

## **Investigation Process Against the Child Perpetrator Restorative Justice-Based Criminal Action at the Pemalang Police Resort**

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**Abstract.** *This study aims to identify and analyze the process of investigating child perpetrators of criminal acts in accordance with the laws and regulations in force in Indonesia and the forms of efforts to implement restorative justice as legal protection for perpetrators of crimes committed by children. The problem in this research is how to apply the Principles of Restorative Justice to children who commit crimes in the Pemalang Resort Police, and what are the inhibiting factors for the police, especially investigators in applying the Principles of Restorative Justice to children who commit crimes in the Pemalang Resort Police. This study uses a sociological juridical approach, which means adopting an approach that examines and discusses the problems raised. The juridical approach refers to the legal principles contained in written regulations, while the sociological approach aims to clarify situations that actually exist and arise in society related to the problem under study, or to give importance to observation steps. The results of this research are: (1) Mapping the definition of Restorative Justice in regulations in the criminal justice system in Indonesia currently which can support the implementation of Restorative Justice as a form of legal legitimacy; (2) the application of Restorative Justice to child criminals in Pemalang Regency, especially those registered with the Pemalang Police, is carried out with the consideration that children still have a long future, so they need to be given the opportunity to change; (3) The application of Restorative Justice to perpetrators of criminal acts committed by children is resolved by means of deliberation or discussion between the perpetrators of criminal acts, victims, families of perpetrators and victims, the community and law enforcement, where through a process of deliberation or discussion together to find a way best and fair for both victims and perpetrators.*

**Keywords:** *Children; Crime; Investigation; Justice; Restorative.*

## 1. Introduction

Justice (*iustitia*) comes from the word "just" which means: not biased, impartial, siding with what is right, appropriate, not arbitrary. From several definitions it can be concluded that the meaning of justice is all things related to attitudes and actions in human relations, justice contains a demand for obligations, this treatment does not discriminate or favor; rather everyone is treated equally according to their rights and obligations.<sup>1</sup>

The existence of law is intended to regulate all actions of society in all its activities. The purpose of law is to create harmony and peace in social life, hence the term "*ubi-ius ubi-societas*," meaning that legal regulations arise from the existence of society.

The harmony and peace desired by law are realized in law enforcement. Law enforcement must be honest and in accordance with applicable provisions based on Pancasila and the Constitution of the Republic of Indonesia, and reach all levels of society regardless of profession and social status, in order to realize the goals and ideals of the Indonesian nation as stated in the fourth paragraph of the Preamble to the Constitution of the Republic of Indonesia, namely to form an Indonesian state government that protects all Indonesian people and all Indonesian blood, advances public welfare, educates the nation's life and participates in implementing world order based on freedom, eternal peace and social justice.<sup>2</sup>

As stated in the Constitution of the Republic of Indonesia, Indonesia is not based on mere power, but also on law, so that the Indonesian state has a character that tends to assess actions carried out by society in accordance with applicable legal regulations, including criminal acts.<sup>3</sup>

Criminal act or *strafbaar feit* in Dutch means criminal act, offense, criminal act or act that is punished. A person can be said to have committed a criminal act if the act has been regulated by law, in accordance with the Principle of Legality in Article 1 paragraph (1) of the Criminal Code which states that no act can be punished except by the force of criminal regulations in existing legislation, before the act was committed.

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<sup>1</sup>Ira Alia Maerani, *Criminal Law and the Death Penalty*, Unissula Press, Semarang, 2018, p. X

<sup>2</sup>Barda Nawawi Arief, *Problems of Law Enforcement and Crime Prevention Policy*, Bandung: PT. Citra Aditya Bakti, 2001, p. 73

<sup>3</sup>Soerjono Soekanto, *Factors Influencing Law Enforcement*, Jakarta: Raja Grafindo Persada, 2007, p. 5

A crime is an act that is prohibited by a legal rule, the prohibition of which is accompanied by a threat (sanction) in the form of a specific punishment for anyone who violates the prohibition.<sup>4</sup>

Currently, criminal acts are not only committed by adults, but minors are also often perpetrators of criminal acts, while children are an important part of human survival and the survival of a nation and state. Children have a strategic role in the Indonesian constitution which expressly states that the state guarantees the right of every child to survival, growth and development, and to be protected from violence and discrimination. Therefore, the best interests of children must be internalized as the best interests for human survival.

Although several laws and regulations have been enacted in Indonesia to protect the interests of children, both as perpetrators and victims, crimes committed by children in Pemalang continue to increase sharply. Every year, the number of children who commit crimes in Pemalang is quite large, and those who have successfully undergone diversion efforts at the Police. They are involved in many cases ranging from drugs, sexual violence, theft, and fights. The main causes of these crimes are bad company, imitating those around them, being influenced by others, and repeating criminal acts. We can see according to the law that is called a child in a criminal act in conflict with the law is contained in Article 1 number 3 of Law Number 11 of 2012 concerning the Juvenile Justice System, which states that a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime. Children who are in conflict with the law can be punished or sanctioned in the form of action or criminal penalties if proven to have violated criminal law.<sup>5</sup>

Article 71 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that the main penalties for children consist of:

- a. Warning penalty;
- b. Criminal with conditions:
  - 1) Coaching outside the Institution
  - 2) Community service
  - 3) Supervision
- c. Job training
- d. Coaching in Institutions

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<sup>4</sup>Moeljatno, Principles of Criminal Law, PT Rineka Cipta, Jakarta, 2008, p. 59.

<sup>5</sup>Article 1 Paragraph (6) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

e. Prison

Meanwhile, additional penalties consist of:

- a. Confiscation of profits obtained from criminal acts; or
- b. Fulfillment of customary obligations.<sup>6</sup>

According to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, detention is carried out in Temporary Child Placement Institutions (LPAS) and in the event that there is no LPAS, detention can be carried out at the local Social Welfare Institution (LPKS).

In practice, when investigating alleged crimes committed by a child, the crime itself must be investigated first. The purpose of this study is to determine whether the crime requires diversion. Investigators are forced to make a detour if the crime is punishable by less than 7 (seven) years in prison and there are no cases of repeat offenses (recidivists). This is in accordance with Article 7 of Law No. 11 of 2012 concerning the Juvenile Justice System.<sup>7</sup>

If the crime committed by a child meets the requirements for diversion, investigators are required to conduct diversion or restorative justice. However, if the crime carries a sentence of more than 7 (seven) years or even a repeat of the crime (recidive), diversion is not carried out. To conduct diversion, investigators must gather the parties, namely the child perpetrator of the crime and his parents, as well as the victim. In addition, diversion is also carried out by involving community leaders and Community Guidance from the Correctional Center. If the diversion is successful, a decision is then requested by the judge as stipulated in Article 12 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

## **2. Research Methods**

This research will be conducted using a sociological juridical approach. This approach was chosen because it can combine legal and social aspects in analyzing legal issues. The sociological juridical approach can provide an understanding of the law that applies formally (juridical) and its implementation in society (sociological). In this study, the sociological juridical approach will be used to analyze the legal legitimacy of the restorative justice policy, the application of Restorative Justice to children who commit crimes within the Pemalang Police jurisdiction, and the obstacles faced by investigators when dealing with existing problems at the Pemalang Police. The juridical approach here is an approach that refers to legal norms or applicable legal rules, which are benchmarks for appropriate behavior or actions. Meanwhile, the sociological approach is an

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<sup>6</sup>Article 71 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

<sup>7</sup>Article 7 of Law No. 11 of 2012 concerning the Juvenile Justice System.

approach that provides an evidentiary framework or testing framework to ensure truth by observing the behavior of community members. Legal research using the sociological juridical approach method means conducting research in identifying and conceptualizing law in the social life system. by using a sociological legal approach method, it means conducting research to identify and conceptualize law in the social life system.

### **3. Results and Discussion**

#### **3.1. Legal Legitimacy of the Concept of Restorative Justice in the Indonesian Criminal Justice System**

The existence of restorative justice as an alternative resolution of criminal cases is largely determined by the awareness and knowledge of the community itself, including law enforcement officials. A judicial understanding that prioritizes only the application of rules, proving the perpetrator's guilt and then punishing them, will not be acceptable. For him, the judiciary is the state's right to impose sanctions on its citizens who have violated the rules. Deterrence and/or rehabilitation are highly popular factors within this process, with judicial attention dominated by the interests of the perpetrator, the community, and the state.

Interest in the restorative justice approach has been growing since the 5-yearly UN Congress: "Congress on Crime Prevention and the Treatment of Offenders." In 1990 and 1995, NGOs from several countries sponsored several sessions specifically to discuss restorative justice. In 2000, the UN produced the Basic Principles on the Use of Restorative Justice Programs in Criminal Matters, which contains several fundamental principles for the use of the restorative justice approach.<sup>8</sup>

According to experts, Umbreit in his writing 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 victim-centered response to crime that allows the victim, the offender, their families, and representatives of the community to address the damage and losses caused by the crime). Regarding this view, Umbreit's concept focuses on "repairing the damage and losses caused by the crime" which must be supported by the concept of restitution, namely "striving to restore the damage and losses suffered by the pre-victims of the crime and facilitating the occurrence of peace."<sup>9</sup>

Thus, what Tony Marshall said is correct, that restorative justice is actually a concept for resolving a particular crime that involves all interested parties to work

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<sup>8</sup>Yunan Hilmy, Law Enforcement by the Police Through a Restorative Justice Approach in the National Legal System, *Jurnal Rechtsvinding*, Volume 2 Number 2, August 2013, p. 250

<sup>9</sup>Mark M. Lanier and Stuart Henry, *Op.Cit*, 2004, p. 332 and 407-408.

together to find a solution and at the same time find a solution in dealing with events after the crime occurs and how to overcome its implications in the future.

This approach is an effort to resolve criminal cases that emphasizes the direct participation of perpetrators, victims, and the community in the resolution process. While this approach remains theoretically debated, it is a growing perspective and has significantly influenced legal policy and practice in various countries.

This paradigm shift in thinking needs to be supported by national legislative policies and an understanding of scientific developments in the judicial system. In Brazil, this restorative justice resolution model is developed through social education (socio-pedagogical).<sup>10</sup> This means that the "restorative circles" model is built from a social-pedagogical point of view or through a social educational perspective that the causes and effects of crime are social problems.

Report of the 11th United Nations Congress in Bangkok, Thailand (Report of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice Bangkok, 18-25 April 2005), formulated that, there was general agreement on the need for innovative approaches in the administration of justice, including the use of alternatives to imprisonment for minor offenses, especially by first-time offenders, juvenile offenders and drug abusers, the use of restorative justice, including mediation and conciliation, and the need to take into consideration the rights of victims, in particular those of women and children.

In the 4th principle of Pancasila: "People Led by Wisdom in Deliberation/Representation" contains the philosophy of deliberation or deliberation, the meaning contained is: prioritizing deliberation in making decisions for the common good, and respecting every deliberation decision, the decisions taken must be morally accountable to God Almighty, upholding human honor and dignity, the values of truth and justice prioritizes unity and integrity for the common good.

The fourth principle of Pancasila teaches us to make choices through deliberation. Prioritizing deliberation in making decisions for the common good. Deliberation to reach consensus is imbued with a spirit of kinship, so that if the philosophy of "deliberation" is broken down, it contains the following five principles: First, conferencing (meeting to listen to each other and express desires); second, search solutions (finding solutions or common ground for the problem at hand); third, reconciliation (making peace with each other's responsibilities); fourth, repair (fixing all the consequences that arise); and fifth, circles (supporting each other).

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<sup>10</sup>D. Bolívar, L. Brancher, I. Navarro, M. Vega, Restorative Justice in Latin America: Reflections from three Countries. Paper presented at Expert Seminar: Conferencing: A Way Forward for Restorative Justice in Europe. Leuven: European Forum for Restorative Justice, 2010

These principles are exactly what is needed and are the key words in restorative justice, so that constitutionally, restorative justice finds its foundation in the philosophy of the 4th principle of Pancasila.<sup>11</sup> This foundation, when implemented in criminal case resolution, incorporates a principle known as Victim-Offender Conferencing (VOC). The goal of VOC (Victim-Offender Conferencing) meetings is mediation or Victim-Offender Mediation (VOM), an opportunity to reconcile and mutually agree on remedies. The goal is to address crime as a conflict to be resolved between those directly affected, rather than as a conflict between the state and the defendant.

Umbreit and Coates stated that the goal of resolving cases with VOM is to "humanize" the justice system. This approach is considered more humane because it seeks to eliminate several problems. First, it no longer relegates the relationship with the victim after the trial to a secondary role, making the consequences of the crime seem unnoticed. Furthermore, the inclusion of all parties in resolving the problem is a significant part and a hallmark of the restorative model. Second, it effectively holds the victim accountable for reparations for material and moral losses and provides various opportunities for dialogue, negotiation, and problem resolution. Third, it fosters respect for human dignity, as restorative justice is inseparable from the human rights protection model; in fact, they both seek a common good.

Miriam Liebman defines Restorative Justice as follows: "Restorative justice has become the term generally used for an approach to criminal justice (and other justice systems such as a school discipline system) that emphasizes restoring the victim and community rather than punishing the offender."<sup>12</sup>

Legal changes implemented in Indonesia should be directed towards creating more stable conditions, so that every citizen can enjoy an atmosphere and climate of order and legal certainty that is based on justice. It must also provide support and security for development efforts to achieve prosperity, by codifying and unifying laws in certain areas while taking into account the growing legal awareness in society. Therefore, it is necessary to continue steps to draft legislation concerning the basic rights and obligations of citizens in order to practice Pancasila and the 1945 Constitution of the Republic of Indonesia. It is

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<sup>11</sup>The principle of democracy, which means the principle of democracy, if implemented in a case resolution pattern with restorative justice, can be equated with Pinto's term as "Participative democracy in Restorative Justice," where victims, perpetrators, and the community play an important role in the decision-making process. Daniel Achutti, *The Strangers in Criminal Procedure: Restorative Justice as a Possibility to Overcome the Simplicity of the Modern Paradigm of Criminal Justice*, Brazil, *Journal: Oñati Socio-Legal Series*, Vol. 1, No. 2, 2011, p. 12

<sup>12</sup>Miriam Liebman, *Restorative justice: How It Works*, London: Jessica Kingsley Publishers, 2007, p. 27.



expected that all Indonesian citizens will always be aware of and obey the law, conversely it is the state's obligation to uphold and guarantee legal certainty.<sup>13</sup>

In recent years, it seems as if the courts are the only appropriate venue for resolving legal issues (conflicts) and seeking justice. Consequently, any indication of a crime, regardless of the escalation of the crime, will continue to be referred to the realm of law enforcement, which is solely the jurisdiction of law enforcement. Active public participation seems to be diminished, with everything focused solely on the court's decision in the form of punishment, regardless of its substance. In a criminal trial, the parties involved are the public prosecutor, the judge, the defendant, legal counsel, and witnesses. The victim is represented by the public prosecutor, and to strengthen the evidence, the victim is usually made a witness (victim).<sup>14</sup> However, it has not yet provided any tangible impact or benefits for crime victims. The restorative justice approach focuses on the direct participation of perpetrators, victims, and the community in the resolution of criminal cases. While this approach remains theoretically debated in practice, this perspective is evolving and impacting legal policy and law enforcement practices in several countries. Restorative justice is considered a new form of thinking that can be used to respond to various crimes and address dissatisfaction with the performance of the current criminal justice system.

Furthermore, the concept of restorative justice is also considered to be in accordance with the values of Pancasila, which is the source of all sources of Indonesian law and is a legal system that is sourced and rooted in various legal systems used by Indonesian society, which include the customary legal system, and the Islamic legal system that prioritizes deliberation in resolving problems (conflicts) that occur between fellow members of society. Satjipto Rahardjo said that law enforcement regulates an effort to make ideas and concepts become reality.

The concept of restorative justice emphasizes peace-based justice, where justice based on revenge or punishment for the perpetrator is not recognized in the resolution of a case. The application of this concept is a form of development of the criminal justice system that emphasizes the involvement of the perpetrator and victim in resolving a case, which is not one of the mechanisms known in conventional criminal procedure law today. The restorative justice approach in resolving a crime provides an opportunity for the parties involved, especially the perpetrator and victim, to participate. So the function of the perpetrator and victim is only to function as witnesses in the resolution of the case carried out by law enforcement officers.

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<sup>13</sup>Abdul Manan, *Aspects of Legal Change*, Jakarta: Kencana Prenada Media, 2009, p. 5

<sup>14</sup>Bambang Waluyo, *Victimology of Witness and Victim Protection*, Jakarta: Sinar Grafika, 2011, p. 8



By adopting restorative justice as an approach, several benefits can be achieved. First, it gives communities the space to handle their own legal issues, which they perceive as fairer. Second, the burden on the state is reduced in several ways. For example, in dealing with crimes that can still be resolved independently by the community. The police, prosecutors, and courts can focus more on eradicating more dangerous crimes. Administratively, the number of cases entering the judicial system can be reduced, thereby reducing the burden on the courts, as discussed above. This will also reduce the burden on providing a budget for the implementation of the criminal justice system, particularly for the management of correctional institutions.<sup>15</sup>

Law enforcement in Indonesia is closely tied to "Law Number 8 of 1981," commonly known as the Criminal Procedure Code, which mandates that law enforcement must be based on applicable laws and regulations. In some countries, dissatisfaction and disillusionment with conventional justice frameworks have led to a renewed need to adhere to and strengthen standard rules, and traditional justice continues to operate, fueling calls for alternatives to address violations and social issues. The abundance of alternatives presents a potential opportunity for relevant stakeholders to participate in resolving issues and determining their outcomes. Restorative justice programs are based on the idea that everyone involved in a dispute needs to be part of the solution to avoid or mitigate negative consequences. They may also be motivated by a desire to restore community structures and local decision-making in some way. Furthermore, this strategy is seen as a means to foster tolerance and inclusion, foster respect for diversity, and encourage responsible social practices.

Legal development begins with the fundamental premise that law is for the benefit of individuals, not the other way around. Law is not a universal institution, but rather a customary, conscientious institution, and therefore determined by its ability to benefit individuals. Law is an institution intended to lead individuals to a balanced, peaceful life, and create happiness. Individuality and balance are the ultimate goals of our legal life. This means that humanity and balance are evident within the law. The essence is the emphasis on maintaining a balanced law, which in Indonesia is the creation of public order, often referred to as a "just and prosperous society."

The concept of restorative justice presents a paradigm that is always contrasted with retributive justice or a judicial model that solely aims to avenge or punish the perpetrator of a crime. This problem of minimal role and involvement of victims also occurs in the current Indonesian criminal justice system. In the concept of criminal acts and criminal procedural law procedures as regulated in the Criminal Code (hereinafter referred to as the KUHP) and Law No. 8 of 1981 concerning

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<sup>15</sup>Yunan Hilmy, Law Enforcement by the Police Through a Restorative Justice Approach in the National Legal System, *Jurnal Rechtsvinding*, Volume 2 Number 2, August 2013, p. 251

Criminal Procedure Law (hereinafter referred to as the KUHP), a crime is considered a violation of state interests; and the state then forms parties to enforce it, namely the public prosecutor who has the authority to prosecute a crime. The orientation is aimed at punishing the perpetrator while the rights of the victim are neglected. In the concept of criminal procedural law regulated by the KUHP, for example, the victim of a crime is only positioned as a witness whose position is to assist the public prosecutor in proving his charges.

In fact, the concept of restorative justice is a manifestation of customary law that has long developed in Indonesian society. Therefore, the recognition of customary law (the living law) in the Criminal Code Bill aims to fulfill the sense of justice that exists within society by restoring a damaged situation or by a process in which interested parties jointly resolve how to reach an agreement after a crime, including its future implications.

Thus, restorative justice in criminal cases is not only viewed through a legal lens, but also linked to moral, social, economic, religious, and local customs, as well as various other considerations. In Indonesian criminal justice practice, the interests of victims, including the losses and suffering caused by the crime, are often overlooked. Crime victims are treated merely as evidence, i.e., witnesses, thus minimizing the opportunity for victims to freely assert their rights. The interests of victims, represented by the Public Prosecutor in the prosecution of the perpetrator, have been considered a legal protection measure for the victims and the wider community. However, in reality, the losses suffered by victims are largely ignored.<sup>16</sup>

Restorative justice, as a system of equality, is always aligned with the view that the participation system should promote balance, defined as a balanced system for the perpetrator, the victim, and the public. For those in conflict, the concept of restorative justice emerged as a critique of the implementation of the criminal justice system, which relies on imprisonment, which is considered ineffective in resolving social divisions. The basic principles, in the form of "restorative outcomes," are agreements reached as a result of restorative techniques. These demands can include reparations, restitution, and compensation to address individual and collective needs and responsibilities of various parties, and to address the reintegration of victims and perpetrators. This can also be combined with other methods in cases involving serious violations.<sup>17</sup>

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<sup>16</sup>Josephin Mareta and Jalan HR Rasuna Said Kav, Implementation of Restorative Justice Through Fulfillment of Restitution for Child Victims of Crime, *Jurnal Lex et Societatis*, Vol.3, No. 1 2018, p.104

<sup>17</sup>Muhammad Yusuf Siregar and Zainal Abidin Pakpahan. Police Discretion in Dismissing Criminal Cases Due to Peace Agreements by the Labuhanbatu Resort Police Institution, Viewed from a Legal Perspective. *Scientific Journal of Advocacy*, Vol. 5 No. 2, 2017, p. 71

The emergence of restorative justice schemes does not mean the elimination of criminality through prison sentences; therefore, prison crimes can still be used. Restorative justice schemes are systems that can operate as accelerators of a simple, fast, and low-cost justice system, thus ensuring the fulfillment of legal certainty and public balance. There have been advances in the practice of the justice system regarding the purpose of punishment schemes, starting with retribution, which is atonement by providing rewards to those who have committed delinquent acts, without having to consider the consequences and further utility. Next, there are restraint schemes that aim to remove delinquents from public life, so that the public is comfortable, peaceful, and free from the burden of delinquent behavior. These include specific deterrence schemes and general deterrence, which aim to create repentance for the perpetrator and serve as a public example to discourage future delinquency. Next, there are reformation and rehabilitation schemes, a system of punishment intended to correct and rehabilitate the perpetrator of delinquency so that they can become healthy and resilient individuals who can be reintegrated into the public sphere.<sup>18</sup>

In the process of resolving criminal problems in Indonesia, the concept of criminal law enforcement using non-penal means has emerged, but further development is still needed. Most people still often misunderstand the idea that "Indonesia is a State of Law," assuming that all legal issues, especially those related to criminal law, must be resolved through legal channels. In retributive theory, the idea of retaliation is now too outdated, but it will continue to be used in Indonesia because law enforcement must not only think narrowly about how to resolve legal problems that arise at that time. Criminal law enforcement procedures that are still based on the Dutch Criminal Code/WvS continue to support and enable the expansion of non-penal law enforcement, particularly the principles of Restorative Justice. Restorative Justice is a law enforcement process, but does not touch on the criminal law side.<sup>19</sup> Instead, it places greater emphasis on the needs of victims and perpetrators, and involves community participation rather than simply fulfilling legal requirements or punishment. In this case, the public will assume that non-criminal punishment will not result in a just verdict for the perpetrator.

However, it's important to further explore the fact that criminal penalties don't always provide justice for both parties. Here's the thing: this is an accident where someone died. The offender could face a fine and/or imprisonment, for example, if the case is reported to the authorities and investigated. What happens if the offender fails to pay the fine? They could face additional criminal penalties, including up to six months in prison. They can go about their normal lives and

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<sup>18</sup>Made Anggina Ahalya Putri & I Gusti Ayu Stefani Ratna M, The Role of Restorative Justice in Indonesia in the Criminal Justice System, *Kertha Negara Journal*, Vol 11 No 4, 2023, p. 406

<sup>19</sup>Azwad Rachmat Hambali, Law Enforcement Through a Restorative Justice Approach to Criminal Case Resolution, *Kalabbirang Law Journal*, Vol 2 No. 1, 2020, p. 71

forget about what happened now that their criminal liability has been resolved and the criminal sentencing process has ended.

He can no longer feel remorse for what might be considered a means of reparation for his wrongdoing. In accordance with the concept of restorative justice, the family of the accident victim can resolve the issue by considering the harm suffered by the victim. For example, what obligations the victim conveyed during his lifetime (e.g., the victim was a father who supported his children), then mediate with the guilty party, require the perpetrator to apologize to the group of people concerned, asked to pay the perpetrator as responsibility for the completed activity, for example, a sum of cash whose value is estimated over a certain period, and some different training. We believe that such an action will make the perpetrator feel a new responsibility for his carelessness. Perpetrators who are obliged to do so will undoubtedly make a conscious effort to correct their mistakes and be careful not to repeat them in the future and cause harm.

Restorative justice is based on the idea that crimes that result in harm must be compensated not only by the victim but also by society as a whole. To help reduce and correct errors and deviations in the affected community, community members must participate. Respect and value victims by requiring players to undergo rehabilitation and redress the consequences of the crime. This shift from the traditional form of punishment involves the creation of a form of punishment that provides balance, particularly a balance that is directed at public balance. This is the starting point and foundation for the birth of restorative justice in any country.

This shift in perspective exposes the ongoing challenges within the criminal justice system. Efforts are underway to provide attention and clarity to the handling of criminal cases, with the goal of achieving balance for all parties involved. Restorative justice has not yet been fully implemented in the Indonesian legal system. Consequently, there have been several changes to the concept of restorative justice. As a result, its use in Indonesia has not yet been implemented or falls into the "can be restorative" category, and we have not even reached the "partially restorative" stage. However, in Indonesia, restorative justice has received attention and recognition as a potential approach within the criminal justice system. Although not yet fully integrated into the justice system, several steps have been taken to introduce and implement restorative justice principles in Indonesia.

Article 5 of Law Number 48 of 2009 concerning Judicial Power explicitly states that judges are required to explore the values that exist in society (the living law or local wisdom). Therefore, judges can essentially apply the approach or concept of restorative justice in resolving cases because the approach or concept of

restorative justice aligns with the spirit of the Indonesian nation, namely Pancasila, the values of customary law, and religious values.<sup>20</sup>

There is a fundamental paradigm shift or redefinition that must be made, namely the way we view crime as a humanitarian problem, so that we do not take an excessive formality approach and only look for someone's fault, but think about solving the situation/problem, and must touch on the context, so that the response to crime should seek solutions to the problem of human relations (care for real people and relationships). This paradigm shifts the current perception from crime as a state problem to crime as an individual problem, therefore the justice that is fought for is one that is able to answer what is actually needed by the victim, the perpetrator and the community (experienced within a context). Such justice is called "experiencing justice".

The principle of deliberation (the fourth principle of Pancasila), with its principle of deliberation for consensus, imbued with a spirit of kinship, embodies the essence of experiencing justice. This aligns with the thinking put forward by Jarem Sawatsky, a restorative justice researcher working at the Institute for Justice and Peace building at Eastern Mennonite University in Virginia, as follows:

*Needs of victims, offenders and communities are central for Restorative Justice. Justice is about participation. This has a huge implication for justice. If needs are central then justice is always ad hoc. Justice must respond and be experienced within a context. That means justice will look different and be arrived at differently depending on the needs, the culture, the history, the future, and the people involved.*<sup>21</sup>

According to Jaccould, the redefinition of crime in relation to restorative justice is not seen as something general or standard, but rather how the impact of the crime and the dialogue that occurs afterward (Crime is no longer conceived as a violation against the state or as a transgression against a legal standard, but as an event that causes harm and consequences. Focusing on the possible solution of the problem through a dialogue between the parties).<sup>22</sup>

Public representation by the state should encompass the interests of the suspect/perpetrator, the victim, and the community. Common sense dictates that the representative will absorb the aspirations and desires of the party they represent, and will fight tooth and nail for the interests of the party they

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<sup>20</sup>Made Anggina Ahalya Putri & I Gusti Ayu Stefani Ratna M, The Role of Restorative Justice in Indonesia in the Criminal Justice System, Kertha Negara Journal, Vol 11 No 4, 2023, p. 408

<sup>21</sup>Jarem Sawatsky, Restorative value: Where Means And Ends Converge, Manitoba, Canada, Restorative Justice Online Journal, Vol. IX, 2010, p. 12

<sup>22</sup>Daniel Achutti, The Strangers in Criminal Procedure: Restorative Justice as a Possibility to Overcome the Simplicity of the Modern Paradigm of Criminal Justice, Brazil, Journal: Oñati Socio-Legal Series, Vol. 1, No. 2, 2011. p. 12

represent. The perpetrator's interest is rehabilitation, the community's interest is protection of values (order), and the victim's interest is reparation/reparation for the suffering caused by the crime. To date, the state's representation of the public interest has been realized by punishing the perpetrator (a deterrent effect) and then rehabilitating them, but has not addressed the interests of the victim at all. Perpetrators found guilty are imprisoned at the state's expense, while victims are no longer a concern after the case is resolved. Therefore, public access to the Indonesian criminal justice system must be improved, and law enforcement officials in particular must recognize this gap.

One form of public access is in the form of a statement of the victim's suffering to the panel of judges (victim impact statement). Through this statement, the victim can convey what they really want from the trial process aimed at seeking justice. In Article 5 paragraph (1) of Law 48/2009 concerning Judicial Power, it is formulated that "Judges are obliged to explore, follow, and understand the legal values and sense of justice that exist in society." This provision provides an opportunity for law enforcement to determine for themselves what should be a just law to resolve legal violations. This also provides public space or public access in determining the form of justice they can receive.

When society interprets justice through Conferencing and Mediation with restorative justice, then it is actually something that is legitimate and legal according to Indonesian law. Furthermore, the government is responsible for maintaining order and society is very responsible for building peace. Article 4 paragraph (1) of Law 48 of 2009 also stipulates that the court judges according to the law without discriminating against people. The fact that attention in criminal justice so far has only focused on the perpetrator is a form of differentiation between people as perpetrators and people as victims of criminal acts. The problem would be different if the parties in a criminal case (perpetrator-victim-society) were each given access through restorative justice media.<sup>23</sup>

While there are no specific regulations governing restorative justice, this doesn't mean its application lacks a legal basis. Furthermore, in the theory of legal discovery, the task of law enforcement includes identifying the law from previous judicial decisions and identifying the prevailing law within society.<sup>24</sup>If, for example, the existing law (retributive justice) turns out to be unable to resolve the problems experienced by the victim, then according to sociolegal studies, the authorities

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<sup>23</sup>Kuat Puji Prayitno, Restorative Justice for the Judiciary in Indonesia (A Philosophical Juridical Perspective in Law Enforcement in Concrete). *Journal of Legal Dynamics*, Vol. 12 No. 3 September 2012, p. 419

<sup>24</sup>Bagir Manan, Judges as Legal Reformers, IKAHI, Jakarta, *Varia Peardilan Journal* No. 254 January 2007, p. 10

should not remain silent (allowing it to happen), but should try to change and innovate the law so that it can create justice.<sup>25</sup>

The restorative justice pathway does not yet have a specific legal framework within the Indonesian criminal justice system. However, penal mediation has implicit regulations that provide the possibility of mediation. Article 82 paragraph (1) of the Criminal Code explains:

"(1) The authority to prosecute violations that are punishable by a fine alone is revoked if the maximum fine and costs incurred have been paid voluntarily if prosecution has been initiated, or by a civil servant appointed for this purpose by general regulations, and within the time period determined by them."

Article 82 paragraph (1) of the Criminal Code is an implied regulation that penal mediation can be carried out, however this article does not explicitly describe the possibility of a peaceful resolution between the perpetrator and the victim.<sup>26</sup> But in practice it is often done by judges, because this is seen as the best way to resolve the problem. If there is no law regulating penal mediation, then we can look at the regulations under the law.

### **3.2. Restorative Justice-Based Investigation Mechanism for Child Criminals at the Pemalang Police Resort**

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. Several meanings of law from various perspectives can be described that law is not merely written regulations and law enforcement officers as has been understood by the general public who do not know about law. But law also includes things that are actually already alive in social interactions.<sup>27</sup>

The Republic of Indonesia is a state based on law. It upholds the supremacy of law to uphold truth and justice. In general, a state based on law has three basic principles: the supremacy of law, equality before the law, and due process of law.<sup>28</sup>

When talking about "children" is very important, not only in relation specifically to the concept of the juvenile justice system, but more broadly than that because

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<sup>25</sup>Adji Samekto, *Legal Studies: Between Normative and Scientific Studies*, Progressive Law Journal, Vol. 2 No. 2, October 2006, p. 66

<sup>26</sup>DS. Dewi and Fatahillah A Syukur, *Penal Mediation: Implementation of Restorative Justice in Indonesian Juvenile Courts*, Depok: Indie Publishing, 2011, p. 81

<sup>27</sup>RA Koesnan, *Criminal Structure in the Indonesian Socialist State*, Bandung: Sumur, 2005, p. 113.

<sup>28</sup>Andi Citra Trisnarningsih Syahril, et al. Effectiveness of Investigations for Children in Conflict with the Law: A Case Study of the Bulukumba Police. *Journal of Philosophy*. Volume 3, Number 2, December 2022, p. 331



children are the potential fate of all (human welfare and the progress of the State) in the future, because children have a role in determining the history of a nation as well as a reflection of the nation's attitude to life in the future. As stated in the explanation of Law No. 11 of 2012 concerning the juvenile criminal justice system, in its definition, children are a mandate and gift from God Almighty who have the dignity and honor as whole human beings and children are an inseparable part of the survival of humans and the survival of a nation and state.

In order to realize quality Indonesian human resources and be able to lead and maintain the unity and integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution, continuous development is needed for the sake of survival, physical, mental and social growth and development as well as protection from all possibilities that endanger them and the nation in the future. These various efforts and protections are faced with problems and challenges in society and sometimes behavioral deviations are found among children, even more than that there are children who commit unlawful acts without regard to social and economic status.

In Article 1 paragraph (1) of Law Number 3 of 1997 concerning Juvenile Courts, the definition of a child is a person who in the case of a delinquent child has reached the age of 8 (eight) years but has never been married. However, a different thing is shown in the field of Constitutional Law, the right to vote in elections, for example, a person is considered to be able to be responsible for the legal actions he has committed if he has reached the age of 17 (seventeen) years.

Based on these considerations, it can be concluded that the age limit for children is relative, depending on their interests. However, a different perspective is shown in the field of Constitutional Law. For example, regarding the right to vote in an election, a person is deemed capable of being responsible for the legal actions they commit if they have reached the age of 17 (seventeen). Based on these considerations, it can be concluded that the age limit for children is relative, depending on their interests.

In Article 1 Paragraph 12 of Law No. 17 of 2016 concerning Child Protection, "Children's Rights are part of Human Rights that must be guaranteed, protected, and fulfilled by Parents, Family, society, state, government, and local government." And in Article 1 paragraph 12 children also have the right to receive special protection which reads "Special Protection is a form of protection received by Children in certain situations and conditions to obtain a guarantee of security against threats that endanger themselves and their lives in their growth and development."<sup>29</sup>

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<sup>29</sup>Law of the Republic of Indonesia no. 17 of 2016 concerning Amendments to Law no. 23 of 2002 concerning Child Protection

The law enforcement process for children in conflict with the law must of course be carried out in accordance with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, starting from the diversion stage, detention and arrest, investigation, prosecution, the judicial process to implementing the judge's decision. In the investigation process carried out by the police, of course, it is the first step in enforcing the law, an investigation is a series of investigators' actions in terms of and according to the methods regulated in the law, to seek and collect evidence that with this evidence makes clear about the crime that occurred and to find the suspect.<sup>30</sup>

An investigation is a series of actions by investigators to seek and gather evidence to identify a suspect. According to K. Wantjik Saleh, as quoted in the Sahuri Lasmadi legal journal, an investigation is defined as the effort and action to seek and discover the truth about whether a crime has occurred, who committed the act, the nature of the act, and who was involved in it.<sup>31</sup>

According to Article 45 number (1) of Law Number 30 of 2002, the investigator himself is:

"Investigators at the Corruption Eradication Commission who are appointed and dismissed by the Corruption Eradication Commission and Investigators carry out the function of investigating corruption crimes."

In the investigation itself, there is something called an investigator, namely a person who carries out an investigation consisting of officials as explained in Article 1 point (1) of the Criminal Code. The investigative officials themselves consist of Police Investigators and Civil Servant Investigators.<sup>32</sup>

The investigation phase of a case usually begins after the investigator becomes aware of an incident suspected to be a crime. Furthermore, an investigation will also begin if the investigator receives a report or complaint alleging a crime has occurred.

A child in conflict with the law generally does not yet understand the consequences of committing an act that violates applicable rules or laws. A child in conflict with the law is a child suspected, accused, or found guilty of violating the applicable criminal law, as regulated by the Child Criminal Justice System Law.

The current development process certainly greatly influences the lifestyle of children, especially in the era of globalization. Children who should be playing with their friends are now more interested in playing with their cell phones at home. With social media, children can see things that can affect their character and

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<sup>30</sup>Article 1 number (2) of the Regulation of the Head of the Republic of Indonesia National Police Number 6 of 2019 concerning Criminal Investigations

<sup>31</sup>Sahuri Lasmadi, Op.Cit, Volume 2, Number 3, July 2010, p. 10.

<sup>32</sup>M. Yahya Harahap, Op.Cit, 2000, p. 112.

emotions because children can respond to anything they see and hear quickly. The positive influence of social media may be a lesson for children to increase their education, both religious and educational. But there are also more negative influences that are often imitated by children so that children become more emotional and sometimes become perpetrators of criminal acts.

Based on interviews conducted by the author at the Pemalang Police, there are currently a lot of child crimes committed, and they are often committed by minors. The causes of these crimes are:

- a. Having a desire to own goods or something
- b. There is no moral education in the family
- c. Social environment
- d. Low education
- e. Lack of family attention
- f. Economy

On the other hand, criminal behavior among minors can also arise from the desire to imitate inappropriate behavior from television or other sources. Furthermore, criminal activity among minors is also thought to be triggered by children's involvement with illegal drugs and alcohol, such as smoking, drinking alcohol, and even illegal drugs.

The judiciary is the cornerstone and foundation of a state based on the rule of law. The legal regulations created are beneficial when there is a judiciary that stands strong and free from any influence, which can provide substance and strength to the legal principles enshrined in laws and other legal regulations. The judiciary is also an institution where everyone can seek justice and resolve issues concerning their rights and obligations under the law.<sup>33</sup>

In responding to the provisions of child criminal acts or child delinquency, law enforcement officers in our country have not fully implemented what has been stipulated or outlined in the United Nations (UN) Convention on the Rights of Children, Law No. 35 of 2014 concerning Child Protection and Law No. 11 of 2011 concerning Juvenile Justice, in treating children as suspects, not a few children involved in a criminal act receive unfair treatment.<sup>34</sup>

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<sup>33</sup>Sri Widoyati Wiratmo Soekito, *Children and Women in Law*, LP3ES, Jakarta, p. 143.

<sup>34</sup>I Made Haribawa Setiawan & I Wayan Suardana, *Investigation Process Against Minors*, E-Journal. Unud, Vol.2, No.1, 2017, p. 4.

According to AIPDA Dwi Heni, "Violations frequently committed by minors in the jurisdiction of the Pemalang Police are theft, assault and molestation. These violations usually occur due to low education and economic factors."<sup>35</sup>

Children who are facing the law are children who are 12 years old and under 18 years old who are suspected of committing a crime.

The Juvenile Criminal Justice System Law explains that the current juvenile criminal justice system utilizes a restorative justice system centered on the diversion process as an effort to resolve crimes committed by juveniles outside the courts. Every crime committed by a juvenile must be subject to a diversion process, as stipulated in Article 5 of the Juvenile Criminal Justice System Law.

The diversion process for children in conflict with the law must meet several requirements, namely that the child must be under 7 (seven) years of age and not be a recidivist. If the child is under 7 (seven) years of age, the judicial process must be implemented.

In Article 1 number 1 of the Criminal Procedure Code (KUHP) it is explained that the definition of investigation is a series of investigator actions in the case and according to the method regulated in this law to search for and collect evidence with which the evidence sheds light on the crime that occurred and to find the suspect. Article 10 of the Criminal Procedure Code determines that the Assistant Investigator is an Official of the Republic of Indonesia National Police appointed by the Chief of the National Police according to the requirements regulated in the Government Regulation.<sup>36</sup>

In the process of investigating crimes committed by children, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System regulates how to investigate crimes committed by children and who conducts the investigation. This investigation process is regulated in Articles 26 to 29.

This section explains the investigators who conduct investigations into crimes against children, the appointment of investigators, and the requirements for being appointed as investigators. (Article 26 of the Juvenile Criminal Justice System Law).

In Article 26 paragraph (1) of the Child Criminal Justice System Law, it is explained that investigators are appointed based on the Decree of the Head of the Republic of Indonesia National Police, however, in paragraph (4) it is explained that if there is no investigator who meets the requirements, then the investigative task is carried out by an investigator who carries out the criminal investigation task carried out by an adult.

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<sup>35</sup>Interview with AIPDA Dwi Heni, as PPA Investigator of Pemalang Police, June 27, 2023

<sup>36</sup>Nico Ngani, I Nyoman Budi Jaya, Hasan Madani, Understanding Criminal Procedure Law, General and Investigation Sections. Liberty, Yogyakarta, 1984, p. 19

It has been stipulated in the Child Criminal Justice System Law that the person who carries out investigations into child crimes is a child investigator with the provisions as explained previously.

Becoming a child investigator requires more than just a high rank; experience in conducting investigations is also crucial, providing technical support. Equally important, interest, attention, dedication, and an understanding of children's issues will help investigators gain knowledge about child issues, ensuring they prioritize children's interests in carrying out their duties.<sup>37</sup>

The investigators assigned are National Police investigators, but not all National Police investigators can investigate juvenile cases. The Juvenile Court Law recognizes juvenile investigators, who are authorized to conduct investigations. These juvenile investigators are appointed by the Chief of Police with a separate decree for this purpose.<sup>38</sup>

Furthermore, in the process of investigating children's cases, it must be kept 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, during the examination of the child perpetrator of the crime, the Pemalang Police Resort has established a Special Child Crime Unit so that specifically the examination of children in conflict with the law is carried out in the children's examination room. In the investigation, the investigator takes an effective and sympathetic approach, uses language that is easy to understand, does not use coercion, does not wear uniforms, or does not wear attributes that can cause the child to be intimidated so as to cause fear and trauma, and if deemed necessary involves community leaders in Pemalang Regency.

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.<sup>39</sup>

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<sup>37</sup>Ibid, p. 15.

<sup>38</sup>Darwan Prinst. Indonesian Child Law. Citra Aditya Bakti. Bandung. 2009. p. 38.

<sup>39</sup>Bayu Rizal Alifianto & Ira Alia Maerani, The Investigation Process Against Child Perpetrators of Criminal Acts of Abuse, Jurnal.unissula.ac id, Vol. 2, No. 1, 2019, p. 760.

## 1) Principles in the Juvenile Criminal Justice System

In principle, the Juvenile Criminal Justice System uses Restorative Justice Efforts, where in the process of resolving a criminal act by a child, a peace process is carried out outside the courts using mediation or deliberation to achieve justice.

Progress in the juvenile criminal justice system has progressed with the introduction of diversion as an effort to resolve children's cases outside the courts, which is more oriented towards efforts to provide guidance to children who are in trouble with the law.

According to Article 1 paragraph (7) of the Child Criminal Justice System Law, which states that:

"Diversion is the transfer of the resolution of a child's case from the criminal justice process to a process outside the criminal justice system."<sup>40</sup>

According to Article 6 of the Child Criminal Justice System Law which states that: "Diversion aims to:

- a. Achieving peace between victims and children;
- b. Resolving children's cases outside the judicial process;
- c. Protecting children from deprivation of liberty;
- d. Encourage the community to participate; and
- e. Instilling a sense of responsibility in children."<sup>41</sup>

It is explained in Article 1 paragraph (7) of the Child Criminal Justice System Law that diversion is a transfer of the resolution of children's cases from the criminal justice process to a process outside the criminal justice system.

Diversion is not carried out on children as perpetrators of the crime of murder because the criminal threat for perpetrators of murder according to the Criminal Code is 15 years and life imprisonment. Meanwhile, this criminal sanction cannot be applied to children because the rights of children must be protected, therefore the punishment that can be imposed on children is a maximum of 10 (ten) years imprisonment, this is in accordance with the provisions stipulated in Article 81 paragraph (6) of the Law.

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<sup>40</sup>Article 1 paragraph (7) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

<sup>41</sup>Article 1 paragraph (6) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

Juvenile Criminal Justice System. Because the requirements for diversion are not met, the judicial process for the child as the perpetrator of the crime of murder must be carried out.<sup>42</sup>

Based on Article 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that:

"The Juvenile Criminal Justice System is implemented based on the following principles:

- a. Protection;
- b. Justice;
- c. Non-discrimination;
- d. Best interests of the Child;
- e. Respect for children's opinions;
- f. Child survival and development;
- g. Child development and guidance;
- h. Proportional;
- i. Deprivation of liberty and criminal punishment as a last resort;
- j. Avoidance of retaliation."<sup>43</sup>

The principle of protection as referred to in Article 2 letter A of the Child Criminal Justice System Law includes activities to protect children, both directly and indirectly, from actions that endanger and threaten children, both physically and/or psychologically.

Resolving a child's case must reflect the principle of justice, namely fostering a sense of justice for the child. For example, bringing the perpetrator, victim, and community together to work toward a just resolution for all parties, including the child as the perpetrator.

Juvenile trials must be closed to the public to protect the identity of children who are in trouble with the law so that society does not give negative views to children, so that children can continue to grow and develop in society.

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<sup>42</sup>Article 81 paragraph (6) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

<sup>43</sup>Article 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System



There are several approaches taken for children in conflict with the law according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System:

- a. Based on restorative justice, juvenile criminal justice with restorative justice aims to strive for peace between victims and children, prioritize settlements outside the judicial process, keep children away from the negative influence of the judicial process, instill a sense of responsibility in children, realize child welfare, prevent children from being deprived of liberty, encourage community participation, and improve children's skills.
- b. Discretion, in the juvenile criminal justice system, discretion is known as the policy of juvenile investigators in determining a case of a juvenile delinquent, not to continue the investigation with legal considerations in accordance with legislation and in the best interests of the child.
- c. Diversion, this aims to achieve peace between victims and children, resolve children's cases outside the judicial process, prevent children from being deprived of liberty, encourage community participation and instill a sense of responsibility in children.<sup>44</sup>

Children in conflict with the law are children who are 12 years old but under 18 years old who are suspected of committing a crime. Children who are victims are children under 18 (eighteen) years old who experience physical, mental and/or economic suffering caused by a crime. Regarding the form of victim involvement in the juvenile justice system, it must be based on the best interests of the victim and the victim's child by striving for a well-maintained family atmosphere so as not to cause fear for the victim and the victim's child. Law No. 11 of 2012 also emphasizes the safety and comfort of child victims, every investigation and inquiry process (investigation) in law enforcement agencies, must be guided or supervised by their parents and/or guardians.

The investigative procedures carried out by investigators/assistant investigators of the Indonesian National Police (Polri) regarding children in conflict with the law have specific aspects that are unique to children and cannot be viewed in the same way as examinations for adults. This is necessary in an effort to protect and guarantee the implementation of the human rights of children in conflict with the law and to provide legal protection for children in order to obtain the truth regarding the crimes committed by the children.<sup>45</sup>

Investigators tasked with conducting investigations are juvenile investigators. Not all investigators are juvenile investigators. A juvenile investigator is an investigator

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<sup>44</sup>Zulfikar Judge. The Position of Children in Conflict with the Law as Perpetrators of Criminal Acts, *Lex Jurnalica*, Volume 13, Number 3, December 2016. pp. 231-233.

<sup>45</sup>Maemunah, *Legal Protection of Street Children (Human Rights Perspective Study)*, Muhammadiyah University of Mataram, Mataram, 2020, p. 80

who meets specific requirements as stipulated in Article 26 of Law Number 11 of 2011 concerning the Juvenile Criminal Justice System (UU SPPA), namely having experience as an investigator; having an interest, concern, dedication, and understanding of juvenile issues; and having attended technical training on juvenile justice. However, if there is no investigator who meets these requirements, the investigative task is carried out by an investigator who carries out the investigation of criminal acts committed by adults.<sup>46</sup>

In conducting investigations into child cases, efforts are made to have female investigators who must have knowledge such as psychology and sociology, must love children, be dedicated, and be able to understand the child's psyche. The examination of child cases is carried out in a family atmosphere, meaning that when examining child suspects, investigators do not wear uniforms/service uniforms, and take an effective, active, and sympathetic approach.<sup>47</sup>

Within the scope of investigations related to the arrest of children in conflict with the law, investigators are authorized to arrest children, but the arrest of children must be carried out humanely by paying attention to needs according to their age. The arrest of children is carried out for the purposes of investigation for a maximum of 24 (twenty-four) hours and must inform the child and parents/guardians regarding the right to obtain legal assistance. Children who are arrested must be placed in a special service room (RPK) for children, if there is not yet one in the relevant area, the child is entrusted to the Social Welfare Administration Institution (LPKS).<sup>48</sup>

In restorative justice, the method used is a restorative consultation involving the victim and perpetrator, along with their respective families, plus community representatives who are expected to represent the environment where the crime involving the child perpetrator occurred. With local support to resolve the problem outside the juvenile justice system, it is hoped that a decision will be made that is not punitive but still prioritizes the interests and responsibilities of the child perpetrator, the victim, and the community.

Some of the benefits of restorative justice include the protection of children as perpetrators, victims, and witnesses by a child-friendly and gender-sensitive juvenile justice system, as well as by society. Theoretically, imprisonment is not the best punishment for a child. The best punishment for juvenile offenders is compensation, a form of sanction decided by the court and requiring the offender to pay a sum of money or provide services, either directly by the offender or by a substitute (the victim's family). In reality, Law No. 3 of 1997 concerning Juvenile

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<sup>46</sup>Interview with AIPDA Dwi Heni, as PPA Investigator of Pemalang Police, June 27, 2023

<sup>47</sup>Sheilla Chairunnisyah Sirait, *The Government's Responsibility to Provide Education to Abandoned Children from the Perspective of the Child Protection Law*, *De Lega Lata*, Volume 2, Number 1, January-June 2017, p. 161

<sup>48</sup>Interview with AIPDA Dwi Heni, as PPA Investigator of Pemalang Police, June 27, 2023

Justice cannot function as a legal umbrella protecting children in conflict with the law. Therefore, changes and updates are crucial. To date, the issue of criminal justice and the protection of juvenile offenders continues to be a major topic of discussion worldwide.<sup>49</sup>

Diversion aims to protect children from the negative effects of the criminal process. Diversion serves as a tool to ensure children have the space to grow and develop optimally. Restorative justice policies can be an alternative for handling criminal cases committed by children. Restorative justice efforts are expected to create justice for all parties and prevent further crimes. The mechanisms and procedures of criminal justice with restorative justice policies focus on the criminal process through mediation to reach an agreement in resolving juvenile criminal cases that is fair and balanced for both victims and perpetrators.<sup>50</sup>

#### **4. Conclusion**

Mapping the definition of Restorative Justice in regulations in the current criminal justice system in Indonesia that can support the implementation of Restorative Justice as a legal legitimacy include Article 1 number 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 1 number 2 of the Joint Memorandum of Understanding between the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Attorney General, and the Chief of the Indonesian National Police concerning the Implementation of the Adjustment of the Limits of Minor Crimes and the Amount of Fines, Fast Examination Procedures, and the Implementation of Restorative Justice which was ratified on October 17, 2012, Number 2 letter b of the Circular Letter of the Chief of Police No. SE/8/2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases, Article 1 number 27 of the Regulation of the Chief of Police No. 6 of 2019 concerning Criminal Investigation, Article 1 number 1 of Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice, Decree of the Director General of the General Court of the Supreme Court of the Republic of Indonesia No. 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice, Article 1 number 3 of the Regulation of the Republic of Indonesia National Police No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice.

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<sup>49</sup>Khoerina Azzizah & Beniharmoni Harefa. Criminal Law Enforcement Against Child Perpetrators of Klitih Crimes, *USM Law Review Journal*, Vol. 6 No. 2, 2023, p. 479

<sup>50</sup>Arilasman Cornelius and Beniharmoni Harefa, Implementation of Restorative Justice in the Juvenile Criminal Justice System Law, *Jurnal Yuridis* 8, No. 1, 2021, p. 86

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#### **Interview:**

Personal interview with AIPTU Panca Wardoyo and AIPDA Dwi Heni as Women and Children Protection (PPA) Investigators of the Pemalang Police Resort, on June 27, 2023.