

In addition to involving victims, communities, and offenders, it is also important to emphasize the involvement of trained professionals with specific expertise in juvenile behavior in the restorative justice process. Its responsibilities include facilitating mediation, designating community services for offenders, developing empathy groups and victim panels, organizing panels to talk to offenders, and facilitating the offenders’ apology process to victims and communities, including raising awareness among victims.³⁴

The concept of restorative justice thinking is an approach to keep children away from unnecessary criminal justice systems. This approach prioritizes crime resolution outside the criminal justice system. This approach applies to adults as well as children (eg petty theft, embezzlement, petty fraud).³⁵ Even in some

30 Nandang Sambas, *Peradilan Pidana Anak Di Indonesia Dan Instrumen Internasional Perlindungan Anak Serta Penerapannya* (Yogyakarta: Graha Ilmu, 2013), 107.

31 Yul Ernis, “Diversi Dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak Di Indonesia,” *Jurnal Ilmiah Kebijakan Hukum* 10, no. 2 (2016): 163–74.

32 Ernis.

33 Sigit Setiaji, Adi Sulistiyono, and Isharyanto, “The Urgency of Utilizing Restorative Justice as An Alternative in the Enforcement of Medical Crime in Indonesia,” *Res Militaris* 13, no. 1 (2023): 2288–2301.

34 Ernis, “Diversi Dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak Di Indonesia.”

35 Nurul Azim, “The Role of the Correctional Hall of Serang in the Settlement of Child Offender Through Diversion in Juvenile Justice System,” *International Journal of Social Science Research and Review* 4, no. 1 (2021): 9–15.

developed countries, corporate lawsuits that have committed crimes can also be resolved through restorative justice approaches. Restorative justice is a way of responding to criminal behavior by balancing the needs of the community with victims and offenders.³⁶ This is a constantly evolving concept and may be interpreted differently in different countries.

Victims are still not well treated in court. During criminal proceedings, law enforcement officials (police, prosecutors, judges) still treat victims of sexual violence as objects rather than objects whose legal rights must be heard and respected. Most often they make their victims second-time victims of falls (*revictimisasi*), who are often blamed and not given the protection they need. The response to incidents of violence against children must be holistic and integrated. All aspects need to be improved and addressed: medical aspects, internal aspects of personal evaluation, legal aspects, social support, economic support, political measures, and advocacy.³⁷

The existence of restorative justice in the criminal justice system has the objective to bring the offenders or their parents to the victims and hold the offender accountable for their actions. This meeting seeks to produce an agreement to end the case. Often the implementation does not reach an agreement because of various underlying factors.³⁸

One way to achieve restorative justice is to apply existing effective diversion to be developed with various models. The implementation of diversion in New Zealand can be used as a successful example where the function of law enforcement deals with children's problems. In New Zealand, the history of diversion began with the success of the family group conferencing model, namely negotiations between the victim and the perpetrators in resolving criminal acts which ultimately influenced the legislation process in 1989.³⁹

Restorative justice takes several forms, including victim-perpetrator mediation, family group meetings, restorative conferences, community remediation committees, restorative circles, or restorative justice.⁴⁰

Focus on this section to find answers on how best to compensate victims. That said, some of the arguments presented below, such as prioritizing monetary compensation for victims, apply to the question of how to ensure adequate compensation for victims.⁴¹

In the present study, a victim-offender mediation (VOM) model is offered. The model is carried out by the dialogue/meeting/reconciliation of victims with the involvement of trained mediators. Peter Cane explained that the model used promotes both victim forgiveness and a deeper healing process. New Zealand, Canada, and the Netherlands have helped reduce recidivism in a variety of settings, including juvenile court systems.⁴²

This form encourages a restorative approach where a forum is made to bring together the perpetrators and the victims including the families. The meeting is also assisted by a mediator a coordinator and a facilitator.⁴³ This form is designed to prioritize the needs of victims, such as the treatment or assistance provided to the victim, the impact of criminal acts for both parties and efforts made for the interests of the parties. During the meeting, victims were asked to describe their experiences and the impacts. If the child victims are unable to provide an explanation, the information can be conveyed by parents/guardians. In addition, the perpetrators

36 Victor Dutse Stephen and Vivian Kajang Dauda, "Restorative Justice, an Antidote For Insecurity and Underdevelopment in Nigeria : A Philosophical Approach," *Albertine Journal of Philosophy* 6, no. 1 (2022): 58–64.

37 Machmud, "Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual Dalam Sistem Peradilan Pidana Terpadu DI Wilayah Kota Pontianak."

38 Mansari, "Pelaksanaan Diversi Terhadap Abh Berdasarkan Qanun Aceh Nomor 11 Tahun 2008 Tentang Perlindungan Anak," *Gender Equality: International Journal of Child and Gender Studies* 2, no. 1 (2016): 51–62.

39 Marlina, *Peradilan Pidana Anak Di Indonesia Pengembangan Konsep Diversi*.

40 Mugopal, *Penerapan Restorative Justice Dalam Sistem Peradilan Pidana*.

41 Suzanne Ost, "A New Paradigm of Reparation for Victims of Child Pornography," *Legal Studies* 36, no. 4 (2016): 613–38, <https://doi.org/10.1111/lest.12128>.

42 Peter Cane and Herbert Kritzer, *The Oxford Handbook of Empirical Legal Research* (OUP Oxford, 2012), 611.

43 David Eagleson, "Old Keys Do Not Open New Doors: Twenty Years of Restorative Justice in Northern Ireland Prisons: An Insight into Making It Happen," *The Howard Journal of Crime and Justice*, 2022, <https://doi.org/https://doi.org/10.1111/hojo.12499>.

explain what crimes he has committed and why the crime was committed, and explains all the questions raised. The mediator provides various inputs to achieve the best possible solution.⁴⁴ Based on experience in several European countries, mediation does not require a direct meeting between the victim and the perpetrator. The mediator may play more roles where he meets one by one with each party until an agreement is reached is done to provide comfort for the parties, especially child victims who get depression.

The proponents of VOM argued that restorative justice was a proposal to humanize the justice system. Generally in traditional justice, victims are left outside the judicial process. In restorative justice, victims and perpetrators have the opportunity to tell stories and listen to each other. The concept of restorative justice in the form of VOM is based on trust, offering an opportunity for both parties to resolve problems. The ultimate goal of VOM is to reach the satisfaction of all parties by creating a sense of justice in every stage of the justice process.⁴⁵

The VOM model is considered appropriate to overcome the problem of sexual crimes committed by close people of victims such as parents, friends, and teachers. Through VOM the parties are given the opportunity to meet and express their demands or wishes, especially from the victims. Sharyn Roach explains the meeting provides an opportunity to apologize, compensate the victim, or recover the harm to the child victim.⁴⁶

The satisfaction of resolving crimes with restorative justice through the VOM model is quite high for victims and perpetrators in several countries. This is influenced by the background of customs and the level of seriousness of the crime. There were 8 or 9 out of 10 victims who were satisfied with the results achieved. In Oregon USA, 89% of victims expressed satisfaction with the VOM results. Several studies note that victims' willingness to take part has been driven by a desire to accept compensation, hold the perpetrators accountable, and avoid justice. This success is also affected because the perpetrators admit mistakes and are willing to take responsibility for the losses suffered by victims.⁴⁷

The practice of restorative justice in New Zealand is carried out by the police department in four stages, namely giving informal warnings, giving written warnings, designing a program within the diversion program framework, and forming a family group conferencing. Evaluations made by Gabrielle Maxwell, et al show that 17% of the cases sampled were resolved through informal warnings, 27% through written warnings, and 32% of programs were diversified with the VOM model and the family group conference.⁴⁸

There are several arguments for the application of the VOM model in cases of sexual crimes. This model gives victims access to get compensation from the offenders and opens up opportunities for perpetrators to make an apology. This model also involves the families of victims in making decisions about what forms of compensation are appropriate to the needs of victims. Data from the implementation of VOM and family group conferences can be used as material for law enforcement officials to solve the problem of sexual crimes that place children as victims. The application of VOM in Indonesia has a great chance of success because the Indonesian people are accustomed to holding deliberations to reach a consensus in solving problems. If an agreement has been reached between the parties and the family, a mediator helps to determine the form of responsibility and compensation according to the needs of the child victims of sexual crime. Regarding the form of responsibility, the mediator can refer to the Child Protection Act or stipulate other forms of responsibility by looking at the best interests of the child.

The model tries to open up a new alternative to address child victims of sexual crimes by placing more decision-making authority in the hands of the parties (including the victim's family) and by being assisted by a mediator. Although it looks ideal conceptually, the application of this model faces many obstacles. Many people in Indonesia consider that satisfactory resolution of cases should be through the courts. One of the results showed that there were factors that hindered the diversion process including the resolution of cases through the formal court mechanism desired by the victim, too high the amount of compensation requested, the

44 Eva Achjani Zulfa, *Pergeseran Paradigma Pemidanaan* (Bandung: Lubuk Agung, 2011), 90.

45 Marlina, *Peradilan Pidana Anak Di Indonesia Pengembangan Konsep Diversi*.

46 Sharyn L Roach Anleu, *Law and Social Change*, 2nd ed. (Los Angeles: SAGE Publications Ltd, 2009), 166.

47 Marlina, *Peradilan Pidana Anak Di Indonesia Pengembangan Konsep Diversi*.

48 Zulfa, *Pergeseran Paradigma Pemidanaan*.

lack of community understanding of diversion, the transfer of work of trained law enforcement officers, the absence of victims' families in the diversion process and the repetition of criminal acts.⁴⁹

4. CONCLUSION

Material security can relate to legal protection for child victims of sexual abuse from the perspective of restorative justice which refers to the victim's right to receive compensation and restitution for the loss suffered due to sexual harassment, as well as facilitating the improvement of the relationship between the victim, the perpetrator, and the community. Thus, legal protection for child victims of sexual abuse in the perspective of restorative justice does not only prioritize punishment for perpetrators, but also restores victims and improves relations between perpetrators, victims, and society, and ensures appropriate material security for victims.

Based on the principles of legal protection regulated in international instruments and the Indonesian legal system, it can be concluded that the rights of children who are victims of sexual crimes must be protected and prioritized as important matters. These principles guarantee that child victims of sexual crimes must be protected from discrimination and that the best interests of the child must be prioritized in all decisions relating to the rights and well-being of children. Children also have the right to participate in decision-making processes related to themselves. These principles should be applied in practice, including in law enforcement and the delivery of health, education, and social support services. However, more serious and integrated efforts are still needed to ensure proper and effective protection for child victims of sexual crimes.

Based on the restorative justice approach model for child victims of sexual abuse, it can be concluded that this approach emphasizes recovery and reconciliation between victims, perpetrators, and society, not only on the punishment of perpetrators. This approach pays attention to the victim's need to feel valued, heard, and involved in the case resolution process, and provides an opportunity for the perpetrator to admit his mistake and apologize sincerely. This approach also involves the community to support victims and perpetrators in the recovery process and to build a safer and child-friendly environment. However, the restorative justice approach is not always suitable for every case of sexual crime and must not sacrifice the interests and rights of the victim. This approach should be used with caution and guided by expert advocates for victims and perpetrators who are trained in restorative justice practices. In addition, the legal system and public policy must also ensure that victims and perpetrators have access to adequate services and a fair system and that victims are not subject to pressure to accept a restorative approach if they are not comfortable with it.

REFERENCES

- Anak, Kementerian Pemberdayaan Perempuan Dan Perlindungan. "Sistem Informasi Online Perlindungan Perempuan Dan Anak (SIMFONI PPA)," 2023. <https://kekerasan.kempppa.go.id/ringkasan>.
- Anleu, Sharyn L Roach. *Law and Social Change*. 2nd ed. Los Angeles: SAGE Publications Ltd, 2009.
- Annisa, Sigma Febby. "Children as Victims of Sexual Abuse: Has the Law Provided Enough Justice?" *The Indonesian Journal of International Clinical Legal Education* 2, no. 4 (2020): 435–48.
- Azim, Nurul. "The Role of the Correctional Hall of Serang in the Settlement of Child Offender Through Diversion in Juvenile Justice System." *International Journal of Social Science Research and Review* 4, no. 1 (2021): 9–15.
- Cane, Peter, and Herbert Kritzer. *The Oxford Handbook of Empirical Legal Research*. OUP Oxford, 2012.
- Cling, B.J. *Sexualized Violence against Women and Children: A Psychology and Law Perspective*. The Guilford Press, 2004.
- Eagleson, David. "Old Keys Do Not Open New Doors: Twenty Years of Restorative Justice in Northern Ireland Prisons: An Insight into Making It Happen." *The Howard Journal of Crime and Justice*, 2022. <https://doi.org/https://doi.org/10.1111/hojo.12499>.

49 Mansari, "Pelaksanaan Diversi Terhadap Abh Berdasarkan Qanun Aceh Nomor 11 Tahun 2008 Tentang Perlindungan Anak."

- Edrisy, Ibrahim Fikma, and Kamilatun. "Restorative Justice in the Implementation of Diversion Against Victims of Child Crimes." *Legal Brief* 11, no. 5 (2022): 3259–67. <https://doi.org/10.35335/legal>.
- Eleanora, Fransiska Novita, Zulkifli Ismail, Ahmad, and Melanie Pita Lestari. *Buku Ajar Hukum Perlindungan Anak Dan Perempuan*. Malang: Madza Media, 2021.
- Emaliawati, Dwidja Priyatno, Dey Ravena, Chepi Ali Firman, and Aji Mulyana. "Concept of Restorative Justice Towards Light Criminal Acts Perspective of Criminal Objectives." *International Journal of Law* 7, no. 3 (2021): 107–12.
- Ernis, Yul. "Diversi Dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak Di Indonesia." *Jurnal Ilmiah Kebijakan Hukum* 10, no. 2 (2016): 163–74.
- Garner, Bryan A. *Black's Law Dictionary*. West Group, 2006.
- HandWiki. "Child Sexual Abuse." Switzerland: Scholarly Community Encyclopedia, 2022. <https://encyclopedia.pub/entry/34460>.
- Herman, Judith Lewis. *Trauma and Recovery: The Aftermath of Violence-From Domestic Abuse to Political Terror*. New York: Hachette Book Group, 1997.
- Hillis, Susan, James Mercy, Adaugo Amobi, and Howard Kress. "Global Prevalence of Past-Year Violence Against Children: A Systematic Review and Minimum Sstimates." *Pediatrics* 137, no. 3 (2016): 1–13. <https://doi.org/10.1542/peds.2015-4079>.
- Irhammudin, and Ibrahim Fikma Edrisy. "Restorative Justice in the Implementation of Diversion Against Child Criminal Victims." *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 22, no. 2 (2022): 223–38. <https://doi.org/10.19109/nurani.v>.
- Jamadi, M. "Identifying Child Protection Standards in the International Judicial Procedure." *Lex Humana* 10, no. 1 (2018): 99–122.
- Kordi, Ghuftron. *Durhaka Kepada Anak*. Yogyakarta: Pustaka Baru Press, 2015.
- Lestari, Ardiyaningsih Puji, Nys. Arfa, and Hj. Andi Najemi. "Perlindungan Hukum Terhadap Anak Korban Perkosaan Di Wilayah Hukum Pengadilan Negeri Jambi." *Jurnal Ilmu Hukum* 7, no. 1 (2016): 85–105.
- Machmud, Temmanganro. "Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual Dalam Sistem Peradilan Pidana Terpadu DI Wilayah Kota Pontianak." *Jurnal NESTOR Magister Hukum* 8, no. 2 (2012): 1–19.
- Mansari. "Pelaksanaan Diversi Terhadap Abh Berdasarkan Qanun Aceh Nomor 11 Tahun 2008 Tentang Perlindungan Anak." *Gender Equality: International Journal of Child and Gender Studies* 2, no. 1 (2016): 51–62.
- Marlina. *Peradilan Pidana Anak Di Indonesia Pengembangan Konsep Diversi*. Bandung: Refika Aditama, 2009.
- Marshall, Tony. *Restorative Justice: An Overview*. London: Home Office Research Development and Statistics Directorate, 1999.
- Mubarok, Nafi. "Pemenuhan Hak Anak Dalam Hukum Nasional Indonesia." *Al-Qānūn: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 25, no. 1 (2022): 31–44.
- . "Pemenuhan Hak Anak Di Negara-Negara Rumpun Melayu." *Al-Hukama' The Indonesian Journal of Islamic Family Law* 12, no. 2 (2022): 47–72.
- Mugopal, Undang. *Penerapan Restorative Justice Dalam Sistem Peradilan Pidana*. Jakarta: Pilar Utama Mandiri, 2012.
- Murdoch, Danielle J, and Michaela M McGuire. "Decolonizing Criminology: Exploring Criminal Justice Decision-Making through Strategic Use of Indigenous Literature and Scholarship." *Journal of Criminal Justice Education* 33, no. 3 (2022): 325–46. <https://doi.org/10.1080/10511253.2021.1958883>.

- Ost, Suzanne. "A New Paradigm of Reparation for Victims of Child Pornography." *Legal Studies* 36, no. 4 (2016): 613–38. <https://doi.org/10.1111/lest.12128>.
- Sambas, Nandang. *Peradilan Pidana Anak Di Indonesia Dan Instrumen Internasional Perlindungan Anak Serta Penerapannya*. Yogyakarta: Graha Ilmu, 2013.
- Setiaji, Sigit, Adi Sulistiyono, and Isharyanto. "The Urgency of Utilizing Restorative Justice as An Alternative in the Enforcement of Medical Crime in Indonesia." *Res Militaris* 13, no. 1 (2023): 2288–2301.
- Setyadi, Agus. "Remaja 14 Tahun Di Aceh Utara Disodomi Pria Selama 4 Hari." detiksumut, 2023. <https://www.detik.com/sumut/hukum-dan-kriminal/d-6518938/remaja-14-tahun-di-aceh-utara-disodomi-pria-selama-4-hari>.
- Stephen, Victor Dutse, and Vivian Kajang Dauda. "Restorative Justice , an Antidote For Insecurity and Underdevelopment in Nigeria : A Philosophical Approach." *Albertine Journal of Philosophy* 6, no. 1 (2022): 58–64.
- Sukardi. "Eksistensi Konsep Restorative Justice Dalam Sistem Hukum Pidana Di Indonesia." *Legal Pluralism* 6, no. 1 (2016): 22–49.
- . "Legitimacy of the Restorative Justice Principle in the Context of Criminal Law Enforcement." *Indonesia Law Reiview* 2 (2014): 196–214.
- Wignjosoebroto, Soetandyo. *Penelitian Hukum Doktriner*. Jakarta: BPHN, 2002.
- Zehr, Howard. *Changing Lenses: A New Focus for Crime and Justice*. Scottsdale Pennsylvania Ontario: Herald press, 1990.
- Zernova, Margarita. *Restorative Justice, Ideals and Realities*. Farnham: Ashgate Publishing, 2007.
- Zulfa, Eva Achjani. *Pergeseran Paradigma Pemidanaan*. Bandung: Lubuk Agung, 2011.