

Implementation of Restorative Justice in the Investigation Stage of Child Crimes in the Police

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Abstract. *The research objectives in this study: 1) to find out and analyze how the application of restorative justice at the stage of investigation of juvenile crimes in the police today; 2) To find out and analyze what are the weaknesses of the application of restorative justice at the stage of investigation of juvenile crimes in the police today. This study uses a normative juridical approach, with a descriptive analytical research method. The data used are primary and secondary data which will be analyzed qualitatively. The research problems are analyzed using the theory of legal objectives, legal protection theory, and restorative justice theory. The results of the study conclude that: 1) The application of restorative justice at the stage of investigation of juvenile crimes in the police is guided by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and the 2012 Police Regulation concerning Restorative Justice, namely the settlement of juvenile cases outside the criminal court which emphasizes the restoration of the original state by emphasizing the conditions for creating justice and balance for children and their victims; 2). Weaknesses in the application of restorative justice during the investigation stage of juvenile crimes in the police can be classified into legal substance, human resources, family/community, facilities and infrastructure. Diversion and restorative justice in resolving juvenile criminal cases should be applied based on the principle of the best interests of the child, the child's survival and development.*

Keywords: Crimes; Investigation; Justice; Restorative.

1. Introduction

A criminal offense begins at the investigative stage, followed by an inquiry, typically conducted by investigators or police investigators mandated by law. The criminal justice system encompasses the process from the investigation to the court's decision, which has the status of *res judicata* (legally binding; *inkracht van*

gewaijsde), or final and binding legal force.¹In practice, criminal proceedings in Indonesia still utilize a retributive justice system that prioritizes retribution and legal certainty. Failure to differentiate between extraordinary crimes, ordinary crimes, and minor crimes, particularly those for which the damages are recoverable, can compromise the sense of justice and social response to the victims. In this context, the victim is not merely the injured party; the suspect is also a victim of the criminal process, which is essentially intended to provide justice for both parties. Therefore, an optimal alternative to the existing regulations is needed, namely discretionary action at each stage of the criminal justice system, one of which is the police.

The exercise of discretion by the police in actions to waive cases, efforts to detain or not detain suspects/perpetrators of legal violations or stop the investigation process, is not an act of individual discretion without seeking guidance or decisions from their superiors. Such actions are acts of bureaucratic discretion because in making discretionary decisions based on or guided by the policies of the leadership in the organization and this has been agreed upon between them.²

The legal basis for the police in exercising discretion is based on Article 7 Paragraph (1) point j of Law No. 8 of 1981 concerning the Criminal Procedure Code, Article 16 Paragraph (1) and Article 18 of Law No. 2 of 2002 concerning the Republic of Indonesia National Police which regulates "may take other actions", with "certain conditions" or called "discretion". Based on these regulations, investigators and investigators have the policy to choose how to act. The issuance of the Circular Letter of the Chief of Police No. SE/8/VIII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases states that the implementation of the authority to investigate and/or investigate criminal acts by investigators and investigators of the National Police who apply the principle of restorative justice in their investigative methods is based on the provisions of the Criminal Procedure Code and the provisions of Law No. 2 of 2002 concerning the Indonesian Police. Article 12 of the Regulation of the Chief of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigations stipulates the requirements that must be met in implementing a restorative justice approach. These regulations provide a pathway for using a restorative justice approach in resolving a case.

Article 18 of Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 concerning Child Protection states that every child who is a victim or perpetrator of a crime has the right to receive legal aid and other assistance. The Child Criminal Justice System Law explains that children who are victims of crime, hereinafter

¹Anas Yusuf, 2016, *Implementation of Restorative Justice in Law Enforcement by the Indonesian National Police to Achieve Substantive Justice*, Tri Sakti University Publisher, Jakarta, p. 3.

²Abbas Said, "Benchmark for Assessing the Use of Discretion by the Police in Criminal Law Enforcement", *Journal of Law and Justice*, No.1 Vol: 1, March 2012, p. 149.

referred to as child victims, are children under 18 years of age who experience physical, mental, and/or economic suffering caused by a crime. More specifically, in order to protect the rights of child victims of crime, regarding services and assistance to victims so that their rights are fulfilled, the government issued Regulation of the Minister of State for Women's Empowerment and Child Protection Number 1 of 2010 concerning the Minimum Service System for Integrated Services for Women and Children Victims of Crime. Law Number 35 of 2014 Article 90 has been regulated as referred to in Article 89, Child Victims have the right to: medical rehabilitation and social rehabilitation efforts, both within and outside institutions, guarantees of safety, both physical, mental, and social, ease of obtaining information regarding case developments.

Law Number 23 of 2003 in Article 4 states that every child has the right to live, grow, develop and participate fairly in accordance with human dignity and honor, and to receive protection from violence and discrimination.

The principles of the Beijing Rules mentioned above have not been fully implemented, even though they are enshrined in Law Number 11 of 2012 concerning Amendments to Law Number 3 of 1997 concerning Juvenile Justice (the Juvenile Criminal Justice System). For example, public prosecutors in handling juvenile cases still impose criminal charges rather than legal action. Consequently, in trials, juvenile judges, who are expected to provide justice for children, still prefer to impose punishment. This is evident in the continued high number of juveniles being sentenced to prison rather than legal action, returning them to their parents/guardians, providing guidance by foundations or social departments, and foster care provided by the state.³

On this basis, attention and concern for children are reflected in the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, replacing Law Number 3 of 1997 concerning Juvenile Courts. This replacement of the law is deemed necessary because the old law is no longer relevant to the legal needs of society and has not comprehensively provided legal protection to children in conflict with the law. The purpose of enacting this new law is to realize a justice system that truly guarantees the protection of the best interests of children in conflict with the law.

So far, child perpetrators who commit crimes can be subject to criminal penalties. Although in principle it is based on criminal liability based on fault (Liability Based on Fault), but in certain cases the concept also provides the possibility of very strict liability (Strict Liability). However, in practice, child perpetrators who commit crimes are more likely to be diverted, in Law Number 11 of 2012 concerning the Criminal Justice System Article 1 paragraph 6 which reads: "Restorative Justice is

³See Article 24 of Law Number 11 of 2012 concerning Amendments to Law Number 3 of 1997 concerning Juvenile Justice (Juvenile Criminal Justice System)

the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just solution by emphasizing restoration to the original state, and not revenge." If the perpetrator is a child under 18 years old.

The existence of several problems in the implementation of the juvenile criminal justice system in Indonesia, demands the importance of reviewing the concepts of diversion and restorative justice in the implementation of the juvenile criminal justice system in Indonesia. The theory used in analyzing the concepts of diversion and restorative justice in the criminal justice system is the theory of crime prevention policy and the spirit of the birth of The Beijing Rules and Law Number 11 of 2012 concerning Amendments to Law Number 3 of 1997 concerning Juvenile Justice (Juvenile Criminal Justice System).

Indonesia must think and take swift and appropriate action to find solutions to the problems facing the juvenile criminal justice system in Indonesia. Policymakers must begin to think carefully and precisely about whether international provisions on child protection, as outlined in the Convention on the Rights of the Child and the Beijing Rules, have been fully ratified in the laws and regulations governing child protection in Indonesia. One crucial aspect is the existence of the diversion and restorative justice conventions, a concept that seeks to protect children in conflict with the law.

For example, police handling of diversion in bullying cases. Throughout 2019-2023, the Semarang Police have handled a number of bullying cases through diversion. In 2021, there were 3 bullying cases where diversion was successfully carried out, while in 2022, there were two bullying cases perpetrated by children and 2 cases of diversion were successfully carried out. In 2023, there were 5 cases that could not be resolved through diversion. Based on the cases studied in 2022, the diversion carried out by the police has met the requirements stipulated in Article 7 paragraph (2) which states "Diversion is carried out in cases where the crime committed is threatened with imprisonment of less than 7 (seven) years; and is not a repeat of the crime." Then, from the age category in the cases studied in 2022, child perpetrators include children under the age of 12. According to the City Police, the child is not included as a child in conflict with the law because a child in conflict with the law is a child who is 12 years old but not yet 18 years old who has committed a crime as regulated in Article 1 paragraph (3) of Law No. 11 of 2012 concerning SPPA).⁴

Based on the description above, the author is interested in conducting research with the title "Implementation of Restorative Justice at the Investigation Stage of Child Crimes in the Police".

⁴Cahyo Budisantoso and Adhani Wardianti, Correctional Social Work Practices in the Juvenile Criminal Justice System. *Journal of Social Work Science (JULIP)* 2(1), pp. 27-37, 2023.

This study aims to determine and analyze how restorative justice is applied at the current stage of investigation of juvenile crimes in the police; to determine and analyze what are the weaknesses of the application of restorative justice at the current stage of investigation of juvenile crimes in the police.

2. Research Methods

This research uses a normative juridical approach. The research method employed in completing this thesis is descriptive qualitative. The data used are primary and secondary data, which will be analyzed qualitatively. The research problem is analyzed using the theory of legal objectives, legal protection theory, and restorative justice theory.

3. Results and Discussion

3.1. The Current Implementation of Restorative Justice in the Investigation Stage of Juvenile Crimes in the Police

Gustav Radbruch explained that there is a scale of priorities that must be implemented, with justice always being the first priority, followed by utility, and finally, legal certainty. Law functions as a means of preserving human interests in society. The purpose of law is to achieve goals that divide rights and obligations among each individual in society. Law also authorizes and regulates how to resolve legal issues and maintain legal certainty.⁵

When linked to the function of law as the protection of human interests, law has goals and objectives to be achieved. The basic goal of law is to create an orderly and balanced social order. Achieving order in society is expected to protect human interests. To achieve this goal, law serves to divide rights and obligations among individuals in society, allocate authority, and regulate how to resolve legal problems.⁶

Investigations into juvenile cases conducted by juvenile investigators or adult criminal investigators must be conducted in a family-like atmosphere, as stipulated in Article 18 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. This provision requires that the examination be conducted with an effective and sympathetic approach. Effective can be interpreted as the examination not taking a long time, using language that is easy to understand and can encourage the defendant to provide the clearest possible statement. Sympathetic can be interpreted as during the examination, the investigator is polite and friendly and does not intimidate the suspect.

⁵Randy Ferdiansyah, The Purpose of Law According to Gustav Radbruch, <http://hukumindo.com/2011/11/artikel-politik-hukum-tujuan-hukum.html>, accessed on November 3, 2024.

⁶Sudikno Mertokusumo, 2003, Understanding Law: An Introduction, Liberty, Yogyakarta, p. 77.

On the other hand, in conducting child investigations, investigators are required to seek consideration or advice from community counselors or, if necessary, educational experts, psychologists, psychiatrists, religious leaders, social workers, and other experts. Furthermore, in the process of investigating child cases, it is mandatory to keep them confidential. Investigators' actions in the form of arrests, detentions, and other actions carried out from the investigation stage to the investigation stage must be carried out confidentially, so that they cannot easily be known to the public, which can cause depression, shame, or inferiority, and so on, which will have psychological consequences for the child's growth and development in society. Based on this, when examining children who commit crimes, the Police have established a Special Child Crime Unit so that specifically examinations of children in conflict with the law are carried out in the children's examination room. In investigations, investigators take an effective and sympathetic approach, use language that is easy to understand, do not use coercion, do not wear uniforms, or do not wear attributes that can cause the child to be intimidated, causing fear and trauma, and if deemed necessary, involve community leaders.

Gustav Radbruch stated that there are three objectives of law: utility, certainty, and justice. In implementing these three objectives, the principle of priority must be applied.⁷Justice can be prioritized, sacrificing the benefit of the wider community. Gustav Radbruch stated that there is a scale of priorities that must be implemented, with justice always being the first priority, followed by benefit, and finally, legal certainty. Law functions as a means of preserving human interests in society. The purpose of law is to achieve goals that divide rights and obligations among each individual in society. Law also authorizes and regulates how to resolve legal issues and maintain legal certainty.⁸

The presence of law in social life is useful for integrating and coordinating interests that are usually in conflict with each other. Therefore, the law must be able to integrate them so that conflicts of interest can be minimized. The definition of legal terminology in Indonesian according to KBBI is a regulation or custom that is officially considered binding, which is confirmed by the authorities or government, laws, regulations, and so on to regulate social interactions, benchmarks or rules regarding certain natural events, decisions or considerations determined by judges in court, or verdicts.⁹In other words, legal protection is a depiction of the

⁷Sonny Pungus, Theory of the Purpose of Law, <http://sonny-tobelo.com/2010/10/teori-tujuan-hukum-gustav-radbruch-dan.html>, accessed on November 3, 2024.

⁸Randy Ferdiansyah, The Purpose of Law According to Gustav Radbruch, <http://hukumindo.com/2011/11/artikel-politik-hukum-tujuan-hukum.html>, accessed on November 3, 2024.

⁹The team compiling the Dictionary of the Center for Language Development and Cultivation, Big Indonesian Dictionary, Second Edition, 1st ed., (Jakarta: Balai Pustaka, 1991) Page 595

function of law, namely the concept that law can provide justice, order, certainty, benefit and peace.

Legal protection does not discriminate between men and women. Indonesia, as a state governed by the rule of law based on Pancasila, must provide legal protection to its citizens. This legal protection will foster the recognition and protection of human rights, both as individuals and as social beings, within a unitary state that upholds the spirit of family for the sake of achieving shared prosperity.

Restorative justice theory is a legal theory that addresses the weaknesses in conventional criminal case resolution, namely the repressive approach implemented in the Criminal Justice System. The weakness of the repressive approach as a solution to criminal cases is, among other things, that it is oriented towards retaliation in the form of punishment and imprisonment of the perpetrator, but even though the perpetrator has served his sentence, the victim does not feel satisfied.

Likewise, perpetrators who have served their sentences cannot be integrated or integrated into their social environment. This leads to lingering resentment and can lead to new criminal behavior. Resolving criminal cases through a repressive approach fails to fully resolve the issue, especially between the perpetrator and the victim and their community. This is because neither the perpetrator nor the victim is involved in the decision-making process. A case resolution should contribute to justice for those involved.¹⁰

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Some definitions of restorative justice put forward by experts include:¹¹

a. According to Howard Zehr: restorative justice is a process of involving, using all possible means, all parties involved in a particular offense and to identify and explain the threats, needs and obligations in order to heal and place them as far as possible in their proper place.

¹⁰Mansyur Kartayasa, "Restorative Justice and Its Prospects in Legislative Policy," a paper presented at the National Seminar, "The Role of Judges in Enhancing Professionalism. Towards Great Research," Held by IKAHI in conjunction with IKAHI's 59th Anniversary, April 25, 2012, pp. 1-2.

¹¹Bambang Waluyo, *Law Enforcement in Indonesia*, p. 109

b. According to Tony Marshall: Restorative justice is a process in which all parties involved in a particular crime come together to collectively solve problems on how to make agreements regarding the (bad) consequences of a crime and its implications for the future. Restorative justice has developed globally throughout the world. In many countries, restorative justice is one of a number of important approaches to crime and justice that are continuously considered in the justice system and laws.

The use of restorative justice in Indonesia has been based on discretion, and this diversion is an effort to divert the criminal justice process away from the formal process to be resolved through deliberation. Essentially, resolving problems and disputes through deliberation is not unfamiliar to Indonesian society. Since before the Dutch arrived in Indonesia, customary law, Indonesia's original law, has used deliberation to resolve all kinds of disputes, both civil and criminal, with the aim of restoring balance or restoring the situation. This system is fundamentally in line with the objectives of the criminal justice system itself, as formulated by Madjono as follows:

- a) Prevent people from becoming victims of crime.
- b) Resolving criminal cases that occur so that the public is satisfied that justice has been upheld and those guilty have been punished; and
- c) Ensure that those who have committed crimes do not repeat their crimes again.

In the process of investigating children's cases, there are also Arrests and Detentions. Arrest is an action by investigators in the form of temporary restrictions on the freedom of a suspect or defendant if there is sufficient evidence for the purposes of investigation or prosecution and/or trial in matters and according to the methods regulated by law. This also applies to children, in other words, the arrest of naughty children follows the procedures in the Criminal Procedure Code. Arrests may not be carried out arbitrarily, therefore arrests may only be carried out based on a warrant from the investigator except for being caught red-handed, namely by immediately handing over the arrested person along with the evidence to the investigator. Detention is the placement of a suspect or defendant to a certain place by a Child Investigator or Child Public Prosecutor or Child Judge with a decision, according to the methods regulated by law. Article 21 paragraph (1) of the Criminal Procedure Code, the reasons for detention are because there is a fear of escape, so as not to damage or eliminate evidence, so as not to repeat the crime. According to the Criminal Procedure Code, removing a person's freedom is not a requirement, but to find the truth that someone has violated the law, a person's freedom is limited by making an arrest and detention. Investigators have the authority to detain children who are strongly suspected of committing a crime based on sufficient preliminary evidence. The basis for permitting the detention of a child is a strong suspicion

based on sufficient evidence that the child has committed a crime (delinquency). Detention is carried out if the child commits a crime that is punishable by imprisonment of 7 (seven) years or more, or certain other crimes determined by law. Detention of children can only be carried out under the following conditions:

- a. The child is 14 (fourteen) years old or more; And
- b. Suspected of committing a crime with a prison sentence of 7 (seven) years or more.

The conditions for detention must be expressly stated in the detention order. The detention of a child is based on considerations of the child's interests and the interests of society, which must be clearly stated in the detention order. The detention period for a child defendant is shorter than the detention period for an adult. The maximum detention period for investigative purposes is 7 (seven) days, and for unfinished examinations, it can be extended for a maximum of 8 (eight) days. This detention place must also be separate from adult detention and must be able to meet the physical, spiritual, and social needs of the child suspect. The provisions of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System state that "Within a period of 30 (thirty) days, the Investigator as referred to in paragraph (1) must submit the relevant case file to the Public Prosecutor. Then in paragraph (5) if the period as referred to in paragraph (4) is exceeded and the case file has not been submitted the suspect must be released from detention by law.

PPA Unit investigators handling child cases are required to maintain confidentiality regarding the child's identity or other information that could reveal the identity of the child in conflict with the law (in print or electronic media reporting), thereby avoiding labeling or stigmatizing the child. This reflects legal protection for children in conflict with the law.

After all restorative justice applications have been implemented, the police then take steps to ensure that the child does not repeat his actions in the future. Then, after all is implemented, the file is stopped and sanctions for the child as the perpetrator of the crime of theft must still be implemented in accordance with the decision of the results of the deliberation from the police who have coordinated with the father, social workers and biological parents. The police who handle the crime of theft with child perpetrators apply restorative justice which is carried out by means of diversion involving the victim, perpetrator, community and interested parties in the case. If the victim still wants to escalate the case to trial, the case must still be escalated. During the trial process of criminal cases committed by children, prosecutors also participate in efforts to ensure the case can be resolved through the application of restorative justice.

3.2. Weaknesses in the Implementation of Restorative Justice in the Investigation Stage of Child Crimes in the Police

The Juvenile Criminal Justice System Law emphasizes that diversion is the transfer of the settlement of a child's case from the criminal justice process to a process outside the criminal justice system, which aims to: achieve peace between the victim and the child, resolve the child's case outside the judicial process, prevent the child from being deprived of liberty, encourage the community to participate, and instill a sense of responsibility in the child. According to the Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 on Deliberation, diversion is a deliberation between parties involving the child and their parents/guardians, the victim and/or their parents/guardians, Community Guidance, Professional Social Workers, representatives and other involved parties to reach a diversion agreement through a restorative justice approach. While the Facilitator is a judge appointed by the Chief Justice to handle the child's case in question. Diversion is a transfer of the process in the long and highly diversionary child case resolution system to achieve restorative justice.¹²

The opinions quoted from several experts regarding legal protection are as follows:

- 1) According to Satjito Rahardjo, legal protection is an effort to protect a person's interests by allocating Human Rights and the power to act in the interests of that person.
- 2) According to Setiono, legal protection is an action or effort to protect society from arbitrary actions by authorities that are not in accordance with legal regulations, to create order and peace so that humans can enjoy their dignity as human beings.
- 3) According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship between values or rules that are embodied in attitudes and actions in creating order in social interactions between fellow human beings.
- 4) According to Philipus M. Hadjon, it is always related to power. There are two powers: government and economic power. In relation to government power, the problem of legal protection for the people (those who are governed) against the government (those who govern). In relation to economic power, the problem of legal protection is the protection of the weak (economic) against the strong

¹²Ridwan Mansyur, Restorative Justice as the Goal of Implementing Diversion in the Juvenile Criminal Justice System, <https://www.mahkamahagung.go.id/id/artikel/2613/keadilan-restoratif-sebagai-tujuan-pelaksanaan-diversi-pada-sistem-peradilan-pidana-anak>, downloaded August 12, 2025

(economic), for example, protection for workers against employers.¹³

Punishment for perpetrators of child crimes does not achieve justice for the victims, considering that on the other hand, it still leaves its own problems that remain unresolved even though the perpetrator has been punished. Considering the principles of child protection, especially the principle of prioritizing the best interests of the child, a process for resolving children's cases outside the criminal mechanism, commonly called diversion, is necessary. Punishment institutions are not a way to resolve children's problems because they are prone to violations of children's rights. Therefore, a program and procedure are needed within the system that can accommodate case resolution, one of which is using a restorative justice approach, through legal reform that not only changes the law but also modifies the existing criminal justice system, so that all the desired objectives of the law are achieved.

Legal protection does not discriminate between men and women. Indonesia as a state of law based on Pancasila must provide legal protection to its citizens because of that legal protection will give rise to the recognition and protection of human rights in their form as individual beings and social beings. In the framework of a unitary state that upholds the spirit of family in order to achieve shared prosperity. The opinion regarding the definition of understanding the meaning of law stated by Dr. O. Notohamidjojo, SH Law is the entirety of written and unwritten regulations that are usually coercive for human behavior in society and between countries that are oriented towards two principles, namely justice and utility, for the sake of order and peace in society.¹⁴

According to Prof. Mahadi, the definition of law is a set of norms that regulate human behavior in society. According to Soedjono Dirdjosisworo, the definition of law can be seen from eight meanings, namely law in the sense of ruler, law in the sense of officials, law in the sense of attitude and action, law in the sense of a system of rules, law in the sense of a network of values, law in the sense of legal order, law in the sense of legal science, law in the sense of legal discipline.

However, in practice, many children still end up in Special Child Development Institutions (LPKA). This is where legal protection continues in the form of a development program consisting of formal and non-formal education, skills training, counseling, and spiritual and religious guidance. LPKA is expected not to be a place of punishment, but rather a place of recovery and preparation for children's reintegration into society. Unfortunately, the implementation of this protection still faces various obstacles, including: limited professional counselors, inadequate facilities and infrastructure, and a lack of participation from families

¹³Asri Wijayanti, *Post-Reformation Employment Law*, Jakarta. Sinar Grafika, 2009, p. 40

¹⁴Syamsul Arifin, *Introduction to Indonesian Law*, Medan: Medan Area University Press, 2012, Page 45

and the community. The lack of involvement of external parties, including victims and the community, makes the development process less than optimal in eliminating stigma and restoring social relations. The restorative justice approach seeks to restore social relations damaged by criminal acts, involving the perpetrator, the victim, their respective families, and the community. In the context of children as perpetrators, this approach is more relevant because it avoids retributive approaches that can damage the child's future. Restorative justice provides space for children to recognize their mistakes, apologize, and actively take responsibility for the consequences of their actions.

One form of restorative justice mechanism is dialogue, which is better known among Indonesians as deliberation for consensus. Therefore, diversion, especially through the concept of restorative justice, is a very important consideration in resolving criminal cases committed by children. If the diversion agreement is not fully implemented by the parties based on a report from the Community Guidance of the Correctional Center, the judge will continue the examination of the case in accordance with the Child Criminal Justice Procedure Code. The judge in making his decision is obliged to consider the partial implementation of the diversion agreement. In PERMA 4 of 2014 it is explained that Diversion is applied to children who are 12 (twelve) years old but under 18 (eighteen) years old or who are 12 (twelve) years old even though they have been married but under 18 (eighteen) years old, who are suspected of committing a crime (article 2).

This PERMA also regulates the stages of diversion deliberation, where the facilitator appointed by the Chief Justice is obliged to provide the opportunity to:

1. Children to be heard regarding the charges
2. Parents/Guardians to convey matters relating to the child's actions and the form of resolution expected
3. Victims/Children of Victims/Parents/Guardians to provide responses and the form of resolution expected.

If deemed necessary, the diversion facilitator can summon community representatives or other parties to provide information to support the settlement and/or can hold a separate meeting (caucus). A caucus is a separate meeting between the Diversion Facilitator and one of the parties known to the other party. Furthermore, in Article 5 paragraph (1) of Law Number 11 of 2012 it is stated firmly that the juvenile criminal justice system must prioritize a restorative justice approach, namely an approach that prioritizes the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just solution by emphasizing restoration to the original state, and not revenge.¹⁵ Furthermore, the juvenile justice system must

¹⁵Bambang Waluyo, Op.Cit., p. 183.

utilize a balanced approach that can meet the needs of society, for perpetrators (children) who after going through the restorative process are expected to be more able to integrate with society than before; and the value of community protection, because the restorative justice system is responsible for protecting society from juvenile crimes through peaceful means (peacefully resolved).¹⁶

According to Nicholas McBala¹⁷ The book "Juvenile Justice System" defines childhood as the period between birth and the onset of adulthood. This period is a time of life development, as well as a time of limited abilities, including the ability to harm others. In Indonesia, children in special institutions for children can be divided into three groups:¹⁸

- 1) Criminal children, namely children who are found guilty by the court and sentenced to deprivation of liberty.
- 2) State child, namely a child who is found guilty by the court and handed over to the state to be educated until 18 (eighteen) years of age.
- 3) Civil children, namely children who, based on the request of their parents/guardians, have received a decision from the District Court, are placed in a special correctional institution for children.

One of the legal problems that has emerged recently is the absence of government regulations as mandated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System that regulates the implementation of diversion. This then impacts the level of implementation in the field regarding the duties and coordination models between institutions in implementing the process and the results of diversion agreements in the juvenile criminal justice system. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System provides special treatment for children in conflict with the law starting from the investigation process. This special attention and treatment aims to prevent children from becoming victims of the application of rigid and formal legal procedures that are feared can cause mental, physical and social suffering for children. Agustinus Pohan emphasized that restorative justice is a concept of justice that is very different from an approach to making transfer and institutionalization in accordance with justice based on the principles of restorative justice, namely making perpetrators responsible for repairing the damage caused by their crimes. Therefore, he agrees with Muladi who stated that criminal law enforcement always touches on morals and ethics. The basic elements of criminal law enforcement should be an impartial and full process of fact-finding and resolution or problem-solving that must be carried out fairly and appropriately, in accordance with the spirit of restorative justice. The

¹⁶Yul Ernis, Op.Cit., p. 167.

¹⁷Marlina, Op.Cit., p. 23.

¹⁸Marlina, Op.Cit., pp. 113-114

implementation of diversion and restorative justice provides support for the protection process for children in conflict with the law. In accordance with the main principles of diversion and restorative justice, they have the same basis, namely preventing child criminals from the formal criminal justice system and providing opportunities for child criminals to carry out alternative sanctions without imprisonment. Obstacles to restorative justice are:

- 1) Re-offending or repeated violations by perpetrators who have undergone restorative justice often occur.
- 2) The success of the restorative justice process is very dependent on the family to which the child is returned.
- 3) It is difficult to prevent children from being punished through retributive justice if they commit very serious violations.
- 4) Public understanding of the restorative justice process and its objectives, as well as trust in the officers implementing it.
- 5) The mediator's ability greatly influences the success of the restorative justice process and officers who interfere too much in decisions.

ST. Burhanuddin emphasized that resolving cases through restorative justice also changes the perspective of law enforcement officers, from upholding and standing by law enforcement guidelines to considering humanism in accordance with conscience. This supports the effectiveness of the implementation of the diversion policy in the juvenile criminal justice system, which has actually been able to reduce the high crime rate, although many obstacles remain in its implementation. It will be even more effective if there is a shared understanding among law enforcement officers about diversion as an effort to resolve juvenile criminal cases, supported by adequate infrastructure and a better legal umbrella for child protection.

Based on the research results, there are several factors that can hinder the implementation of restorative justice for ABH, namely:

1) Legal Regulation Factors

(a) Limitations of statutory regulations

The implementing regulations of the SPPA Law have not yet been regulated technically and comprehensively, although there are already Government Regulation 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children under 12 years old, and Government Regulation 58 of 2022 concerning Forms and Procedures for the Implementation of Criminal Procedure and Actions against Children. In addition, there are different perceptions regarding the requirements for implementing diversion which

according to the provisions are under 7 years and not repeated. However, there are law enforcement officials who argue that "the threat of punishment is exactly 7 years then diversion can be done". In addition, in the provisions of diversion, children should not be detained (because Indonesia does not yet have special detention centers for children and if the child has a guarantor then they cannot be detained), but by the police (even though they meet the requirements for diversion) are detained.

(b) Time Period

The diversion process required in practice actually takes approximately 2 (two) months or 60 (sixty) days. This is because there must be administrative procedures such as the need for a disposition letter from the superior. In addition, summoning both parties also takes time, making the diversion process difficult and difficult to complete in a short time. This is certainly not in accordance with Article 29 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which states that: Investigators are required to attempt Diversion within a maximum of 7 (seven) days after the investigation begins. The Diversion process is carried out no later than 30 (thirty) days after the start of Diversion. This occurs because of dishonesty from both the perpetrator and the victim, which makes the diversion process slow. This is reinforced by the opinion of the PPA Investigator of Semarang Police who stated that: The existence of a process of more than 30 (thirty) days to resolve a child case related to diversion, does not rule out the possibility of obstacles from the absence of one of the parties and the existence of a disposition letter that must be processed from the beginning so that it also takes time. The implementation of diversion in child cases should be carried out quickly in resolving children's problems, so that children will not be harmed and will not experience trauma during the diversion process, if the process is long, the child will feel that his time is being lost, or his physical harm is being suffered, and the child will experience prolonged trauma from the legal process and the child's growth and development will be disturbed.

(c) Age limits for children

Previous research also shows that the age limit for children poses a dilemma in implementing diversion when the crime committed is classified as an extraordinary crime. This concerns law enforcement officials who see the quality of juvenile crime exceeding their age. Law enforcement officials strongly encourage diversion, but the increasing quality of juvenile crime raises concerns, as victims also need protection.¹⁹

¹⁹Diah Ratna Sari Hariyanto and Gde Made Swardhana, *Optimizing the Implementation of Diversion in the Juvenile Criminal Justice System Oriented to Restorative Justice in Denpasar City*. 18(3) *Indonesian Legislation Journal*, 394-404, 2021.

(d) There are no clear regulations regarding restorative justice.

Restorative justice needs to be specifically regulated by the government because the scope of restorative justice is very broad, not only for ABH.

Some issues related to the substance are the need to review the age restrictions for children to implement diversion considering the quality and quantity of criminal acts that exceed crimes committed by adults. The need for consistency between one regulation and another. If seen from the provisions of Article 7 paragraph (1) and paragraph (2) of the SPPA Law, it can be seen that children's cases that are required to be diverted at the court level implemented by the judge as facilitator are children's cases that are subject to a criminal threat of under 7 (seven) years and are not a repetition of the crime. However, in Article 3 of Perma 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Child Criminal Justice System which regulates that Children's Judges are required to attempt Diversion in the case of Children being accused of committing a crime that is subject to a prison sentence of under 7 (seven) years and also being accused of a crime that is subject to a prison sentence of 7 (seven) years or more in the form of a subsidiary, alternative, cumulative or combined (combined) indictment. This provision provides an opportunity for diversion for children who face a sentence of more than 7 years (due to subsidiary, cumulative, or combined charges). Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System can be said to have accommodated, expanded, and relaxed the provisions of diversion that are normatively regulated in the USPPA, but are in conflict with provisions issued by other agencies, such as: Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

Inadequate legal knowledge among law enforcement officers results in inadequate law enforcement. Therefore, intensive and continuous education and development are needed for all law enforcement officers, including police, prosecutors, and judges. The involvement of these various institutions demonstrates that the diversion process requires shared knowledge and understanding, as well as strong coordination and cooperation for the best interests of children. Several studies in major cities in Indonesia have shown similar results regarding the obstacles experienced by law enforcement officers, including police, prosecutors, district courts, and district courts.

1) Legal culture and legal awareness

Legal culture in this discussion can be divided into two categories: the legal culture of law enforcement and the legal culture of the community. Research shows that the legal culture within law enforcement agencies is excellent for diversion efforts.

The research also shows that community culture influences the implementation of the diversion process, as many people do not yet understand the concepts of restorative justice and diversion. Therefore, ongoing outreach is needed to ensure that children convicted of a crime are handled wisely through a diversion and restorative justice approach. The community needs to be educated and understand that diversion is a method of deliberation and consensus to resolve cases outside the courts based on the principles of justice, the best interests of the child, and the child's survival and development.

2) Facilities and infrastructure

As interviewed by sources from the agencies, the lack of facilities for diversion also impacts its success. Limited facilities for examining children, particularly at police stations, also hinder the mediation process or the investigation of crimes allegedly committed by children.

Currently, there is only a special room for examining children in the police force and it is handled by the police women and children's unit (PA).²⁰Bapas also stated that specific facilities and infrastructure, as stipulated in the UUSPPA (Law on Child Protection), are not yet available, such as Temporary Child Placement Institutions (LPAS), Special Child Development Institutions (LPKA), Social Welfare Institutions (LPKS), and Correctional Institutions (BAPAS). These facilities and infrastructure are increasingly needed with the increasing number of children in conflict with the law, and the use of diversion and restorative justice as criminal remedies.

4. Conclusion

The application of restorative justice at the stage of investigating child crimes in the police is guided by Law Number 11 of 2012 concerning the Child Criminal Justice System and the 2012 Police Regulation concerning Restorative Justice, namely the settlement of child cases outside the criminal court which emphasizes the restoration of the original situation by emphasizing the conditions for creating justice and balance for children and their victims which has an important meaning and aims to avoid stigmatization of children who are in conflict with the law, namely through the settlement of child cases outside the court which is motivated by the desire to avoid negative impacts on the soul and development of children by involvement with the criminal justice system. Weaknesses in the application of restorative justice during the investigation phase of juvenile crimes by the police can be categorized into legal substance, human resources, family/community, and facilities and infrastructure. Diversion and restorative justice in resolving juvenile criminal cases should be implemented based on the principles of the child's best interests, survival, and development. To achieve this, an evaluation of the legal regulations, legal structure, community legal culture, and provision of facilities and

²⁰Tio Juan Carlos Triono, op.cit.

infrastructure is necessary.

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