

# Juvenile Social Media Hate Crime and Community Safety: Indonesia's Constitutional Overview and Restorative Justice Challenges

Abdurrahman Alhakim<sup>1)</sup>, Eko Nurisman<sup>2)</sup> & Tantimin<sup>3)</sup>

<sup>1)</sup> Faculty of Law, Universitas Internasional Batam, Indonesia, Email: [alhakim@uib.ac.id](mailto:alhakim@uib.ac.id)

<sup>2)</sup> Faculty of Law, Universitas Internasional Batam, Indonesia, Email: [eko@uib.ac.id](mailto:eko@uib.ac.id)

<sup>3)</sup> Faculty of Law, Universitas Internasional Batam, Indonesia, Email: [tantimin@uib.ac.id](mailto:tantimin@uib.ac.id)

**Abstract.** *This study aims to analyze the emerging juvenile criminal trend within social media usage. Utilizing normative legal research method, this study focuses on the potentials and challenges of employing restorative justice for juvenile hate crime offenders. The analysis supported by the statutory approach found that Indonesia normatively supports youth development but doesn't specifically connect the restorative justice approach with the concept of community safety. Through the statutory approach, this study also found that there's no recognition of the different nature of hate crimes, especially among youth, which could have different and unique negative effects on community safety. These findings serve the purpose of expanding the literature and providing deeper insights for the development of a legal framework to support the application of restorative justice approach in Indonesia, by expanding it to include a legal framework to support the application of the restorative justice approach in Indonesia by expanding it to include the concept of community safety.*

**Keywords:** *Community Safety; Juvenile Hate Crime; Restorative Justice.*

## 1. INTRODUCTION

Juvenile social media hate crime has become a growing concern in Indonesia, particularly due to the rise of online platforms.<sup>1</sup> Indonesia's Ministry of Communication and Information Technology recorded that throughout 2018-2021, there have been more than 3,000 hate speeches on social media.<sup>2</sup> This indicates the rising trend of hate crimes in general, as hate speech often precedes hate crimes.<sup>3</sup> Hate crimes may include various forms of online harassment, cyberbullying, hate speech, and even threats of violence. These actions can have severe psychological and emotional impacts on victims and may even escalate to mass violence targeting certain groups.<sup>4</sup>

<sup>1</sup> Fajrina et al., "Prinsip HAM Dalam Penerapan Peraturan Penanganan Ujaran Kebencian di Indonesia dan United Kingdom." *Jurnal Studia Legalia* 1, no. 1 (2020): 86.

<sup>2</sup> Ferdinandus Setu. "Sejak 2018, Kominfo Tangani 3.640 Ujaran Kebencian Berbasis SARA di Ruang Digital (Siaran Pers No. 143/HM/KOMINFO/04/2021)." *Kominfo*, April 26, 2021. [https://www.kominfo.go.id/content/detail/34136/siaran-pers-no-143hmkominfo042021-tentang-sejak-2018-kominfo-tangani-3640-ujaran-kebencian-berbasis-sara-di-ruang-digital/0/siaran\\_pers](https://www.kominfo.go.id/content/detail/34136/siaran-pers-no-143hmkominfo042021-tentang-sejak-2018-kominfo-tangani-3640-ujaran-kebencian-berbasis-sara-di-ruang-digital/0/siaran_pers).

<sup>3</sup> Widati Wulandari. "Hate Crimes di Indonesia dalam Perspektif Perbandingan Hukum." *Veritas et Justitia* 3, no. 1 (2017): 66.

<sup>4</sup> Amy Farrell and Sarah Lockwood. "Addressing hate crime in the 21st century: Trends, threats, and opportunities for intervention." *Annual Review of Criminology* 6 (2023): 108

Restorative justice is a concept that seeks to address criminal behavior by focusing on repairing the harm caused to victims and communities. Restorative justice is a process that has been considered as an alternative to the traditional criminal justice system in addressing such crimes.<sup>5</sup> However, the implementation of restorative justice in the context of social media hate crimes raises various constitutional and legal challenges in Indonesia.

The Indonesian Constitution protects human rights, including the right to freedom of expression and the right to privacy.<sup>6</sup> However, exercising these rights must also be balanced with protecting public order and morality.<sup>7</sup> The government has enacted several laws that regulate online activities and criminalize certain forms of hate speech and cyberbullying, namely Law No. 11 of 2008 on Electronic Information and Transactions and its revision through Law No. 19 of 2016 and Law No. 1 of 2024. However, the enactment of these laws didn't stop people from continuing their hate crimes online, including juveniles. This raises the urgency to approach this issue using other existing laws, with a particular focus on juveniles.

Juvenile social media hate crime has caused growing concerns worldwide due to its potential impact on community safety. A study analyzing the studies conducted on this topic found that there is an intersectional relationship between place, race, and ideologies behind the many cases of hate crimes in social media.<sup>8</sup> Another study adds to this by highlighting the negative psychological and emotional impacts of such behavior on children and young people in general, including depression, anxiety, and decreased self-esteem.<sup>9</sup> A similar study found that a considerable proportion of adolescent and young adult Internet users are affected by online hate speech, especially those who are politically engaged online.<sup>10</sup>

Another study focused on the impact of social media hate crimes on victims' perceived safety and trust in the community by emphasizing the understanding of the concept of moral and social responsibility.<sup>11</sup> This is essentially what community safety is, with a broader sense that includes the public or relevant groups' perceived safety and trust in the community that they belong to. Another study showed that online threats, despite happening in online spaces, have a more significant impact on the victims' perceived offline safety and trust in the community than those who had not experienced such behavior.<sup>12</sup> Analysis from another study even shows more serious implications; another study found that it underscores that hate crimes are associated with radical groups also who spread conspiracy theories that may take a more carefully meditated form to

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<sup>5</sup> Zebua, Molalan, Nur Rochaeti, and AM Endah Sri Astuti. "Perlindungan Hukum bagi Anak sebagai Pelaku Tindak Pidana Penyalahgunaan Narkotika di dalam Sistem Peradilan Pidana Anak (Studi Putusan PN. Semarang No. 05/Pid. sus/2015/Pn. smg.)." *Diponegoro Law Journal* 5, no. 2 (2016): 2.

<sup>6</sup> Esa Lupita Sari and Lista Widyastuti. "Penghakiman Sepihak Melalui Media Sosial Dalam Persepsi Kebinekaan Dan Hak Asasi Manusia." *Majalah Hukum Nasional* 51, no. 2 (2021): 132.

<sup>7</sup> Nina Zainab and Indra Lorenly Nainggolan. "Kebebasan berekspresi membuat konten sosial media: Perlindungan hukum oleh negara." *Scripta: Jurnal Kebijakan Publik dan Hukum* 2, no. II (2022): 250.

<sup>8</sup> Ariadna Matamoros-Fernández and Johan Farkas. "Racism, hate speech, and social media: A systematic review and critique." *Television & new media* 22, no. 2 (2021): 206.

<sup>9</sup> Irene Kwan et al., "Cyberbullying and children and young people's mental health: a systematic map of systematic reviews." *Cyberpsychology, Behavior, and Social Networking* 23, no. 2 (2020): 73.

<sup>10</sup> Magdalena Obermaier and Desirée Schmuck. "Youths as targets: factors of online hate speech victimization among adolescents and young adults." *Journal of Computer-Mediated Communication* 27, no. 4 (2022): 2.

<sup>11</sup> Amos Guiora and Elizabeth A. Park. "Hate speech on social media." *Philosophia* 45 (2017): 958.

<sup>12</sup> Jessica E. Bodford. "Blurring safety between online and offline worlds: archival, correlational, and experimental evidence of generalized threat in the digital age." PhD diss., Arizona State University, 2017.

systematically generate distrust and decrease the communal sense of safety between many elements of society.<sup>13</sup>

Some studies have highlighted the potential of restorative justice in addressing social media hate crimes,<sup>14</sup> while others have raised concerns about its effectiveness, which can be caused by the difference in approaches.<sup>15</sup> A study found that while restorative justice can be beneficial in addressing some forms of hate crimes, it may be overwhelmingly difficult for facilitators of restorative justice to deal with the differences of backgrounds between victims and perpetrators.<sup>16</sup> The study highlighted the need for a comprehensive approach to addressing social media hate crimes that includes legal sanctions, public education, and restorative justice.

While there is some research on the use of restorative justice in addressing hate crimes in Indonesia, as already highlighted, research regarding its effectiveness in addressing social media hate crimes specifically is limited. This is a crucial research gap given the unique challenges posed by social media hate crimes, such as the ease of anonymity and the potential for a broad audience. There's also a gap in addressing community safety in dealing with this issue, which is an important aspect of the restorative justice approach. This research aims to analyze the potentials and challenges in integrating community safety into the restorative justice approach to ensure that restorative justice measures take into account the wider public interest. This is done by analyzing the suitability of the existing legal norms to support the emphasis on community safety in restorative justice measures. Instead of analyzing the existing laws governing some of the crimes that can be categorized as hate crimes, namely Law No. 11 of 2008 on Information and Electronic Transactions (EIT Law) and Law No. 19 of 2016 on Amendments to Law Number 11 of 2008 on Information and Electronic Transactions (Revised EIT Law), along with the latest revision in Law No. 1 of 2024, this research focuses instead on the process of dealing with hate crimes itself, which may include a variety of forms. This focus is important as it recognizes the different nature of hate crimes and how they can affect youth development and community safety, which is further analyzed through the application of restorative justice on hate crimes based on the relevant sources of law.

## 2. RESEARCH METHODS

This research utilized the doctrinal legal research method to analyze the many important internal aspects of positive laws that govern the life of Indonesian society.<sup>17</sup> To analyze the normative framework that Indonesia has to deal with the process of prosecuting juvenile hate crime offenders, this research utilized the statutory approach in the form of primary law sources, namely the Indonesian Constitution (1945 Constitution), Law No. 40 of 2009 on Youth, and Law No. 11 of 2012 on Juvenile

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<sup>13</sup> Jan-Willem Van Prooijen, Giuliana Spadaro, and Haiyan Wang. "Suspicion of institutions: How distrust and conspiracy theories deteriorate social relationships." *Current opinion in psychology* 43 (2022): 66.

<sup>14</sup> William Wood, Masahiro Suzuki, and Hennessey Hayes. "Restorative Justice in Youth and Adult Criminal Justice." In *Oxford Research Encyclopedia of Criminology*. Oxford University Press, 2022, 3.

<sup>15</sup> M. Eve Hanan. "Decriminalizing violence: A critique of restorative justice and proposal for diversionary mediation." *New Mexico Law Review* 46, no. 1 (2016): 123.

<sup>16</sup> Veronika Szontagh. "The chances of restorative justice in hate crime cases." *Hungarian Journal of Legal Studies* 61, no. 3 (2021): 314.

<sup>17</sup> Hari Sutra Disemadi. "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies." *Journal of Judicial Review* 24, no. 2 (2022): 290. See also, David Tan. "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum." *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2464.

Justice System.

### 3. RESULTS AND DISCUSSION

#### 3.1. Evolution of the Conceptualization of Hate Crime in the Digitalization Era

Digitalization has been transforming the way people communicate and interact with one another. Consequently, hate crimes are now perpetrated and understood in novel ways due to the influence of technology on our daily lives.<sup>18</sup> As a result, there's a need to revisit the conceptualization of hate crimes in order to keep up with the changing landscape of society. The establishment of this connection has been crucial in recent times in analyzing the rising incidence of hate speech and hate crimes on the internet,<sup>19</sup> which has been recorded by Indonesia's Ministry Of Communication And Informatics.<sup>20</sup> Therefore, there is a growing need to understand the unique characteristics of these incidents and to devise effective strategies to address them by analyzing the internet as an enabler for the rise of hate crimes in recent times.<sup>21</sup> Governments need to reshape their understanding of how digital spaces can have societal impacts, particularly during sensitive times.

What distinguishes the digitalization era is the rise of online platforms as breeding grounds for hate speech, discrimination, and intolerance. The internet, due to its importance, has been supported by the increased access provided as a part of human rights, but it has also seen content that is increasingly seen as illegal, such as hate crimes like hate speech and bullying.<sup>22</sup> The features of social media, such as sharing, connecting, and fast communication, empower users to organize and mobilize effectively, yet these same features also make it easy for individuals intent on spreading hateful rhetoric.<sup>23</sup> However, the shift towards the digital sphere has not only redefined the battleground for hate crimes but has also presented unique challenges for law enforcement and society at large. Unlike traditional crimes, where physical evidence often plays a central role in investigations, the evidence in the digitalization era leaves a digital footprint. Social media posts, online conversations, and electronic communications have become critical artifacts in unmasking the perpetrators and building strong cases against them. This development has raised the urgency to strike a balance between the conceptualization of freedom of speech and hate speech.<sup>24</sup>

One of the primary challenges in this is the difficulty in identifying the individuals behind online hate crimes. Due to the anonymity of the internet and the use of false

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<sup>18</sup> Bharath Ganesh. "The ungovernability of digital hate culture." *Journal of International Affairs* 71, no. 2 (2018): 31.

<sup>19</sup> Ashley Reichelmann et al., "Hate knows no boundaries: Online hate in six nations." *Deviant Behavior* 42, no. 9 (2021): 1101.

<sup>20</sup> Setu. "Sejak 2018."

<sup>21</sup> Mitchell A. Kaplan and Marian M. Inguanzo. "The Historical Facts about Hate Crime in America the Social Worker's Role in Victim Recovery and Community Restoration." *Journal of Hate Studies* 16, no. 1 (2020): 55.

<sup>22</sup> Nicola Lucchi. "Digital Media Pluralism: The Question of Access." In *IXth AIDC-IACL World Congress - "Constitutional Challenges: Global and Local."* Oslo 16 - 20 June 2014 (Norway).

<sup>23</sup> Tracey J. Hayes. "Trump's Digital Rhetoric of Hate: The Use of Enthymemes in Creating Division." *Journal of Hate Studies* 17, no. 1 (2021): 14.

<sup>24</sup> Theodora Agapoglou et al., "Combating Online Hate Speech through Critical Digital Literacy: Reflections from an Emancipatory Action Research with Roma Youths." *International Journal of Learning and Development* 11, no. 2 (2021): 104-120.

identities, it can be challenging to track down those responsible for committing hate crimes online.<sup>25</sup> Furthermore, some virtual spaces are not subject to the same regulations and protections as physical spaces, which can make it challenging to determine the appropriate response to online hate crimes. As the conceptualization of hate crimes keeps evolving, there's a growing need to understand the intersectionality of discrimination and prejudice in online hate crimes. Intersectionality refers to the ways in which different forms of oppression intersect and compound to create unique experiences of marginalization and victimization.<sup>26</sup> Understanding this point of view opens more possibilities for better understanding the root causes of hate crimes and developing more effective strategies for prevention and response.

Online hate crimes can also have serious effects on the victims and the wider community.<sup>27</sup> This shifts the focus to the victim's experience and the emotional and psychological trauma that can result from a hate crime and how those can become a shared experience between many victims of the same type of hate crime.<sup>28</sup> In response to this, new terms have emerged that reflect this increased awareness, such as "hate crime trauma" and "secondary victimization."<sup>29</sup> These terms underscore the importance of providing support and resources to those who have been victimized, including access to mental health services and legal assistance. Due to the expansion of hate spaces to digital ones, victims can feel overwhelmed as they can feel like they can't escape the threats of hate crimes, even when they're not outside of their homes.

Another important aspect of hate crimes that is often overlooked is the role of bystanders. Bystanders are individuals who are present during a hate crime but do not actively participate in it. They may feel unsure of how to react or fear for their own safety, which can prevent them from taking action. However, a recent study has shown that bystanders can make a significant impact in preventing and responding to hate crimes by intervening when possible or reporting the incidents to authorities.<sup>30</sup> Community safety as a concept can also make use of bystander intervention to improve the sense of security among community members significantly.<sup>31</sup>

Another interesting perspective regarding the concept of community safety within the context of hate crime, and perhaps the counterintuitive one, is the fact that it can be used as a tool to promote hate crime. At its core, the idea of community safety is intended to promote a sense of security and well-being for all members of a community, regardless of their background or identity. However, when this concept is misused, it can become a justification for targeting and marginalizing specific groups of people based on their perceived differences. This usually happens through the process

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<sup>25</sup> Jason R. C. Nurse. "Cybercrime and You: How Criminals Attack and the Human Factors That They Seek to Exploit." In *The Oxford Handbook of Cyberpsychology*, ed. Alison Attrill-Smith, Chris Fullwood, Melanie Keep, and Daria J. Kuss (Oxford: Oxford University Press, 2018), 663.

<sup>26</sup> Jane Healy. "Thinking outside the box: intersectionality as a hate crime research framework." In *Papers from the British Criminology Conference* 19. London: British Society of Criminology, 62.

<sup>27</sup> Jörg Friedrichs. "Majority-Muslim Hate Crimes in England: An Interpretive Quantitative Analysis." *Journal of Muslim Minority Affairs* 41, no. 2 (2021): 216.

<sup>28</sup> Randi Solhjell. "How acts become hate crime: The police's documenting of criminal cases." *International Journal of Law, Crime and Justice* 72 (2023): 4.

<sup>29</sup> Frank S. Pezzella, Matthew D. Fetzer, and Tyler Keller. "The dark figure of hate crime underreporting." *American Behavioral Scientist* (2019): 00027642188238445.

<sup>30</sup> David Wilkin. *Disability Hate Crime: Experiences of Everyday Hostility on Public Transport* (Cham, Palgrave Pivot, 2020), 86.

<sup>31</sup> Matteo Vergani and Carolina Navarro. "Hate crime reporting: The relationship between types of barriers and perceived severity." *European journal on criminal policy and research* 29, no. 1 (2023): 112.

of “dangerization,” where a certain group of people is labeled as a threat to community safety to whitewash the “discrimination” element.<sup>32</sup>

This misuse of the concept of community safety often involves singling out individuals or groups based on characteristics such as their race, ethnicity, religion, gender identity, or disability status. Perhaps the more common example of this is masked racism, where certain people receive racially coded messages on safety, even in an area where the race of people who receive the message is the majority.<sup>33</sup> Those who promote such actions argue that they are necessary to protect the safety and security of the community. However, in reality, they often lead to further harm and marginalization of vulnerable populations. The effects of this kind of discrimination can be profound, leading to feelings of fear, anxiety, and isolation among those targeted. When certain groups are marginalized and excluded, it can create a culture of fear and mistrust that undermines the sense of social cohesion and belonging that is essential for a healthy and thriving community. This can result in decreased civic engagement, reduced economic opportunities, and a more fragmented and divided society.

It is important to recognize that community safety can only be achieved when everyone feels valued and treated with respect, regardless of their differences.<sup>34</sup> Ensuring community safety means ensuring a community free of all kinds of discrimination and hate crimes, where everyone is allowed to have necessary intangibles such as voice, recognition, and respect, which can all contribute to a greater sense of safety.<sup>35</sup>

### **3.2. Constitutional Insights on Community Safety and Their Implications on Juvenile Offenders**

The supreme law of the Republic of Indonesia is enshrined in the Constitution of Indonesia, which is also referred to as the *Undang-Undang Dasar* 1945 (1945 Constitution). This fundamental source of law was adopted on August 18, 1945, and has since undergone four amendments. The Constitution serves as a constitutional and juridical cornerstone for the Indonesian state,<sup>36</sup> establishing the core principles that govern the nation’s democratic system, including the principles of social justice, the rule of law, and democracy.<sup>37</sup>

The first key insight that the 1945 Constitution provides on community safety is the principle of collective responsibility. Article 28H of the Constitution states that “*every person is entitled to live prosperous physically and spiritually, to have a place to reside and to acquire a good and healthy living environment as well as be entitled to obtain health care.*” This principle recognizes that the safety and well-being of the community is a collective responsibility that must be shared by all members of society, including

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<sup>32</sup> Leanne Weber et al., *Place, race and politics: The anatomy of a law and order crisis* (Bingley: Emerald Publishing Limited, 2021), 26.

<sup>33</sup> Rob. Eschmann. “Unmasking racism: Students of color and expressions of racism in online spaces.” *Social Problems* 67, no. 3 (2020): 419.

<sup>34</sup> Timothy Bryan. “Race, Diversity, and the Politics of Hate Crime: an Analysis of Police Response to Racially Motivated Hate Crimes in the Greater Toronto Area.” PhD diss., York University, 2019, 35.

<sup>35</sup> Barbara Perry. “What Communities Want: Recognizing the Needs to Hate Crime Targets.” *Journal of Hate Studies* 12, no. 1 (2014): 9.

<sup>36</sup> Indrati Rini. “Aktualisasi Nilai-Nilai Pancasila Dalam Membangun Jati Diri Bangsa Indonesia Guna Menanggulangi Radikalisme.” *Journal de facto* 6, no. 1 (2019): 2.

<sup>37</sup> Rokilah. “Dinamika Negara Hukum Indonesia: Antara Rechtsstaat dan Rule Of Law.” *Nurani Hukum* 2, no. 1 (2020): 13.

the government, the private sector, and individuals. Philosophically, this is in line with community policing, which is an organizational approach that places significant emphasis on fostering collaborative partnerships between law enforcement agencies and the communities they serve.<sup>38</sup> Another important point the article addresses is spiritual well-being, which can be an important and often overlooked indicator of a person's quality of life.<sup>39</sup>

Another key insight that the 1945 Constitution provides on community safety is the importance of the freedom to have a religion, to express thoughts, to associate, and to assemble. Article 28E of the Constitution states:

*"(1) Every person shall be free to embrace a religion and to worship according to his/her religion, to choose education and teaching, to choose work, to choose citizenship, to choose a place to reside in the territory of the state and to leave it, as well as be entitled to return; (2) Every person shall be entitled to freedom to be convinced of a belief, to express thought and attitude in accordance with his/her conscience; dan (3) Every person shall be entitled to freedom to associate, to assemble, and of expression."*

This principle recognizes the basic spiritual well-being needs as mentioned in Article 28H, which includes basic rights that are essential in making sure that people have room in society to nourish their spiritual well-being. The philosophical insights behind these verses come from Pancasila, which emphasizes the importance of tolerance in Indonesia's multicultural society.<sup>40</sup>

The 1945 Constitution also provides insights on the role of law enforcement in ensuring community safety. Article 28I paragraph (4) and (5) of the Constitution states that:

*"(4) The protection, advancement, enforcement, and fulfillment of human rights shall be the responsibility of the state, particularly the government; dan (5) For the enforcement and protection of human rights in accordance with the principle of a democratic state based on law, the execution of human rights shall be guaranteed, regulated, and set out in statutory rules and regulations."*

This principle emphasizes the importance of upholding the rule of law in maintaining community safety and provides the basic principle for the role of law enforcement agencies in enforcing the law in a fair and just manner. It's also important to look at Article 28I as a whole, as it provides an important philosophical basis for social justice with a human rights approach.<sup>41</sup>

Another key insight that the 1945 Constitution provides on community safety is the importance of protecting the rights of minorities and marginalized groups. Article 28I paragraph (2) of the Constitution states that *"Every person is entitled to be free from discriminative treatment on whatsoever basis and is entitled to acquire protection against such discriminative treatment."* This principle recognizes that the safety and well-being of the community cannot be achieved if the rights of minority and

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<sup>38</sup> Justin N. Crowl. "The effect of community policing on fear and crime reduction, police legitimacy and job satisfaction: an empirical review of the evidence." *Police Practice and Research* 18, no. 5 (2017): 450.

<sup>39</sup> Hayatul Khairul Rahmat et al. "The Influenced Factors of Spiritual Well-Being: A Systematic Review." *Sociocouns: Journal of Islamic Guidance and Counseling* 2, no. 1 (2022): 44.

<sup>40</sup> Indra Wicaksono. "Grounding Pancasila: The importance of Upholding Human Rights as a Shield of Diversity Tolerance." *Lex Scientia Law Review* 2, no. 2 (2018): 170.

<sup>41</sup> Nanin Koeswidi Astuti. "Penerapan Nilai-Nilai Keadilan Sosial Dalam Konstitusi Ekonomi (Studi Terhadap Pembatalan UU Sumber Daya Air Oleh Mahkamah Konstitusi)." *Jurnal Hukum To-ra* 6, no. 3 (2021): 330.

marginalized groups are not protected and respected, as it explicitly says that “every person” is entitled to that right.

The 1945 Constitution also recognizes the importance of understanding the limits of every human right mentioned to ensure that the exercise of someone’s rights doesn’t trump that of others. Article 28J paragraph (2) of the Constitution states:

*“(2) In the exercise of his/her rights and freedom, every person shall abide by the limitations to be stipulated by the laws with the purpose of solely guaranteeing the recognition as well as respect for the rights and freedoms of others and in order to comply with just demands in accordance with considerations for morality, religious values, security, and public order in a democratic society.”*

This principle is significant as it explains the fundamental concept of rights, which is to be exercised not just according to the existing laws but also according to other values that affect the lives of Indonesians.<sup>42</sup> It is also essential to understand the pivotal role that youth play in shaping and constructing a secure and thriving society. The Constitution aptly acknowledges the significance of investing in the growth and progress of young individuals who hold the key to the nation’s future.<sup>43</sup>

Article 31 of the 1945 Constitution recognizes the right of every citizen to education and states that the state must provide and finance basic education for all. It states that: *“(1) Every citizen shall be entitled to acquire an education, and (2) Every citizen shall follow basic education and the government shall finance it.”* This principle reflects the government’s commitment to ensuring that young people acquire the necessary skills and knowledge to contribute to the development of the country and to participate fully in the democratic process. Substantively, it also agrees with the notion that education is a powerful tool for influencing human development and a structural vehicle for societal evolution and human differentiation.<sup>44</sup>

Indonesia bases its foundation of the juvenile justice system on Article 28B paragraph (2) of the Constitution, which states that *“every child shall be entitled to viability, to grow up, and to develop as well as be entitled to protection against violence and discrimination.”* This principle underscores the government’s responsibility to provide youth with access to opportunities for personal growth and development. The restorative justice approach recognizes the importance of looking at crimes committed by the youth through a different perspective, which relies on many important factors such as risk factors, the youth’s self-assessment of risk, and their perspectives on other important aspects of their lives.<sup>45</sup> It is then justified for the government’s efforts to create extra measures for youth development. This is in line with how Pancasila philosophically suggests government involvement through basic rules and principles,

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<sup>42</sup> Nathania Griseldis Kirsten Moendoeng. “Peran Pemerintah dalam Mengatasi Pelanggaran Hak dan Peningkaran Kewajiban Warga Negara Berdasarkan UUD 1945.” *Lex Et Societatis* 7, no. 7 (2019): 44.

<sup>43</sup> Sismonika Puspitasari. “Pentingnya realisasi bela negara terhadap generasi muda sebagai bentuk cinta tanah air.” *Indonesian Journal of Sociology, Education, and Development* 3, no. 1 (2021): 73.

<sup>44</sup> Moreira, Paulo AS, and Danilo Garcia. “Person-centered schools.” In *Personality and brain Disorders: Associations and interventions*, ed. Danilo Garcia, Trevor Archer, and Richard M. Kostrzewa (Cham: Springer, 2019), 184.

<sup>45</sup> Agnė Limantė, Rūta Vaičiūnienė, and Jolanta Apolevič. “Child-friendly legal aid and individual assessment of children in conflict with the law: building the basis for effective participation.” *International journal of environmental research and public health* 19, no. 1 (2021): 7.



institutions, robust legal framework, and practical processes to support public welfare, including the effort to protect youth development.<sup>46</sup>

Indonesia further develops the concept of children within the legal system by giving a legal definition to "youth" through Law No. 40 of 2009 on youth. The law specifically defines youth (in the context of development) through Article 1 number 2 of Youth Law, which states that "*youth (development) is a variety of things related to the potential, responsibilities, rights, character, capacity, self-actualization, and aspirations of youth.*" An important thing to note here is that the English language doesn't differentiate the translation of the words "*pemuda*" and "*kepemudaan*" which may cause normative confusion. Article 1 number 2 of Youth Law defines youth (*pemuda*) as "*Indonesian citizens who are entering an important period of growth and development aged 16 (sixteen) to 30 (thirty) years.*" Essentially, what this law refers to as "*pemuda*" is the same as the word "adolescent," which gives a good normative basis for further legal development of this concept. Furthermore, community safety can also be developed through youth development through the application of *Bhinneka Tunggal Ika*, an important spirit of national unity that can help the nation cope during a crisis.<sup>47</sup> This concept also helps promote diversity as an important strength of Indonesia rather than a challenge.

### **3.3. Legal Challenges and Normative Restrictions on The Application of Restorative Justice**

Applying restorative justice principles to juvenile hate crimes in Indonesia presents various legal challenges that need to be addressed by the Indonesian government. Pancasila, the philosophical foundation of Indonesia, supports the application of restorative justice in the Indonesian legal system, mainly through the fourth principle, which encourages deliberation in many social situations.<sup>48</sup> Pancasila, as the national spirit of Indonesia, also implies that a Pancasila constitutional state is a constitutional state based on the principles of kinship, deliberation for consensus, and the protection of human rights concerning societal harmony.<sup>49</sup> This means that Pancasila, as a philosophical bedrock of Indonesia, is fully supportive of restorative justice, as it also factors in societal harmony, which is closely related to community safety. Therefore, there needs to be a concrete manifest.

Cultural diversity in Indonesia is another issue that poses significant challenges to applying restorative justice for juvenile hate crimes. This cultural complexity may affect the implementation of restorative justice, as it may require adapting restorative justice practices to different cultural contexts to ensure their effectiveness and acceptance. Cultural sensitivities and considerations may arise in the facilitation of restorative justice processes, such as communication styles, customary practices, and traditional dispute resolution mechanisms, which may vary across different regions and communities in Indonesia.

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<sup>46</sup> Sri Wahyuningsih Yulianti. "Kebijakan Penegakan Hukum Terhadap Kejahatan Kekerasan Seksual Kepada Anak Dalam Sistem Peradilan Pidana Di Indonesia." *Amnesti: Jurnal Hukum* 4, no. 1 (2022): 12.

<sup>47</sup> Dominikus David Biondi Situmorang. "Indonesia finally returns to 'Bhinneka Tunggal Ika': no more hate but solidarity in COVID-19 crisis." *Journal of Public Health* 44, no. 4 (2022): e610.

<sup>48</sup> Muhammad Fatahillah Akbar. "Keadilan Restoratif dalam Sistem Peradilan Pidana sebagai Perwujudan Nilai-Nilai Pancasila." *Justitia Et Pax* 37, no. 1 (2021): 86.

<sup>49</sup> Duwi Aryadi. "Implementasi keadilan restoratif dalam sistem peradilan pidana sebagai perwujudan nilai-nilai yang berwawasan pancasila." *Al Daulah: Jurnal Hukum Pidana dan Ketatanegaraan* 9, no. 2 (2021): 139.

Indonesia's main legal source for the juvenile justice system is Law No. 11 of 2012 on Juvenile Justice System (Juvenile Justice System Law). The Juvenile Justice System law, through Article 1 No. 1, defines the juvenile justice system as *"the process of resolving cases of children in conflict with the law, from the investigation stage to the counseling stage after serving a criminal sentence."* This law aims to protect the rights of children who are in conflict with the law and provide them with a fair trial.<sup>50</sup> One of the ways the restorative justice approach can be applied in Indonesia is through the process of diversion, which is explained in the Juvenile Justice System Law. Article 1 number 7 states that *"Diversion is the transfer of settlement of child cases from the criminal justice process to processes outside of criminal justice."* Unfortunately, this is the only restorative approach that exists within the Juvenile Justice System. The law does emphasize the importance of using diversion but doesn't necessarily explain why. This problem shows a disconnection between the process of diversion and the concept of community safety, which is inseparable from the restorative justice approach itself.

While restorative justice practices may be more commonly applied to juvenile offenders, the Indonesian legal system still prioritizes punishment over rehabilitation for juvenile offenders, and the use of restorative justice practices may face resistance from traditional legal perspectives, particularly by legal practitioners who don't think restorative justice is enough in addressing many of its limitations.<sup>51</sup> There are some cases of hate speech committed in Indonesia by juveniles that are dealt with by restorative justice approach. The first is the one where the juvenile offender insulted the president of Indonesia,<sup>52</sup> and the second one is where a different juvenile offender uploaded a post containing hate speech against the religion of Islam.<sup>53</sup> Both of these cases dealt with restorative justice and ended with the juveniles being sent back to their parents. However, none of these cases addressed community safety. While it's much easier for the president to have his perceived safety in the community improved, the same can't always be said for regular people, which is the case with the latter. This needs to be carefully addressed to ensure that restorative justice isn't only used to dodge responsibility but also to recover victims' trust in the community.

Moreover, the issue of victim participation in restorative justice processes also poses another legal challenge in the context of juvenile hate crimes in Indonesia. Victim's participation requires careful consideration to protect their rights and well-being, as they're prone to suffer from many psychological issues caused by hate crimes. The juvenile justice system law, through Article 1 No. 6, states, *"Restorative justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state and not retaliation."* Therefore, it's important to emphasize understanding the victim's position and how he/she can develop the fear of further victimization throughout the restorative justice process.<sup>54</sup>

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<sup>50</sup> Emy Rosna Wati. "Penanganan anak yang berkonflik dengan hukum." *Justitia Jurnal Hukum* 1, no. 2 (2017): 279.

<sup>51</sup> Bruce A. Green and Lara Bazelon. "Restorative justice from prosecutors' perspective." *Fordham Law Review* 88, no. 6 (2019): 2287.

<sup>52</sup> Chazizah Gusnita et al. "Analisis Keadilan Restoratif dalam Kasus Penghinaan Presiden Jokowi oleh Anak di Bawah Umur." *Deviance Jurnal kriminologi* 2, no. 1 (2019): 36.

<sup>53</sup> R. Samosir, Taufik Siregar, and Rizkan Zulyadi. "Peranan Kepolisian Resor Tebing Tinggi Dalam Penegakan Hukum Terhadap Tindak Pidana Ujaran Kebencian Di Media Sosial." *Journal of Education, Humaniora and Social Sciences (JEHSS)* 4, no. 2 (2021): 906.

<sup>54</sup> Szontagh. "The chances of restorative justice in hate crime cases." 316.

Ensuring meaningful victim participation in a way that is sensitive to the age, vulnerability, and rights of victims may require legal safeguards, guidelines, and specialized support services to address the unique challenges of juvenile hate crimes. This can be significantly enhanced by addressing the importance of their perceived safety within their own community, which might be damaged due to the hate crimes committed against them.

Ensuring community safety is an integral part of restorative justice. The Juvenile Justice System Law through Article 93 Letter D states, "*Communities can participate in protecting children from prevention to social reintegration of children by participating in resolving child cases through diversion and restorative justice approaches.*" Unfortunately, the Juvenile Justice System Law doesn't provide further guidance on how communities can participate in helping the process of restorative justice. Considering the fact that victims may fear further victimization during the process of restorative justice,<sup>55</sup> it is important to make sure that the involvement of communities does not affect the victims negatively or, even worse, damage the victims' perception of safety and trust by discriminating against the victims.<sup>56</sup>

Lastly, restorative justice processes require trained facilitators, resources for mediation, and support services for victims and offenders, which can be an issue. The availability of such resources may be scarce, particularly in rural areas or regions with limited access to legal services. Another problem that is often overlooked is the lack of social movements to improve restorative justice in Indonesia. Despite having diverse social and religious backgrounds, the organizations related to these backgrounds aren't often connected to the efforts of applying the restorative justice approach, especially when perceived safety within the community is threatened, as already highlighted in the example of cases. It's important for the government to utilize all the available resources to make sure that restorative justice can be used to secure youth development in Indonesia.

#### **4. CONCLUSION**

Through the normative analysis done in this study, it's clear that the Indonesian 1945 Constitution essentially supports the basic rights of Indonesians to be free from discrimination. It also embraces the concept of community safety as a part of the Indonesian tradition of unity, along with the support for the youth whose growth is important for Indonesia's future. However, the concept of community safety isn't reflected clearly in the Juvenile Justice System Law, redundantly governing what the 1945 Constitution already mentioned. Furthermore, the application of restorative justice in Indonesia might face another difficulty as it mainly focuses on diversion and ignores the important aspects of community safety. Ultimately, this research underscores the lack of consideration that the Indonesian legal system has for a more robust system of restorative justice, which can greatly benefit youth development. Using the existing philosophical and normative insights within the Indonesian legal system, the government should explore the option to further develop the legal framework for restorative justice for the juvenile justice system, which emphasizes the importance of community safety and how it affects efforts to protect human rights.

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<sup>55</sup> Szontagh. "The chances of restorative justice in hate crime cases." 326.

<sup>56</sup> Weber et al., *Place, race and politics*, 27.

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