

## Application of Restorative Justice in the Child Criminal Justice System Law

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**Abstract.** *The conventional criminal process does not provide space for the parties involved, in this case the victim and the perpetrator to actively participate in resolving their problems. Every indication of a criminal act, without taking into account the escalation of the act, will continue to be rolled out into the realm of law enforcement which is only the jurisdiction of law enforcers. Active participation from the community seems to be no longer important, everything only leads to a criminal decision or punishment without looking at the essence. This study aims to determine the Implementation of Restorative Justice in the Child Criminal Justice System Law. In this study, the approach method used is: a normative legal approach (normative legal research method). library legal research conducted by examining library materials or secondary data alone. The research specification used is Analytical Descriptive, which is an effort to analyze and explain legal problems related to objects with a comprehensive and systematic description of everything related to the Implementation of Restorative Justice in the Child Criminal Justice System Law. Regulations related to restorative justice are regulated in the Supreme Court regulations, one of which is through the implementation of policies in the form of the Regulation of the Supreme Court of the Republic of Indonesia PERMA Number 2 of 2012 concerning Adjustment of the Limits of Minor Crimes and the Amount of Fines in the Criminal Code (hereinafter referred to as PERMA No. 2 of 2012). PERMA Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. Strengthening Regulations and Technical Implementation The government needs to strengthen the implementing regulations of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, especially those related to the diversion mechanism and indicators of restorative justice success. Uniform technical guidelines throughout Indonesia will prevent disparities in the application of restorative justice.*

**Keywords:** Criminal; Enforcement; Justice; Law; Restorative.

## **1. Introduction**

In a state of law, law is the main pillar in moving the joints of social, national, and state life. One of the main characteristics of a state of law lies in its tendency to assess actions taken by society on the basis of legal regulations. This means that a state with the concept of a state of law always regulates every action and behavior of its people based on applicable laws.

This is done to create, maintain and defend peace in social life in accordance with what is mandated in Pancasila and the 1945 Constitution, namely that every citizen has the right to feel safe and free from all forms of crime.

Article 28G paragraph (1) of the 1945 Constitution "Everyone has the right to protection of themselves, their family, their honor, their dignity and the property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right."

The conventional criminal process does not provide space for the parties involved, in this case the victim and the perpetrator to actively participate in solving their problems. Every indication of a criminal act, without considering the escalation of the act, will continue to be rolled into the realm of law enforcement which is only the jurisdiction of law enforcers. Active participation from the community seems to be no longer important, everything only leads to a criminal decision or punishment without looking at the essence.

While restoration includes restoring the relationship between the perpetrator and the victim in a crime. This restoration of the relationship can be based on a mutual agreement between the victim and the perpetrator. The victim can convey the losses suffered and the perpetrator is given the opportunity to atone for them, through compensation mechanisms, peace, social work, or other agreements.

The term restorative justice is often heard in judicial practice, especially in juvenile justice in Indonesia. The concept of the restorative justice approach is an approach that focuses more on the conditions for creating justice and balance for perpetrators of criminal acts and their victims. The mechanism of criminal procedure and justice that focuses on punishment is changed into a process of dialogue and mediation to create an agreement on the settlement of criminal cases that is fairer and more balanced for victims and perpetrators.

The Juvenile Criminal Justice System is a subsystem in the broader criminal justice system. An important point to emphasize is that the juvenile criminal justice system is different from the adult criminal justice system in various aspects. Juvenile criminal justice includes all investigation and termination activities that concern the interests of children. Emphasis or concentration on the interests of children must be the focus of attention in juvenile criminal

justice.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System has changed the paradigm of handling children in conflict with the law. The most fundamental substance in the Juvenile Criminal Justice Law is the explicit regulation of restorative justice and through the diversion stage which is intended to avoid and distance children from the judicial process, so as to avoid stigmatization of children in conflict with the law and it is hoped that children can return to the social environment naturally.

The Juvenile Criminal Justice System in Indonesia recognizes Diversion based on Restorative Justice. As regulated in Article 7 paragraph 2 of Law No. 11 of 2012, diversion is implemented in cases where the crime committed is punishable by imprisonment of less than 7 years and is not a repetition of the crime.

One of the characteristics inherent in the juvenile criminal justice system is that law enforcement can end the judicial process due to certain circumstances that are the basis for the authorities to stop it. This is in line with the provisions of Article 17.4 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), which states that "the competent authority has the authority to stop the process at any time. The authority to end the judicial process at any time is an inherent feature in handling juvenile violations of the law as different from adults.

Restorative justice through a diversion process, namely all parties involved in a particular crime together solve the problem and create an obligation to make things better by involving victims, children, and the community in finding solutions to improve, reconcile and calm the heart that is not based on retaliation. Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system.

The term restorative justice is a foreign terminology that has only been known in Indonesia since the 1960s with the term Restorative Justice. In several developed countries, restorative justice is not just a discourse by academics of criminal law or criminology. North America, Australia and several countries in Europe, restorative justice has been applied in the conventional criminal justice process, starting from the investigation, prosecution, adjudication and execution stages.

In contemporary criminal law literature, restorative justice is closely related to what is known as penal mediation, which is the settlement of criminal cases outside the court. In Dutch, penal mediation is called "straf bemiddeling", in German it is called "der Au Bergerichtliche Tataos-gleich", and in French it is called "de mediation penale". Penal mediation is sometimes also called victim-offender mediation because it brings the perpetrator and victim into a peace forum.

According to Martin Wright, penal mediation is a process in which victims and perpetrators of crimes meet and communicate with each other, and with the help of a third party, directly or indirectly, makes it easier for victims to express their needs and feelings, and allows the perpetrator to accept and take responsibility for their actions.

Children are a gift from God Almighty who must be educated and guarded as a provision of resources, children are priceless treasures. A child is presented as a trust from God to be guarded, cared for and educated, and every parent will be held accountable for the behavior and actions of the child during his life in the world. In terms of language, children are interpreted as the embryo that will later continue the generation of the family, nation and state. In addition, children are also human resource assets that are expected to help build the nation and state.

Children are also the forerunners of the birth of a new generation in the future who will be the holders of the baton of the nation's struggle and valuable assets for national development. The future of the nation and state is in the hands of children today. The better the personality of today's children, the better the nation's life will be in the future. On the other hand, if the child's personality is bad, the future life of the nation will be bad. People generally think that childhood is a long period in the life span.

Considering this, it is only right that children receive special attention from the government, in the context of child development to create responsible and quality human resources. In relation to child development, legal facilities and infrastructure are needed to anticipate all problems that arise. The facilities and infrastructure in question concern the interests of children as well as those concerning deviations in attitudes and behavior that force children to be brought before the court.

Affection is the most basic psychological need in a child's life and life that actually relies on the conscience of the parents. In reality, many parents are not aware of this, which affects the development of the child's life. Children who are raised in an atmosphere of conflict tend to experience mental restlessness that can encourage children to do negative actions, which are categorized as juvenile delinquency. Children as perpetrators of criminal acts are called delinquent children or in criminal law are called juvenile delinquency.

Delinquency also means doing wrong, neglected/ignoring which is then expanded to mean evil, asocial, criminal, rule breaker, troublemaker, troublemaker, terrorizer, irreparable, wicked, immoral and others. Thus etymologically Juvenile Delinquency is a crime against children, the perpetrators of which are children.

Romli Atmasasmita is of the opinion that juvenile delinquency is any act or

behavior of a child under the age of 18 and not yet married which constitutes a violation of applicable legal norms and can endanger the child's personal development.

Meanwhile, the definition of Juvenile Delinquency according to Kartini Kartono is evil/immoral behavior, or crime/delinquency of young people, which is a symptom of social illness (pathology) in children and adolescents caused by a form of social neglect, so that they develop a form of neglect of deviant behavior.

Therefore, in facing and overcoming these various problems, it is necessary to consider the position of the child with all the characteristics and characteristics that are typical as perpetrators of criminal acts. Not seeing whether the act is based on his thoughts, feelings and will, but must also see various things that can influence the child to commit a crime. So the role of parents and the surrounding community is needed.

In dealing with children as perpetrators of criminal acts, law enforcers must always pay attention to the conditions of children that are different from adults. The basic nature of children as individuals who are still unstable, the future of children as national assets, and the position of children in society that still needs protection can be used as a basis for finding an alternative solution on how to prevent children from a formal criminal justice system, placing children in prison, and stigmatization of the position of children as prisoners.

One solution is to divert or place child criminals out of the criminal justice system. This means that not all cases of children in conflict with the law must be resolved through formal justice, and provide an alternative for resolution with a justice approach in the best interests of the child and by considering justice for the victim, which is called the restorative justice approach. Handling with this approach is also carried out on the grounds of providing an opportunity for lawbreakers to become good people again through non-formal channels by involving community resources, also trying to provide justice to cases of children who have committed crimes to law enforcement officers.

## **2. Research methods**

Research Methods, are basically a function of the problems and objectives of the research. Therefore, discussions in research methods cannot be separated and must always be closely related to the problems and objectives of the research. What is used in this research consists of approach methods, research specifications, sources and types of data, data collection techniques and data analysis techniques.

### 3. Results and Discussion

#### 3.1 Restorative Justice Regulation in the Criminal Justice System

Restorative justice is a stage of settlement outside of court by involving the victim, perpetrator, victim and perpetrator's family, the community and interested parties to reach a settlement agreement that is expected to fulfill the sense of justice of both parties by emphasizing the restoration to the original state and not retaliation. According to Lynne N. Henderson in her writing entitled *The Wrongs of Victims' Rights*, restorative justice is a manifestation of the evolution of criminal acts from the concept of "private or personal" to the scope of "public or social". The criminal justice system before knowing restorative justice highlighted law enforcement against criminal acts through the trial stage only where the defendant would be charged by the public prosecutor and then the punishment was decided by the judge. This system focuses solely on the perpetrator and the state and in its development resulted in the neglect of the fulfillment of the victim's rights because the orientation of punishment is aimed at the perpetrator only. For example, in the Criminal Procedure Code (KUHP), victims of criminal acts are only positioned as witnesses who help the public prosecutor to prove the charges.

The basic principle of restorative justice is based on the idea of fair and impartial law enforcement. With the implementation of restorative justice, the harmony of the criminal justice system is not only based on the accountability of the perpetrators of the crime but also on the interests of the victim's recovery, including through compensation, peace, imposing social work sentences on the perpetrators, or other agreements. The criminal justice system that is not yet familiar with restorative justice in its journey also tends to use the instrument of imprisonment for punishment. This, in the end, causes the problem of overcrowding or excess residents in State Detention Centers and Correctional Institutions. According to data as of January 23, 2024 from the website of the Directorate General of Corrections, Ministry of Law and Human Rights, there has been an overcapacity of 77 (seventy-seven) percent with the number of residents amounting to 228,204 from the capacity for 128,656 residents of the Correctional Technical Implementation Unit (UPT).

The beginning of the concept of Restorative Justice was born from the emergence of awareness of the failure of the criminal justice system in accommodating the role of victims initiated by the women's movement called the "National Association for Victim Assistance Schemes". Then, in 1973, the first international meeting was held to discuss the rights of victims in the criminal justice system which became the forerunner to the formation of the World Society of Victimology in 1979[3] until in 1985, the United Nations (UN) General Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. These movements are in line with the birth of the

concept of Restorative Justice. The term 'restorative justice' was only introduced in several writings by Albert Eglash in the 1950s and was only widely used in 1977.

The definition of restorative justice, or what is known in positive law in Indonesia as Restorative Justice, is regulated in the provisions of Article 1 number 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law). In addition to the SPPA Law, the regulation of restorative justice in laws and regulations in Indonesia is also found in:

1. Law Number 31 of 2014 concerning Protection of Witnesses and Victims;
2. Government Regulation Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims;
3. Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (Twelve) Years of Age;
4. Regulation of the Chief of the Republic of Indonesia Police Number 6 of 2019 concerning Criminal Investigation;
5. Republic of Indonesia Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution under Restorative Justice;
6. Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice; and
7. Attorney General's Guidelines Number 18 of 2021 concerning Settlement of Narcotics Crime Cases Through Rehabilitation with a Restorative Justice Approach as an Implementation of the Dominus Litis Principle of the Prosecutor

The principle of restorative justice has also been implemented by the Supreme Court, one of which is through the implementation of policies in the form of the Regulation of the Supreme Court of the Republic of Indonesia (hereinafter referred to as PERMA) and the Circular of the Supreme Court of the Republic of Indonesia (hereinafter referred to as SEMA). The PERMA and SEMA are:

1. PERMA Number 2 of 2012 concerning Adjustment of the Limits of Minor Criminal Offenses and the Amount of Fines in the Criminal Code (hereinafter referred to as PERMA No. 2 of 2012)
2. PERMA Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System
3. PERMA Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law (hereinafter referred to as PERMA No. 3 of 2017)



4. SEMA Number 4 of 2010 concerning the Placement of Abusers, Victims of Abuse and Narcotics Addicts in Medical Rehabilitation and Social Rehabilitation Institutions (hereinafter referred to as SEMA No. 4 of 2010)
5. SEMA Number 3 of 2011 concerning the Placement of Victims of Narcotics Abuse in Medical Rehabilitation and Social Rehabilitation Institutions
6. Joint Decree of the Chief Justice of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of the National Police of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, and the Minister of State for the Empowerment of Women and Child Protection of the Republic of Indonesia Number 166A/KMA/SKB/XII/2009, 148A/A/JA/12/2009, B/45/XII/2009, M.HH-08 HM.03.02 of 2009, 10/PRS-s/KPTS/2009, 02/Men.PP and PA/XII/2009 concerning Handling of Children in Conflict with the Law
7. Joint Memorandum of Understanding of the Chief Justice of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of the National Police of the Republic of Indonesia Number 131/KMA/SKB/X/2012, Number M.HH-07.HM.03.02 of 2012, Number KEP-06/E/EJP/10/2012, Number B/39/X/2012 dated 17 October 2012 concerning the Implementation of the Application of Adjustments to the Limits of Minor Criminal Offenses and the Amount of Fines, Fast Examination Procedures and the Application of Restorative Justice
8. Joint Regulation of the Chief Justice of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of the National Police of the Republic of Indonesia, Chief of the National Narcotics Agency of the Republic of Indonesia Number 01/PB/MA/III/2014, Number 03 of 2014, Number 11 of 2014, Number 03 of 2014 Number Per-005/A/JA/03/2014, Number 1 of 2014, Number Perber/01/III/2014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions
9. Decree of the Director General of the General Courts Number 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts

The SPPA Law through Article 5 paragraph (1) has required the entire process of resolving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving a sentence, to prioritize the restorative justice approach. One of these approaches is attempted through the Diversion institution, namely the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system.



Diversion efforts can be applied to children who are 12 (twelve) years old but not yet 18 (eighteen) years old who are suspected of committing a crime that is threatened with imprisonment of less than 7 (seven) years, or are threatened with imprisonment of less than 7 (seven) years and are also charged with a crime that is threatened with imprisonment of 7 (seven) years or more in the form of a subsidiary, alternative, cumulative or combination (combined) indictment, and are not a repetition. Diversion efforts are carried out through deliberation by paying attention to the interests of the victim, the welfare and responsibility of the child, avoiding negative stigma, avoiding retaliation, community harmony, and propriety, morality and public order.

The variety of principal penalties that can be imposed on children in conflict with the law accommodates the obstacles encountered related to overcrowding in the law enforcement process in Indonesia. Article 71 paragraph (1) of the SPPA Law regulates the types of principal penalties that can be imposed on children in conflict with the law, namely warning penalties, penalties with conditions in the form of guidance outside the institution (can be in the form of a requirement to follow a guidance and counseling program carried out by a supervisory official, follow therapy in a mental hospital, or follow therapy due to abuse of alcohol, narcotics, psychotropics, and other addictive substances), community service, or supervision, as well as job training, guidance in an institution, and imprisonment. Meanwhile, for children in conflict with the law who are under 14 (fourteen) years of age, they can only be subject to the actions as regulated in Article 82 paragraph (1) of the SPPA Law in the form of return to parents/guardians, surrender to someone, treatment in a mental hospital, treatment at the LPKS, the obligation to follow formal education and/or training held by the government or private bodies, revocation of a Driving License (SIM), and/or correction due to criminal acts.

Another manifestation of the concept of restorative justice that considers aspects of justice and humanity in the SPPA Law is also manifested in the concept of judicial forgiveness or *rechtelijke pardon*. In this concept, judges are expected to be able to weigh the lightness of the criminal act, the child's personal circumstances, or the incident at the time the act was committed or that occurred later as stated in Article 70 of the SPPA Law. In jurisprudence, an example of a judicial pardon decision was once handed down by the Rengat District Court in a case of theft against a child who was sentenced to 2 (two) months in prison in case number 2/Pid,Sus-Anak/2021/PN Rgt.

In the Supreme Court institution, in addition to child criminal acts, the application of restorative justice is found in the implementation of law against minor criminal acts, criminal acts committed by women in conflict with the law, and narcotics crimes. According to Article 1 of PERMA No. 2 of 2012, cases of minor theft, minor embezzlement, minor fraud, minor vandalism, and minor

receiving of goods whose value does not exceed Rp2,500,000.00 (two million five hundred thousand rupiah) are examined by a single judge with a fast examination procedure in accordance with Articles 205-210 of the Criminal Procedure Code. If a peace agreement is not reached, the single judge will continue the criminal examination process and during the trial, the judge is advised to continue to strive for peace and prioritize restorative justice in his/her decision.

Then, the existence of PERMA No. 3 of 2017 is one proof of the Supreme Court's commitment to guaranteeing access to justice and improving the bargaining position of women who come into conflict with the law as vulnerable groups through the principles of respect for human dignity, non-discrimination, gender equality, equality before the law, justice, benefit, and legal certainty as regulated in Article 2 of PERMA No. 3 of 2017. Through this PERMA, the role of women who come into conflict with the law in providing evidence in court is not only to "assist the public prosecutor" in proving the defendant's guilt, but also in restoring public order which is accommodated in the statutory order for judges in Article 8 paragraph (1) to guarantee women's rights to communicate openly regarding losses, the impact of the case, and their need for recovery.

In narcotics cases, the restorative justice approach is implemented through the application of punishment in the form of an order to take legal action in the form of rehabilitation for defendants who are drug addicts, namely those who use or abuse narcotics and are in a state of dependence on narcotics both physically and mentally, who are caught red-handed and when caught red-handed evidence of use of 1 (one) day is found (more complete details are listed in SEMA No. 4 of 2010), there is a positive Laboratory test letter for using Narcotics based on the investigator's request and a Certificate from a government psychiatrist/psychiatrist appointed by the judge, and there is no evidence of involvement in the illicit trafficking of narcotics. Then, the judge in determining the length of the rehabilitation process must seriously consider the level of addiction of the defendant so that in this case the existence of expert testimony becomes mandatory. During the examination at the trial, the judge can also order the defendant to present the defendant's family and related parties to be heard as mitigating witnesses in the context of the restorative justice approach.

Based on the explanation above, it can be understood together that in the application of restorative justice, the law as a tool of social control that is always developing following the development of its society has a remedial nature that aims to restore the situation to its original state. As the legal adage that reads *judex herbere debet duos sales, salem sapientiae, ne sit insipidus, et salem conscientie, ne sit diabolus* which means "a judge must have two things; a policy, unless he is stupid; and a conscience, unless he has a cruel nature", then the purpose of the application of restorative justice is not only to prioritize revenge

for the perpetrators of the crime while ignoring a fair settlement for both parties. However, a good judge should also consider the interests of the victim by prioritizing the restoration to its original state.

### **3.2 Implementation of Restorative Justice in the Juvenile Criminal Justice System in Indonesia**

Children are a gift from God Almighty who must be educated and guarded as a provision of resources, children are priceless treasures. A child is presented as a trust from God to be guarded, cared for and educated, and every parent will be held accountable for the behavior and actions of the child during his life in the world. In terms of language, children are interpreted as the embryo that will later continue the generation of the family, nation and state. In addition, children are also human resource assets that are expected to help build the nation and state.

Children are also the embryo of the birth of a new generation in the future who will be the holders of the baton of the nation's struggle and valuable assets for national development. The future of the nation and state in the future is in the hands of today's children. The better the personality of today's children, the better the nation's life will be in the future. On the other hand, if the child's personality is bad, the future life of the nation will be bad. People generally think that childhood is a long period in the life span.

The existence of child protection in a nation is a measure of the nation's civilization itself. Therefore, it must be attempted according to the capabilities of the nation concerned. Child protection activities are legal actions that have legal consequences (Abdul Hakim G. Nusantara, 1986). Protection of children in conflict with the law (ABH) is a shared responsibility of law enforcement officers, which is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, one of which is through the application of restorative justice.

Handling of cases of children in conflict with the law that prioritizes the best interests of the child is still far from what is expected. The government has issued special regulations governing the protection of the rights of children in conflict with the law, such as Law Number 3 of 1997 concerning Juvenile Courts, or Law Number 23 of 2002 as amended by Law Number 35 of 2014, and Law Number 17 of 2016 concerning Child Protection, even the government has ratified the UN Convention on the Rights of the Child (CRC) by issuing Presidential Decree Number 36 dated August 25, 1990, and signing the Beijing Rules agreement, but it turns out that the provisions in these regulations are not the best solution for resolving cases of children in conflict with the law (Yulianto, 2014).

Restorative justice is a paradigm that aims to answer dissatisfaction with the results of the criminal justice system that has been going on so far. This approach is used as a framework for a strategy for handling criminal cases involving the community, victims and perpetrators of crimes with the aim of achieving justice

for all parties, so that it is hoped that the same conditions will be created as before the crime occurred, and prevent further crimes.

Restorative justice is a way to respond to criminal behavior by balancing the needs of victims, perpetrators and the community. However, restorative justice is a concept that continues to evolve and has various interpretations in different countries, so there is no perfect consensus on a formal definition of the concept.

The legal basis for Restorative Justice is contained in Article 24 paragraph (1) of the Covenant on Civil and Political Rights which stipulates that every child has the right to receive protection measures, because their status as minors should be used as a legal basis for judges, for example, the law to stop a child's case. Such a decision is valid because the judge is given the freedom in Article 28 paragraph (1) of Law Number 4 of 2004 to explore, follow and understand the legal values and sense of justice that live in society.

Beijing Rules Article stipulates the transfer of formal legal processes to non-formal settlement channels through the application of the restorative justice model in handling children's cases, which can be carried out by the Judge. Restorative justice can be used as a reference for the Judge to resolve children's cases. Beijing rules provide maximum protection for the future of children because they contain the following principles:

1. The best interests of the child are a priority.
2. Criminal justice should be avoided whenever possible.
3. Any form of intervention should be kept to a minimum.
4. Police, prosecutors, judges and other law enforcement officers shall use policy/discretion as much as possible in handling cases involving children.
5. Criminalization and punishment of children should be avoided unless serious harm occurs to the child or others.
6. Legal aid must be provided immediately without charge.

According to Rika Saraswati, In principle, restorative justice recognizes 3 stakeholders, namely victims, perpetrators, and communities in determining the resolution of children's cases. Through restorative justice, there is an effort to bring together victims and perpetrators in order to seek recovery for the victim. On the other hand, the perpetrator is burdened with the obligation to be accountable for his actions to the victim and the community and is responsible for admitting his crimes and if possible, restoring the victim's suffering (Rika Saraswati, 2009).

This restorative justice approach is in accordance with the provisions set out in

Article 40 paragraph (1) of the Convention on the Rights of the Child (CRC), which states that "States Parties recognize the right of every child who is accused of or recognized as having violated the criminal law to be treated in a manner consistent with the promotion of the child's sense of respect and dignity, which reinforces the child's respect for the human rights and freedoms of others and which takes into account the child's age and the desire to promote the child's reintegration and the child's return to a constructive role in society."

Restorative justice is a thought that responds to the development of the criminal justice system by emphasizing the need for community involvement and victims who feel marginalized by the mechanisms that work in the current criminal justice system. In addition, restorative justice is also a framework of thinking that can be used in responding to a crime for law enforcement. Handling criminal cases with a restorative justice approach offers a different approach and perspective in understanding and handling a crime. In the restorative justice view, the meaning of a crime is basically the same as the general criminal law view, namely an attack on individuals and society and social relations.

However, in the restorative justice approach, the main victim of a crime is not the state, as in the current criminal justice system. Therefore, crime creates an obligation to repair damaged relationships resulting from a crime. Meanwhile, justice is interpreted as a process of finding solutions to problems that occur in a criminal case where the involvement of victims, society and perpetrators is important in efforts to improve, reconcile and ensure the sustainability of these efforts.

According to the concept of restorative justice, handling crimes that occur is not only the responsibility of the state, but also the responsibility of society. The concept of restorative justice is built on the understanding that the losses caused by crime will be restored, both the losses suffered by the victim and the losses borne by society.

Without ignoring the mechanisms that work in the formal legal system, the resolution mechanism through deliberation institutions also works in society. In various principles and models of restorative justice approaches, the dialogue process between the perpetrator and the victim is the basic moral and the most important part of the implementation of this justice. Direct dialogue between the perpetrator and the victim allows the victim to express what he feels, express hopes that his rights and desires will be fulfilled from a criminal case resolution. Through dialogue, the perpetrator is also expected to be moved to correct himself, realize his mistakes and accept responsibility as a consequence of the criminal act he has committed with full awareness. From this dialogue process, the community can also participate in realizing the results of the agreement and monitoring its implementation. Therefore, basically restorative justice is also known as case resolution through mediation (penal mediation).

Restorative justice is a process of diversion from formal criminal proceedings to informal criminal proceedings as the best alternative for handling children as perpetrators of criminal acts by means of all parties involved in a particular criminal act working together to solve problems to deal with the consequences of the child's actions in the future.

Criminal prosecution by the public prosecutor rarely involves criminal charges but rather sanctions so that if the child defendant is proven guilty, the sanctions imposed are returned to the parents or at least in accordance with the length of time the child defendant has been in temporary detention.

Efforts to implement the law's order that the imposition of a prison sentence on a child is a last resort (*ultimum remedium*), then the best decision is in the form of an action sanction to return the child defendant to his parents to be educated and guided as appropriate.

The implementation of restorative justice does not mean that all cases involving children must be sentenced to sanctions in the form of returning the child to the parents, because the judge must of course pay attention to certain criteria, including:

1. The child has just committed a crime for the first time (first offender);
2. The child is still in school;
3. The crime committed is not a serious crime against morality, a crime that results in loss of life, serious injury or permanent disability, or a crime that disrupts/harms the public interest.

Characteristics of the implementation of restorative justice:

1. The implementation of restorative justice is aimed at making offenders responsible for repairing the losses arising from their actions;
2. Provide an opportunity for the offender to prove his/her ability and quality in taking responsibility for the losses he/she has caused, in addition to overcoming feelings of guilt constructively;
3. The resolution of criminal cases involving the victim or victims, the parents and family of the perpetrator, the parents and family of the victim, the school and peers;
4. Settlement with the concept of restorative justice is aimed at creating a forum for working together to resolve problems that occur;
5. Establishing a direct and concrete relationship between errors and social reactions.

Based on the restorative justice above, there are prerequisites that must be met in order for restorative justice to be implemented, namely:

1. There must be a confession or statement of guilt from the perpetrator;
2. There must be agreement from the victim to carry out a settlement outside the applicable juvenile criminal justice system;
3. Approval from the police or the prosecutor's office as an institution that has discretionary authority.

In its implementation, restorative justice is based on several principles:

1. Building joint participation between perpetrators, victims and community groups in resolving an event or crime. Placing perpetrators, victims and the community as "stakeholders" who work together and directly try to find a solution that is considered fair for all parties (win-win solution).
2. Encourage the perpetrator/child to be responsible towards the victim for events or criminal acts that have caused injury or loss to the victim. Next, build responsibility not to repeat criminal acts that have been committed.
3. Placing an event or crime primarily as a form of violation between individuals, namely the law, but as a violation by a person (a group of people) against a person (a group of people). Therefore, it is appropriate that the perpetrator is directed towards accountability to the victim, not prioritizing legal accountability (legal formal).
4. Encourage resolving an event or crime in a more formal and personal manner, rather than resolving it through formal court proceedings (rigid and impersonal)
  - a. The conditions for implementing restorative justice are: Conditions for the perpetrator:
    1. Child age
    2. Threat of punishment (maximum 7 years)
    3. The perpetrator admitted his mistake and regretted his actions.
    4. Consent of victim and family
    5. The frequency of perpetrators committing criminal acts (recidivist)

The nature and number of previous violations (recidive).

If the child has previously committed a minor violation of the law, restorative justice must still be considered. The difficulty in providing restorative justice will



arise when finding records that the child often commits criminal acts (recidive).

Does the child perpetrator admit to the crime committed and regret it? If the child admits and regrets his actions, then this is a positive consideration to be able to handle it with a restorative justice approach.

Impact of the act on the victim. The child perpetrator apologizing to the victim can be an important reason for the use of restorative justice. If the crime has had a very serious impact on the victim, and the victim does not forgive the perpetrator, then restorative justice may not be an option.

The attitude of the child perpetrator's family. Support from parents and family is essential for restorative justice to succeed. If the family tries to cover up the child's actions, it will be difficult to implement effective restorative justice.

According to Article 1 paragraph (2) of Law Number 13 of 2006 concerning Protection of Witnesses and Victims, a victim is someone who experiences physical, mental, and/or economic suffering resulting from a crime. The importance of protecting victims of crime has received serious attention, as can be seen in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power by the United Nations as a result of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which took place in Milan, Italy, September 1985. One of its recommendations states:

"The perpetrator or those responsible for an unlawful act must provide restitution to the victim, the victim's family or guardian. The restitution is in the form of returning property rights or replacing the losses suffered by the victim, losses due to negligence that has been carried out resulting in victims, which is a stipulation of the law as a form of service and fulfillment of rights"

In Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, restitution is compensation given to victims or their families by the perpetrator or a third party. According to this government regulation, victims are entitled to receive restitution in the form of:

1. compensation for loss of wealth or income;
2. compensation for losses incurred as a result of suffering directly related to criminal acts and/or
3. reimbursement of medical and/or psychological care costs.

Article 11 of the SPPA Law states that the results of a diversion agreement can take the following forms:

1. peace with or without compensation;

2. handover to parents/guardians;
3. participation in education or training at educational institutions or LPKS for a maximum of 3 (three) months; or community service.

The obstacle that arises in this case is when the perpetrator of the crime does not have the ability or assets to pay compensation to the victim, even though it can be estimated that most of the people who commit crimes are among those who are unable.

#### **4. Conclusion**

Regulations related to restorative justice are regulated in the Supreme Court regulations, one of which is through the implementation of policies in the form of the Regulation of the Supreme Court of the Republic of Indonesia PERMA Number 2 of 2012 concerning Adjustment of the Limits of Minor Crimes and the Amount of Fines in the Criminal Code (hereinafter referred to as PERMA No. 2 of 2012). PERMA Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. The implementation of restorative justice in the juvenile justice system is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

#### **5. References**

Criminal Code (KUHP)

Law Number 1 of 2012 concerning the juvenile justice system.

Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection

Law Number 8 of 1981 concerning the Criminal Procedure Code

Pan Mohamad Faiz, 2009, Teori Keadilan John Rawls, dalam Jurnal Konstitus

The 1945 Constitution of the Republic of Indonesia