

Diversion as a form of Resolving Child Criminal Cases Through the Restorative Justice System by Investigators in Cases of Violence

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Abstract. *The Convention on the Rights of the Child is the most comprehensive legal and human rights instrument for promoting and protecting children's rights.¹Indonesia is one of the countries that has ratified the Convention on the Rights of the Child (CRC) in 1990 which was approved by the UN General Assembly on 20 November 1989. The type of research used in this study is a type of analytical descriptive legal research. Analytical descriptive legal research is a method that functions to describe or provide an overview of the object being studied through data or samples that have been collected as they are without conducting analysis and making conclusions that apply to the public.² Descriptive research is limited to efforts to reveal a problem or condition or event as it is so that it is merely to reveal facts (fact finding). Constraint in the process of investigating cases of child criminal acts through restorative justice at the Semarang City Police in the form of the lack of public knowledge regarding the resolution of criminal cases through restorative justice; the lack of public awareness to reconcile through restorative justice in cases of minor assault; and the lack of regulation of the resolution of hate speech crimes through restorative justice in a complete and specific manner in government regulations, both central and regional.*

Keywords: *Criminal; Convention; Justice; Restorative.*

¹Zendy Wulan Ayu Widhi Prameswari, "Ratification of the Convention on the Rights of the Child in the Legal Regulation System in Indonesia", Jurnal Yuridika, Vol.32, No.1, January 2017, p.167.

²Sugiono, Quantitative, Qualitative and R&D Research Methods, Alfabeta, Bandung, 2009, p. 29.

1. Introduction

The United Nations (UN) Agreement in 1948, known as the Universal Declaration of Human Rights (UDHR), one of the formulations of which is that every human being is born free and equal in dignity and rights. Based on the UN Agreement, children are guaranteed the right to live and develop according to their abilities and must be protected. Protection of children's rights by the international community is stated in (1) the 1959 UN General Assembly Declaration on the Rights of the Child; (2) the 1966 International Covenant on Civil and Rights of the Child; (3) the 1966 International Covenant on Economic, Social & Cultural Rights; (4) the 1989 UN Convention on the Rights of the Child.³

The Convention on the Rights of the Child is the most comprehensive legal and human rights instrument for promoting and protecting children's rights.⁴Indonesia is one of the countries that has ratified the Convention on the Rights of the Child (CRC) in 1990 which was approved by the UN General Assembly on 20 November 1989.⁵The Convention on the Rights of the Child which has been ratified by the Indonesian government through Presidential Decree Number 37 of 1990, then stated in Law Number 4 of 1979 concerning Child Welfare, Law Number 35 of 2014 concerning Child Protection. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, all of which state the general principles of child protection, namely non-discrimination, the best interests of the child, a life that respects and grows and develops. The presence of these regulations has formulated protection for children's rights, but in reality they have not received very beneficial treatment for the best interests of the child.⁶

In Article 1 number 2 of Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection, it is formulated that "Child Protection is all activities to guarantee children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and receive protection from violence and discrimination". Children are included in the group that is vulnerable to the occurrence of a criminal act that is in conflict with the law, either as perpetrators of criminal acts, or as victims of criminal acts and children who are witnesses to criminal acts, as formulated in Article 1 numbers 2, 3, 4 and 5 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

³Muhammad Azil Maskur, "Legal Protection for Juvenile Delinquency in the Indonesian Criminal Procedure Process", *Pandecta: Research Law Journal*, Vol.7, No.2, 2012, p.172

⁴Zendy Wulan Ayu Widhi Prameswari, "Ratification of the Convention on the Rights of the Child in the Legal Regulation System in Indonesia", *Jurnal Yuridika*, Vol.32, No.1, January 2017, p.167.

⁵Hardianto Djanggih, "Concept of Legal Protection for Children as Victims of Cybercrime Through Penal and Non-Penal Approaches", *Jurnal Mimbar Hukum*, Vol.30, No.2, June 2018, p.317

⁶Yul Ernis, "Diversion and Restorative Justice in Resolving Child Criminal Cases in Indonesia", *Scientific Journal of Legal Policy*, Vol.10, No.2, July 2016, 163-174.

During the examination process, children in conflict with the law are forced to follow the procedures that are usually followed by adults. This situation allows children to be forced to go through the examination process that has become a habit of police officers in conducting investigations or inquiries in handling criminal cases.

The reason for imprisonment, judges more often use judicial policies and discretion, rather than sociological considerations, not only that, many judges ignore community research, even though there are quite a few social structures in Indonesia that experience social pathology and panels of judges that ignore community research from BAPAS.⁷

In its concept, child protection does not only include protection of their rights but also relates to aspects of fostering the younger generation, taking into account that children are not individualists because children are still very dependent on adults, especially adults they know, in addition to the fact that children are not yet able to support themselves. This situation clearly contradicts the objectives of the rule of law in the concept of development law. So that in its development the law should be able to realize justice for children in order to support the life of children that is guaranteed, beneficial and has legal certainty.⁸

The concept of a state of law (nomocracy) has guaranteed the principle of equal rights before the law (before the law), so the concept of development law which prioritizes openness (transparency) is equivalent to the offer of forming law as a consensus involving the public sphere, the concept of a state of law which prioritizes deliberative democracy.⁹

2. Research Methods

The type of research used in this study is a type of analytical descriptive legal research. Analytical descriptive legal research is a method that functions to describe or provide an overview of the object being studied through data or samples that have been collected as they are without conducting analysis and making conclusions that apply to the public.¹⁰ Descriptive research is limited to efforts to reveal a problem or condition or event as it is so that it is merely to reveal facts (fact finding). The results of the research are emphasized on

⁷Solopos.com, 2016, Friday 20 May 2016, 05.00 WIB: 90% of children in conflict with the law end up in prison, in <http://www.solopos.com/2016/05/20/90-anak-berhadapan-hukumberakhir-di-penjara-721069>

⁸Nur Cahyanti, Budi Raharjo, and Sri Endah Wahyuningsih, Sanctions Against Notaries Who Commit Criminal Acts According to the Laws and Regulations in Indonesia, *Jurnal Akta*, Vol 5 No 1 March 2018, p. 91.

⁹Sri Endah Wahyuningsih, Criminal Law Enforcement Policy on Money Laundering Prevention in the Framework of Criminal Law Reform in Indonesia, *Journal of Legal Reform* Volume III No. 2 May - August 2016, p. 47.

¹⁰Sugiono, *Quantitative, Qualitative and R&D Research Methods*, Alfabeta, Bandung, 2009, p. 29.

providing an objective picture of the actual condition of the object being investigated.¹¹ Research on the effectiveness of implementing diversion in juvenile criminal justice was conducted using analytical descriptive because it was conducted by collecting various data related to the research, then the data was presented descriptively (explanation) and analyzed in accordance with related laws and related theories.

3. Results and Discussion

3.1. History of Restorative Justice in Indonesia

The concept of diversion and restorative justice itself is increasingly known through seminars that foster enthusiasm and desire to study these two concepts in more depth. In 2004 in Jakarta, a discussion was held among law enforcement officers involved in the juvenile criminal justice system to discuss the best steps in handling child perpetrators of crimes. The discussion held among law enforcement officers aimed to find the best solution in order to provide protection for children. This seriousness was first carried out by the Bandung District Court by creating a special detention room and a waiting room for children on August 13, 2004. Seeing the seriousness of law enforcement officers in the criminal justice system in Bandung, UNICEF designated the city of Bandung as a Pilot Project in implementing the concept of diversion and restorative justice in Indonesia.¹²

Diversion and restorative justice programs have grown rapidly throughout the world in a short time. The starting point for changing the juvenile justice system in several countries and the reasons put forward for child perpetrators are the reasons for implementing a new concept, namely restorative justice. This concept is relevant for the transformation of all parts of the criminal justice system to the right process, meaning that at every level of justice or institution of law enforcement officers included in the criminal justice system can be transferred to the restorative justice process.¹³

In Indonesia itself, with the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the concept of diversion and restorative justice is implemented as a form of resolving criminal cases committed by children as perpetrators and making criminal punishment an ultimum remedium or last resort used when an appropriate resolution is not achieved through these two concepts.¹⁴

¹¹Hadari Nawawi, *Social Research Methods*, Gadjah Mada University Press, Yogyakarta, 1993, p. 31.

¹²Hadi Supeno, *Restorative Justice: A Model of Future Indonesian Juvenile Justice*, Diponegoro University, Semarang, 2006, p. 211.

¹³*Location, cit.*

¹⁴*Location, cit.*

The application of restorative justice emphasizes the pure willingness of the perpetrator to repair the losses that have been caused as a form of responsibility. Repair of losses must be proportional by considering the rights and needs of the victim. To produce an agreement between the parties, in this case the victim and the perpetrator, informal dialogues such as mediation and deliberation are needed.

The principles of restorative justice according to Adrinus Meliala are as follows:¹⁵

- a. Making perpetrators of criminal acts responsible for repairing the losses caused by their mistakes.
- b. Giving criminals the opportunity to prove their capacity and quality while also constructively overcoming their guilt.
- c. Involving victims, families and other parties in solving problems.
- d. Creating a forum to work together to solve problems.
- e. Establishing a direct and concrete relationship between an act deemed wrong or evil and a formal social reaction.

Settlement of criminal acts through restorative justice a conflict or damage that arises due to a criminal act is seen as a conflict that occurs in the relationship between members of society that must be resolved and restored by all parties together. The circle of resolution is centered on balance by providing opportunities for victims to play a role in the process of resolving criminal acts. Umbreit explains that, "restorative justice is a victim-centered response to crime that allows the victim, the offender, their families, and representatives of the community to address the harm caused by the crime" (restorative justice is a response to a crime that is centered on the victim wants the victim, the perpetrator of the crime, their families, and representatives of the community to address the damage and losses caused by the crime).

Susan Sharpe stated that there are 5 (five) principles in restorative justice, namely:¹⁶

- a. *Restorative justice invites full participation and consensus*

Restorative Justice contains full participation and consensus. In this case, the victim and the perpetrator are actively involved in the negotiation to find a comprehensive solution. In addition, it also opens up opportunities for the community who have felt their security and order have been disturbed by the

¹⁵Location, cit.

¹⁶Rufinus Hotmaulana Hutaeruk, Combating Corporate Crime Through a Restorative Approach: A Legal Breakthrough, Sinar Grafika, Jakarta, 2013, p. 130.

perpetrator to sit together to solve the problem. The invitation to participate is basically not binding/mandatory, only voluntary, although of course the perpetrator will be included, if not, the traditional justice process will run;

b. *Restorative justice seeks to heal what is broken*

Restorative Justice seeks solutions to restore and heal the damage or loss caused by the crime committed by the perpetrator. This also includes efforts to heal or restore victims of the crime that befell them. However, perpetrators also need healing, they need to be freed from their guilt and fear.

c. *Restorative justice seeks full and direct accountability*

Restorative Justice provides a sense of complete responsibility for the perpetrator who is responsible for his actions. The perpetrator must show his remorse and admit his mistakes and realize that his actions have caused harm to others;

d. *Restorative justice seeks to reconcile what has been divided*

Restorative Justice seeks to reunite the perpetrator as a member of society with his/her community that has been separated due to the crime. This is done by reconciling the victim and the perpetrator and reintegrating both into normal community life. Both must be freed from their past for a brighter future.

e. *Restorative justice seeks to strengthen the community in order to prevent further harm*

Restorative Justice empowers communities to prevent crimes from happening again. Crime causes damage to people's lives, but crime can be a lesson for communities to open up true justice for everyone.

The process of resolving criminal acts through a restorative approach, each individual is required to play an active role in solving problems and the State in this case is placed as a party that must provide support for individuals or communities who have the desire to resolve the conflicts they experience. The view of restorative justice is that individuals actually play their roles and responsibilities in resolving conflicts collectively and are not charged to the State.

According to Helen Cowie and Jennifer, the main aspects of restorative justice are identified as follows:¹⁷

a. *Reparation, is not about gaining victory or accepting defeat, accusations or revenge but about justice;*

¹⁷Hadi Supeno, *Restorative Justice: A Model of Future Indonesian Juvenile Justice*, Diponegoro University, Semarang, 2006, p. 203.

b. Restoration of the relationship, not in the form of punishment where the perpetrators take responsibility for their mistakes and correct them in a number of ways, but through a process of open and direct communication between the victim and the perpetrator, which has the potential to change the way they relate to each other;

c. Reintegration, at its broadest level, provides an arena in which children and parents can have a fair process. The idea is that they can learn about the consequences of violence and crime and understand the impact of their behavior on others.

Article 9 of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that:

(1) Investigators, Public Prosecutors and Judges in carrying out Diversion must consider:

- a. category of criminal acts;
- b. Child's age;
- c. results of community research from Bapas; and
- d. support from family and community environment.

(2) The Diversion Agreement must obtain the approval of the victim and/or the Child Victim's family and the willingness of the Child and his/her family, except for:

- a. criminal acts in the form of violations;
- b. minor crime;
- c. crime without victims; or d. the value of the victim's loss is not more than the local provincial minimum wage.

In order to realize restorative justice through diversion in handling child cases, the police have the authority to exercise discretion (discretionary power). Discretionary authority is a legal authority in which the police have the right to continue or not to continue a case. Based on this authority, the police can also divert a child's case so that the child does not need to face formal criminal court settlement.

The existence of diversion in handling cases of child abuse as an effort to realize restorative justice in reality has not been able to be realized optimally, especially in the Central Java Regional Police area. Based on the EMP Pusiknas Bareskrim Polri, the Central Java Regional Police have taken the most action against children in conflict with the law related to crimes and thuggery carrying sharp

weapons. Throughout 2024, the Central Java Regional Police took action against 143 children related to these crimes. The most were children aged 12 to 17 years, as many as 130 children. While 13 other children were under 11 years old. The Central Java Regional Police are also the regional unit with the most actions related to brawls. Data on the DORS SOPS Polri application shows that since the beginning of the year, the Central Java Regional Police have taken action against 3 brawls. Meanwhile, in second place is the Metro Jaya Regional Police, which took action against 117 children related to crimes and thuggery carrying sharp weapons, and took action against 2 brawl cases. The third position is occupied by the North Sumatra Police, which prosecuted 116 children and 1 brawl case. Of the 34 regional units spread throughout Indonesia, six police did not report any action against children related to crimes and thuggery carrying sharp weapons, namely the Aceh Police, the Riau Islands Police, the East Nusa Tenggara Police, the North Kalimantan Police, the Gorontalo Police, and the North Maluku Police. Meanwhile, for brawl cases, there were six police that reported taking action against these disturbances. Namely the Central Java Police (3 cases), the Metro Jaya Police (2 cases), the South Sulawesi Police (2 cases), the Banten Police (2 cases), the North Sumatra Police (1 case), and the West Java Police (1 case). Brawls are one of the crimes and violence committed by groups. Carrying sharp weapons is also an illegal act that is prohibited by law. The National Police continues to strive to prevent brawls between youths in their respective regions. The police patrol vulnerable areas to prevent security disturbances, especially brawls which are very disturbing to the community. Of all the cases, most are resolved in court.¹⁸

The number of cases submitted to the Semarang City District Court related to cases of violence committed by children was 78 cases from cases involving 117 suspects, of which 70 cases were brawls, while 8 cases were bullying with violence.¹⁹Based on the available data, especially in Central Java, it is clear that diversion is rarely carried out in the legal process for children involved in cases of violence. Criminal punishment on children can have significant psychological impacts, both short-term and long-term, including fear, loss of self-confidence, and even trauma. Long legal processes and prison sentences can trigger behavioral problems, depression, and even the risk of suicide. In addition, punishment can damage family relationships, cause deprivation, and increase the risk of social stigma. AKP Wigiyadi said that the impact of criminalization on children can be:²⁰

¹⁸ National Police Education Center, "Number of Children Involved in Violence Cases", https://pusiknas.polri.go.id/detail_artikel/antara_tawuran_dan_senjata_tajam#:~:text=Th%20roughout%20the%20years%202024%2C%20Polda%20Jawa,the%20most%20related%20to%20br%20awl%20actions., May 7, 2025.

¹⁹Interview with AKP Wigiyadi as Head of the Semarang Police Samapta Unit, April 4, 2025.

²⁰Interview with AKP Wigiyadi as Head of the Semarang Police Samapta Unit, April 4, 2025.

a. Fear and Loss of Self-Confidence:

Children who are in conflict with the law, or who have been punished, may feel afraid of law enforcement officers, legal institutions, and even parents or other adults. This fear can hinder social and emotional development, and cause a loss of confidence in one's own abilities.

b. Trauma:

Severe legal proceedings, especially those involving violence or imprisonment, can cause serious psychological trauma. This trauma can lead to behavioral problems, depression, anxiety, and difficulties in daily living.

c. Behavioral Issues:

Harsh punishment can cause children to experience behavioral problems, such as becoming more aggressive, behaving unlawfully, or even isolating themselves.

d. Depression and Anxiety:

Children who are in conflict with the law or are punished, especially in prison, are at risk of experiencing depression and anxiety. This depression and anxiety can hinder cognitive and social development, and cause difficulties in forming social relationships.

e. Social Stigma:

Criminal penalties can cause children to be socially stigmatized, which can hinder their opportunities for employment, education, and a normal social life.

f. Damage to Family Relationships:

Frequent or harsh punishment can damage the relationship between children and parents, cause communication breakdowns, and trigger conflict within the family.

g. Deprivation:

Prison sentences can lead to deprivation, which is the lack of opportunities to obtain basic needs such as education, health care and social support.

The various negative impacts of criminal sanctions on children show the importance of implementing diversion for children involved in cases of violence. The provisions of Article 5, Article 7 to Article 9 of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System clearly state that diversion as an effort to realize restorative justice in the investigation of cases of violence committed by children is an obligation mandated by law. However, in reality, according to AKP Wigiyadi, most parents of victims of acts of

violence between children prefer to take legal action through the courts, so that the perpetrators who are still children are expected to be punished as severely as possible. This is especially true in cases of violence that result in death.²¹

It should be understood that violent crimes committed by children are acts of delinquency or Juvenile delinquency is behavior that reflects errors in educational patterns, both at home and in society and at school. This problem cannot be assessed from one aspect, but must involve many aspects, including the individual aspect of the teenager himself. Basically, the occurrence of juvenile delinquency indicates the indiscipline of teenagers towards the applicable rules and norms, be it family, school, society or self-norms as an individual, and the instillation of these norms must of course be given to individual teenagers so that they have a good understanding related to these norms. The causes of this delinquency include the result of wrong parenting patterns, a bad school environment, bad social groups, a non-conducive social and community environment, weak self-control, and adolescent emotional maturity that does not develop according to the level of adolescent development age. That is why this article attempts to examine the causes of juvenile delinquency and preventive measures and how to improve adolescent discipline from a psychological and Islamic perspective. The report of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which met in London in 1960, stated that there was an increase in the number of juvenile delinquents in the quality of crime, and an increase in the ferocity and cruelty of the crimes, which were more often committed in group actions than individual crimes.²²

The facts then show that all types of juvenile crime are increasing in number with the increasing pace of industrialization and urbanization. In industrial cities and large cities that are rapidly developing physically, there are far more cases of crime than in "primitive" societies or in villages. And in economically prosperous countries, the level of this crime is correlated with the process of industrialization. Therefore, America as the most economically advanced country among the nations of the world, has the highest number of juvenile crimes; so there is the highest level of juvenile crime. Social diseases or social diseases are all forms of behavior that are considered inappropriate, violate general norms, customs, formal laws, or cannot be integrated into general behavioral patterns. Social diseases are also called social disorganization, because the symptoms develop into social excesses that disrupt the integrity and smooth functioning of social organizations. Furthermore, it is also called social disintegration, because one part of the social structure develops out of balance with other parts (for example, members of a tribe, clans, etc.) so that the process can disrupt, hinder,

²¹Interview with AKPWigiyadi as Head of the Semarang Police Samapta Unit, April 4, 2025.

²²Mr. Mardianto, *Social Pathology, Concepts, Theories and Applications*, State Islamic University (UIN) Mataram, Mataram, 2019, pp. 136-149.

or even harm other parts, because it cannot be integrated into a complete totality.²³

Juvenile delinquency does not arise and exist just like that in every life, because these delinquencies have causes which are factors of the occurrence of juvenile delinquency. Initially, there were criminologists who assumed that the elements of intention and opportunity greatly influenced the causes of crime or juvenile delinquency. The element of intention is related to endogenous and exogenous factors.²⁴

Endogenous factors are factors that originate from within the child itself that influence his/her behavior, including: first, biological and psychological disabilities. Second, hampered personality and intelligence development so that he/she cannot internalize the prevailing norms. Exogenous factors are factors that originate from outside the child that can influence his/her behavior. According to Walter Luden, the factors that play a role in the emergence of delinquency are as follows:²⁵

- 1) The wave of urbanization of teenagers from villages to cities is quite large in number and difficult to prevent.
- 2) The occurrence of conflict between traditional rural customary norms and new norms that are growing in the process and rapid sexual shifts, especially in big cities.
- 3) The fading of individual personality patterns that are strongly linked to traditional social control patterns, so that members of society, especially teenagers, face "vague patterns" in carrying out their behavior.
- 4) The development of juvenile delinquency is caused by the negative impact of rapid global changes including knowledge and technology beyond their awareness.

Social and cultural influences play a major role in the formation or conditioning of criminal behavior of teenagers. The behavior of these teenagers shows signs of lack or absence of confirmation of social norms, the majority of juvenile delinquents are under the age of 21 years. The highest number of crimes is at the age of 15-19 years: and after the age of 22 years, cases of crime committed by delinquent gangs decrease.²⁶

These juvenile crimes are a by-product of first mass education that does not emphasize character and personality education of children. Second, the lack of

²³Location, cit.

²⁴Location, cit.

²⁵Location, cit.

²⁶Location, cit.

effort by parents and adults to instill morality and religious beliefs in young people. Third, the lack of social responsibility in young people. Teenagers who commit crimes generally lack self-control, or even abuse self-control, and like to uphold their own standards of behavior, in addition to belittling the existence of others. The crimes they commit are generally accompanied by mental elements with subjective motives, namely to achieve a certain object accompanied by violence and aggression. In general, these young people are very egotistical, and like to abuse or exaggerate their self-esteem. The motives that drive them to commit crimes and immorality include: To satisfy greed, Increased aggressiveness and sexual urges, Miscarriage and miseducation of parents, so that children become spoiled and mentally weak, The desire to gather with friends of the same fate and age, and a liking for imitation, Pathological or abnormal innate tendencies, and Conflict itself then using irrational escape mechanisms and self-defense. The total number of crimes committed by teenagers cannot be known precisely, because cases reported to the police and brought to court are very limited. Only a very small proportion of the number of crimes can be known or reported, usually in the form of cruel and very conspicuous crimes in the public eye. Petty crimes are generally not reported, because people are reluctant to deal with the police or authorities, or people feel embarrassed if the incident is revealed.²⁷

Juvenile delinquency includes all behaviors that deviate from criminal law norms carried out by teenagers. Such behavior will harm themselves and those around them. Adolescence as a threshold period of adulthood experiences confusion or difficulty in trying to leave habits at a previous age and in giving the impression that they are almost or already adults, namely by smoking, drinking alcohol using drugs. The family is the first socialization agent in the formation of a child's personality. Therefore, the family is very important for a child's life before the child enters school, playmates, workplaces and others.²⁸Based on the existing description, it is clear that child perpetrators of violence are actually victims of a lack of attention and social education from their families and the community, which causes children to have a hard and deviant attitude. With the same investigation process as for adult perpetrators in violent crimes, it is clear that this cannot be justified considering that children also have the right to receive guidance, education, and the fulfillment of decent living needs. The less than optimal implementation of diversion in cases of violence committed by children in Central Java shows how the law has not been able to be implemented fairly for children. This is also clearly not in accordance with the objectives of criminal law which requires protection of the rights of perpetrators of crimes.

in essence, criminal law is a protection for society and retaliation for unlawful acts. In addition, Roeslan Saleh also stated that criminal law contains other

²⁷*Location, cit.*

²⁸*Location, cit.*

things, namely that criminal law is expected to be something that will bring harmony and criminal law is an educational process to make people acceptable again in society.²⁹In that context, Muladi proposed a combination of criminal purposes that are considered suitable with sociological, ideological, and philosophical-juridical approaches based on the basic assumption that criminal acts are disturbances to the balance, harmony, and compatibility in community life, which results in individual or societal damage. Thus, the purpose of criminal punishment is to repair individual and social damage caused by criminal acts. The set of criminal purposes are: 1) prevention (general and specific), 2) community protection, 3) maintaining community solidarity, 4) recompense/balance.³⁰

Meanwhile, regarding criminalization, Barda Nawawi said that criminalization must be directed at two targets, namely:

- 1) Community protection;
- 2) Protection and guidance for individual criminals and victims.

So that criminalization should be able to see the interests of society which are then accommodated with the principle of legality and individual interests which are then accommodated with the principle of culpability or the principle of error. So that in terms of criminalization, it is necessary to review the matter of criminal acts and criminal responsibility.³¹

3.2. Child Protection According to Islamic Law

Islam's seriousness towards a generation (descendants; read children) cannot be denied by anything and anyone. So serious, Islam through its holy book has given a special space for children. However, before discussing children more broadly, it would be good to look at the various definitions of children. From the perspective of the Indonesian dictionary, a child is "a human being who is still small" or "children who are still small (not yet adults)".³²

Meanwhile, from a terminology perspective, many experts provide definitions of children. Among these definitions are the second generation, a small human being, a small animal, a small tree that grows on a tuber or a clump of large plants, a person who is included in one work group (family and so on), a small part (of an object), which is smaller than the others.³³

²⁹Muladi and Barda Nawawi, *Criminal Theory and Policy*, Alumni, Bandung, 1992, p. 22.

³⁰Muladi, *Selected Chapters on the Criminal Justice System*, UNDIP, Semarang, 1995, p. 61.

³¹Barda Nawawi Arief, *Anthology of Criminal Law Policy*, Citra Aditya Bakti, Bandung, 2005, p. 88.

³²Ahmad Muzakki, 2013, *Gus Dur: Reformer of Indonesian Islamic Humanist Education in the 21st Century*, Idea Press Yogyakarta, pp. 19-30.

³³*Location, cit.*

In the context of Islamic law and civil law, the definition of a child is closely related to the family. If related to the family, then the definition of a child is very diverse. Therefore, it is not surprising that when classified, the definition of a child is very diverse and has broad aspects. Thus, it can be underlined that various meanings of children can be translated from various perspectives and approaches. So that to approach children correctly can be done through the system of religious, legal, social interests from each field. Wisely from the explanation above, it can be said that the understanding of children from various branches of science will have differences, both in terms of their function, meaning and purpose. For example, in the context of Islamic law, children will have a different definition from the understanding of children in the context of legal, social, economic, political and defense disciplines. In this case, Islam firmly provides definition limitations and always socializes that children are wise and noble creatures of Allah SWT. In addition, the process of creation and existence through various dimensions and becomes the authority of the will of Allah SWT.³⁴

3.3. Obstacles and Solutions in the Investigation Process of Child Criminal Cases Through Restorative Justice at the Semarang City Police

1) Constraint In the Process of Investigating Child Criminal Cases Through Restorative Justice at the Semarang City Police

The implementation of restorative justice also faces several challenges and obstacles, such as lack of understanding and support from the community, lack of training for legal practitioners, and lack of clear and systematic regulations for the implementation of restorative justice. Likewise with the supporting facilities and infrastructure for the process as mentioned below:³⁵

- a. The limitations of Special Child Development Institutions in Indonesia require that juvenile criminals are still placed in adult prisons/detention centers;
- b. Places for fostering children under the age of 12 years, and special care facilities for detained children if there are no special service rooms for children under the responsibility of the Social Welfare Institution (LPAS) are not yet evenly available throughout Indonesia;
- c. Replacement prisons for children aged 14-18 years are not yet evenly available throughout Indonesia;
- d. Not all police stations have 24-hour child care facilities in the Special Child Service Room (RPKA).

³⁴*Location, cit.*

³⁵Interview with AKPWigiyadi as Head of the Semarang Police Samapta Unit, April 4, 2025.

The transfer of child case resolution outside the criminal justice process, known as diversion, is part of state policy. This is done by considering the best interests of the child, to prevent stigmatization and avoid imprisonment. Efforts to resolve child crimes through diversion are implemented as much as possible, considering that Article 13 of the SPPA Law emphasizes that if the diversion process does not result in an agreement between the victim and the perpetrator of the crime or the agreement is not implemented, then the process outside the child criminal justice system will be continued into the child justice process as a formality contained in the Criminal Procedure Code. Based on the various weaknesses that exist, it is clear that in the existing investigation process, diversion as a legal instrument to protect children as perpetrators of violence has not been realized, this also shows that the legal process has not been able to realize child protection in terms of children's basic rights.³⁶

The obstacles in implementing restorative justice in Semarang City in cases of violence against children are:³⁷

- a. Lack of public knowledge regarding the resolution of criminal cases through restorative justice;
- b. Lack of public awareness to make peace through restorative justice in cases of minor assault;
- c. The settlement of hate speech crimes through restorative justice has not been regulated completely and specifically at the level of government regulations, both central and regional.

The theory of legal validity states that any action to be taken by the role holders, implementing institutions or law makers is always within the scope of the complexity of social, cultural, economic and political forces and so on. All social forces always work in every effort to function the applicable regulations, apply their sanctions, and in all activities of the implementing institutions. Finally, the role played by the legal institutions and institutions is the result of the work of various factors.³⁸

2) Solutions to Problems in the Investigation Process of Child Criminal Cases Through Restorative Justice at the Semarang City Police

Effectiveness is a vocabulary in Indonesian that comes from English, namely "efektive" which means successfully obeyed, validated, efficacious and fortunate. From the series of meanings above, the most appropriate is successfully obeyed. Effectiveness according to Amin Tunggal Widjaya is the result of making

³⁶Interview with AKPWigiyadi as Head of the Semarang Police Samapta Unit, April 4, 2025.

³⁷Interview with AKPWigiyadi as Head of the Semarang Police Samapta Unit, April 4, 2025.

³⁸William J. Chambliss and Robert B. Seidman in Esmi Warassih, *Legal Institutions: A Sociological Study*, UNDIP Press, Semarang, 2011, p. 10.

decisions that direct doing something right, which helps fulfill a company's mission or achieving goals.³⁹

Meanwhile, according to Permata Weshia, effectiveness is a condition or ability of a work done by humans to provide the expected benefits. In order to see the effectiveness of work, four types of considerations are generally used, namely: Economic, physiological, psychological and social considerations. Effectiveness is also said to be a condition that shows the success of work that has been determined. Sarwoto terms effectiveness as "effective", namely good service in terms of style and quality that really suits the needs in achieving the goals of an organization.⁴⁰

In addition to the above factors that influence the problematic implementation of restorative justice is the cultural factor. Culture as according to Soerjono Soekanto, what is meant by culture is one element of the legal system, in the form of values that underlie the implementation of a law. These values are abstract conceptions of what is considered good (so it is adopted) and what is considered bad (so it is avoided).⁴¹

The solutions that can be done are:

1. For the government, it is necessary to emphasize in Article 7 of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System that the type of conditions for carrying out diversion are not only based on the child's actions which constitute a criminal act that is subject to a 7-year prison sentence but also need to look at the aspects of the child's criminal responsibility and the child's future circumstances.
2. For law enforcers, it is necessary to emphasize to the parties in cases of violence committed by children that the legal process through diversion for children must be carried out first.
3. For the community, there needs to be legal education about the importance of diversion, especially in cases of violence committed by children.

4. Conclusion

The investigation process for child criminal cases through diversion as an effort to realize restorative justice at the Semarang City Police has not been optimal, this is because 70 cases of violence committed by children were resolved at the

³⁹Amin Tunggal Widjaya, *Management: An Introduction*, First Printing, Rineka Cipta Jaya, Jakarta, 1993, p. 32.

⁴⁰Sarwoto, *Basics of Organization and Management*, Ghalia Indonesia, Jakarta, 1990, p.126.

⁴¹M. Gargarin Friyandi and Aryani Witasari, *Restorative Justice In Application For Crime Investigation Abuse In Polsek Middle Semarang*, *Jurnal Daulat Hukum* Volume 2 Issue 1, March 2019, pp. 41-44. <http://jurnal.unissula.ac.id/index.php/RH/article/view/4204>.

Semarang City District Court in 2024. Constraint in the process of investigating cases of child criminal acts through restorative justice at the Semarang City Police in the form of mthe lack of public knowledge regarding the resolution of criminal cases through restorative justice; the lack of public awareness to reconcile through restorative justice in cases of minor assault; and the lack of regulation of the resolution of hate speech crimes through restorative justice in a complete and specific manner in government regulations, both central and regional. The solutions that can be done are: for the government, it is necessary to emphasize in Article 7 of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System that the type of requirements for diversion are not only based on the child's actions which are criminal acts that are subject to 7 years of imprisonment but also need to look at the aspects of the child's criminal responsibility and the child's future. For law enforcers, it is necessary to emphasize to the parties in cases of violence committed by children that the legal process through diversion for children must be carried out first. For the community, there needs to be legal counseling about the importance of diversion, especially in cases of violence committed by children.

5. References

Journals:

Nur Cahyanti, Budi Raharjo, dan Sri Endah Wahyuningsih, Sanksi Terhadap Notaris Yang Melakukan Tindak Pidana Menurut Peraturan Perundang-Undangan Di Indonesia, *Jurnal Akta*, Vol 5 No 1 Maret 2018

Sri Endah Wahyuningsih, Kebijakan Penegakan Hukum Pidana Terhadap Penanggulangan Money Laundering Dalam Rangka Pembaharuan Hukum Pidana Di Indonesia, *Jurnal Pembaharuan Hukum* Volume III No. 2 Mei - Agustus 2016

Sri Endah Wahyuningsih, Perlindungan Hukum terhadap Anak Sebagai Korban Tindak Pidana Kesusilaan Dalam Hukum Pidana Positif Saat Ini, *Jurnal Pembaharuan Hukum* Volume III No. 2 Mei - Agustus 2016

Books:

Daud AM., Mohammad, 1993, *Hukum Islam Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia*, Rajawali Pers, Jakarta

Edi Swasono, Sri, 2009, *Ekspose Ekonomika : Mewaspada Globalisme dan Pasar-Bebas Ekonomi*, Pusat Studi Ekonomi Pancasila-UGM, Yogyakarta

Endah Wahyuningsih, Sri, 2013, *Prinsip-Prinsip Individualisasi Pidana Dalam Hukum Islam Dan Pembaharuan Hukum Indonesia*, UNDIP, Semarang

- Farida Indrati S., Maria, 2007, *Ilmu Perundang-Undangan: Jenis, Fungsi dan Materi Muatan, Buku 1*, Kanisius, Yogyakarta
- Friedman, L. M., 1975, *Legal System*, Russel Sage Foundation, USA
- Giddens, Anthony, 2003, *Runaway World Bagaimana Globalisasi Merombak Kehidupan Kita*, PT. Gramedia Pustaka Utama, Jakarta
- HR., Mahmutarom, 2016 *Rekonstruksi Konsep Keadilan, Studi Perlindungan Korban Tindak Pidana Terhadap Nyawa Menurut Hukum Islam, Konstruksi Masyarakat, Dan Instrumen Internasional*, UNDIP, Semarang
- Irmayanto, Juli, dkk, 2002, *Bank dan lembaga keuangan*, Universitas trisaksi, Jakarta
- Kelsen, Hans, 1935, *General Theory of Law and State*, Russel & Russel, New York
- Komarudian, 1994, *Enxiklopedia Manajemen*, Bumi Aksara, Jakarta
- Lubis, Mochtar, 2013, *Manusia Indonesia*, Yayasan Pustaka Obor Indonesia, Jakarta
- Mahfud M. D., Moh., 2006, *Membangun Politik Hukum, Menegakkan Konstitusi*, Pustaka LP3ES, Jakarta
- Mertokusumo, Sudikno, 2014, *Penemuan Hukum, Sebuah Pengantar*, Cahaya Atama Pusaka, Yogyakarta
- Meuwissen, 2018, *Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, Dan Filsafat Hukum*, PT. Refika Aditama, Bandung
- Nawawi Arief, Barda, 1998, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum*, Citra Aditya Bakti, Bandung
- Nawiasky, Hans, 1948, *Allgemeine Rechtslehre als System der rechtlichen Grundbegriffe, Cetakan 2*, Einseideln / Zurich / Koln, Benziger
- Rahardjo, Satjipto, 2003, *Sisi-Sisi Lain dari Hukum di Indonesia*, Kompas, Jakarta
- Ranggawidjaja, Rosjidi, 1998, *Pengantar Ilmu Perundang-Undangan Indonesia*, Mandar Maju, Bandung
- Sarja, 2016, *Negara Hukum Teori Dan Praktek*, Thafamedia, Yogyakarta
- Soekanto, Soerjono, 1982, *Pengantar Penelitian Hukum*, Penerbit Universitas Indonesia Press, Jakarta
- Sri Endah Wahyuningsih, 2013, *Prinsip-Prinsip Individualisasi Pidana Dalam Hukum Islam Dan Pembaharuan Hukum Indonesia*. UNDIP, Semarang,

Sunarmi, 2010, *hukum kepailitan, edisi 2*, PT. Sofmedia, Medan

Sundari, Siti, 2011, *Laporan Kompendium Hukum Bidang Perbankan*, Kementrian Hukum dan HAM RI, Jakarta

Tobink, Riduan dan Nikholaus, Bill, 2003. *"Kamus Istilah Perbankan"*, Atalya Rileni Sudeco, Jakarta

Regulation:

The 1945 Constitution of the Republic of Indonesia,

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System,

Criminal Code (KUHP), and

Criminal Procedure Code (KUHAP).