

# IMPLEMENTATION OF RESTORATIVE JUSTICE AS AN ALTERNATIVE FOR CHILD CRIMINAL RESOLUTION

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## Abstract

Since the enactment of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System in Indonesia, it is necessary to immediately provide outreach to Law Enforcement Officials (APH) who do not yet understand and know about the obligation to take a restorative justice approach in the implementation of the Juvenile Criminal Justice System. The norms governing the obligation to carry out a restorative justice approach in handling children in conflict with the law (ABH) are contained in article 5 paragraph 1 of the Juvenile Criminal Justice System Law and this law has also adopted the International Convention on the Rights of the Child (CRC) instrument which has been adopted, ratified by the government of the Republic of Indonesia with Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child (Convention on the Rights of the Child) in addition to other international regulations such as the Beijing Rules, Riyadh Guidelines and Tokyo Rules which are of course in line with the Constitution 1945 concerning the goals of the state, one of which is to realize social justice and promote general welfare. This restorative justice approach certainly has the same spirit as the ideological, political and socio-cultural values of the Indonesian nation which prioritizes resolution through deliberation to reach consensus so that this restorative justice approach is also one of the legal reforms that further promotes the values of local wisdom of the nation. Indonesia. The conceptual approach and the statutory approach are the approaches used in this research and maximize the implementation of the implementation of restorative justice in every handling of Children in Conflict with the Law (ABH) at every stage of the investigation, prosecution and trial process. Objectives The aim of the research is to provide confirmation to every Law Enforcement Officer of the obligation to take a Restorative Justice approach in every handling of ABH.

**Keywords:** *Implementation of Restorative Justice, Resolving Child Crimes,*

## A. INTRODUCTION

Restorative Justice, or Restorative Justice, is an approach to conflict resolution and law enforcement that places greater emphasis on restoring relationships between perpetrators and victims, as well as involving the community in the process. This concept tries to overcome the negative impact of crime, as well as providing an opportunity for the perpetrator to admit his mistake and provide compensation to the victim (Zehr, 2002). Linguistically, the term "restorative justice" comes from the words "restore" which means to restore or recover, and "justice" which means fairness. In this context, restorative justice means a process that aims to restore or restore conditions damaged by crimes (McCold & Wachtel, 2003). Experts and scholars from various scientific disciplines have provided their definitions and opinions regarding restorative justice. Howard Zehr, an expert in the field of restorative justice, defines restorative justice as "a process that involves, to the extent possible, those who have a stake in a particular offense and brings them together to pool collective power creatively in dealing with the consequences and implications of that offense" (Zehr, 2002). According to Braithwaite (2002), restorative justice is a process that aims to create a balance between the needs of victims, perpetrators and the community involved in a crime. In this case, restorative justice emphasizes three main aspects, namely: (1) restoring losses suffered by victims, (2)

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holding perpetrators accountable and helping them to rehabilitate themselves, and (3) strengthening social relationships and preventing crimes from occurring in the future. .

Meanwhile, according to Van Ness and Strong (2010), restorative justice is a model of law enforcement that focuses on restoring relationships damaged by crime, as well as involving victims, perpetrators and the community in finding fair and effective solutions. In this context, restorative justice replaces the conventional law enforcement paradigm, which places more emphasis on punishment and retribution. Restorative justice has been applied in various legal systems throughout the world, including in the United States, Canada, Australia and several European countries. Some restorative justice methods commonly used in conflict resolution and law enforcement include mediation, family conferences, and justice circles (McCold & Wachtel, 2003). Various studies have shown that restorative justice has a positive effect in dealing with crime and social conflict. Some of the benefits of restorative justice include increasing victim satisfaction with case resolution, reducing the rate of repeat crimes by perpetrators, as well as restoring and strengthening relationships between victims, perpetrators, and the community (Latimer, Dowden, & Muise, 2005). One of the studies conducted by Latimer, Dowden and Muise (2005) found that restorative justice was more effective in reducing repeat crimes compared to conventional law enforcement methods. Apart from that, the study also found that victims who were involved in the restorative justice process felt more satisfied and had a higher sense of justice than victims who only followed the conventional legal process.

Restorative justice also has significant implications in the educational context. According to Morrison (2005), implementing restorative justice in schools can help reduce violence, bullying and other problematic behavior, as well as increase a positive and inclusive school climate. In this case, restorative justice is considered an effective strategy in overcoming disciplinary problems and creating a conducive learning environment for all students. Overall, restorative justice is an innovative and holistic approach to conflict resolution and law enforcement. By restoring relationships between victims, perpetrators and the community, restorative justice can provide a more just, effective and sustainable solution in overcoming the problem of crime and social conflict. Criminal acts committed by children and teenagers are a serious concern in various countries, including Indonesia. This phenomenon raises concerns about the negative impacts it causes, both for the victims and for the perpetrators themselves. Children and adolescents who are involved in criminal acts, hereinafter referred to as child criminals, often face significant legal, social and psychological consequences (Widodo, 2013). In overcoming this problem, the criminal justice system in Indonesia needs to evaluate the appropriate approach in handling cases involving child perpetrators of crimes.

According to Law of the Republic of Indonesia no. 35 of 2014 concerning Child Protection, a child is defined as someone who is not yet 18 years old, including children who are still in the womb. Meanwhile, Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) regulates how to handle criminal cases committed by children and teenagers in Indonesia (Widodo, 2013).

One approach that is starting to be introduced and implemented in the juvenile criminal justice system in Indonesia is restorative justice. As previously explained, restorative justice is an approach that emphasizes restoring the relationship between the perpetrator and the victim, as well as involving the community in the process (Widodo, 2013). The principles of restorative justice have been adopted in the SPPA Law, with the aim of creating a criminal justice system that is fairer, more humane and effective for children who commit crimes (Sulistyo & Setyowati, 2019).

In the context of law and criminology, child perpetrators of criminal acts is a term used to describe children or adolescents who are involved in criminal law violations. This phenomenon is a quite complex problem and requires a deep understanding of the various

factors that influence the behavior of children who commit criminal acts, as well as effective strategies to prevent and overcome this problem (Utomo & Sudrajat, 2016).

According to Law of the Republic of Indonesia no. 35 of 2014 concerning Child Protection, a child is defined as someone who is not yet 18 years old, including children who are still in the womb. Meanwhile, Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) regulates how to handle criminal cases committed by children and teenagers in Indonesia (Widodo, 2013). Child perpetrators of criminal acts in the context of the SPPA Law are children under 18 years of age who are suspected, accused, or found guilty of committing a criminal act.

It is important to note that children and adolescents have different psychological, social, and emotional characteristics than adults. In this context, children who commit crimes are often considered victims of various factors that influence their behavior, such as a less conducive family environment, economic instability, or social pressure (Sulistyo & Setyowati, 2019). Therefore, a different approach is needed in handling cases of child criminals, with a focus on rehabilitation and reintegration, not just punishment (Widodo, 2013).

One approach that is starting to be introduced and implemented in the juvenile criminal justice system in Indonesia is restorative justice. Restorative justice is an approach that emphasizes restoring the relationship between the perpetrator and the victim, as well as involving the community in the process (Widodo, 2013). The principles of restorative justice have been adopted in the SPPA Law, with the aim of creating a criminal justice system that is fairer, more humane and effective for children who commit crimes (Sulistyo & Setyowati, 2019).

In the practice of implementing restorative justice in Indonesia, several methods used include mediation, family conferences, and diversion programs (Widodo, 2013). Mediation is a dialogue process between the perpetrator and the victim, facilitated by a neutral mediator, with the aim of reaching an agreement regarding the responsibility and recovery that must be carried out by the perpetrator. Family conferences involve meetings between children who have committed crimes, victims, families and communities facilitated by trained facilitators, with the aim of finding solutions that are acceptable to all parties (Sulistyo & Setyowati, 2019).

The application of restorative justice in handling children who commit crimes in Indonesia still faces various challenges, such as a lack of understanding and support from legal authorities, limited resources, and policies that are not yet fully consistent (Utomo & Sudrajat, 2016). Therefore, there needs to be more intensive efforts and coordination between various parties, including the government, legal authorities, educational institutions, families and communities, to ensure the success of restorative justice in dealing with the problems of children who commit crimes (Sulistyo & Setyowati, 2019). Overall, restorative justice offers a more humane, fair and effective alternative in dealing with the problems of children who commit crimes compared to the traditional criminal justice system. In this context, it is important for various related parties to work together to overcome the problem of child perpetrators of criminal acts and create a better juvenile criminal justice system.

## **B. FORMULATION OF THE PROBLEM**

1. How is Restorative Justice Implemented for Children Who Perpetrate Criminal Offenses?
2. What are the challenges in implementing restorative justice for children who are criminals?

## **C. RESEARCH METHODS**

In this research The type of research used in this research is normative legal research methods or library legal research. namely legal research carried out by examining library materials, namely primary and secondary data. These legal materials are arranged systematically to make it easier to draw conclusions from the problems studied. In approaching this problem using the Normative Juridical approach method. This approach is an approach to applicable legislation. The statutory approach is carried out by examining all laws and regulations that are related to the content of the law being handled. The normative juridical

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problem approach is an approach used to approach statutory regulations (statue approach), this approach examines statutory regulations related to the problem being studied. Apart from that, a conceptual approach is also used to look at legal concepts related to existing problems.

#### **D. DISCUSSION**

##### **1. Implementation Of Restorative Justice For Children Who Perpetrate Criminal Offenses**

In the criminal justice system, one of the approaches that is starting to be implemented to deal with child perpetrators of criminal acts is Restorative Justice. Restorative Justice is a criminal case resolution system that aims to restore the condition of victims, perpetrators and communities affected by criminal acts (Suhartono, 2015). It is hoped that the application of Restorative Justice to children who have committed criminal acts can provide a more effective, fair and humane solution for children, victims and society (Suhartono, 2015). On this occasion, we will discuss the application of Restorative Justice to children who have committed criminal acts along with the source of the quotation in Indonesian.

Restorative Justice has several basic principles, including restorative justice, accountability, participation, protection and prevention (Suhartono, 2015). Restorative justice emphasizes efforts to restore the rights and interests of victims, perpetrators and communities affected by criminal acts (Suhartono, 2015). Accountability refers to the perpetrator's obligation to be responsible for his actions and accept the consequences that arise from his actions (Suhartono, 2015). Participation requires active involvement from victims, perpetrators and the community in the case resolution process (Suhartono, 2015). Protection ensures that the rights of victims and perpetrators, especially children, remain protected during the case resolution process (Suhartono, 2015). Prevention aims to prevent similar criminal acts from occurring in the future (Suhartono, 2015).

The application of Restorative Justice to children who have committed criminal acts in Indonesia has been regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) (Suhartono, 2015). The SPPA Law regulates several case resolution methods that prioritize the principles of Restorative Justice, such as diversion, mediation and family conferences (Suhartono, 2015). Diversion is the resolution of cases outside the judicial process involving victims, perpetrators and other related parties, such as family and community (Suhartono, 2015). Mediation is a process of resolving cases through the mediation of a mediator which aims to reach an agreement between the victim and the perpetrator (Suhartono, 2015). A family conference is a meeting between victims, perpetrators and their families which aims to design joint solutions in dealing with the impact of criminal acts that have occurred (Suhartono, 2015).

The implementation of Restorative Justice in handling children who have committed crimes in Indonesia has several advantages, including (Suhartono, 2015):

1. Prioritizing the interests and rights of children: Restorative Justice emphasizes the importance of protecting the rights of children, both as victims and perpetrators. The case resolution process that prioritizes the principles of Restorative Justice is designed to reduce the negative impacts that children may experience, both during the judicial process and afterwards.
2. Helping victims recover: Restorative Justice emphasizes efforts to restore victims' conditions, both physically, psychologically and socially. In the case resolution process, victims are given the opportunity to convey their feelings, needs and hopes regarding the crime they have experienced.

3. Fostering a sense of responsibility in children of perpetrators: A case resolution process that prioritizes the principles of Restorative Justice helps children of perpetrators understand the impact of their actions on the victim and society. This is expected to foster a sense of responsibility in.
4. Reducing the risk of recidivism: Restorative Justice aims to prevent similar crimes from occurring in the future. By involving perpetrators, victims and the community in the case resolution process, it is hoped that it can increase understanding of the consequences of criminal acts and encourage positive behavioral changes in children of perpetrators.

Even though the implementation of Restorative Justice for children who have committed criminal acts in Indonesia has been regulated in the SPPA Law, there are still many challenges faced in its implementation, such as a lack of understanding and skills of the parties involved in the case resolution process, as well as limited resources and supporting facilities (Suhartono, 2015 ). Therefore, more intensive and integrated efforts are needed from various parties, such as the government, judicial institutions, educational institutions, families and society, to optimize the implementation of Restorative Justice in handling children who are criminals in Indonesia.

## 2. Challenges In Implementing Restorative Justice For Children Who Perpetrate Criminal Offenses

Although Restorative Justice has many advantages in resolving criminal cases involving child perpetrators, its implementation also faces various challenges. Some of the challenges in implementing Restorative Justice for children who have committed crimes include:

1. Lack of Understanding and Awareness One of the main challenges in implementing Restorative Justice is the lack of understanding and awareness regarding the concept and benefits of Restorative Justice among law enforcement, government, society, and even victims and perpetrators (Latimer, Dowden, & Muise, 2005). This lack of understanding can result in distrust and resistance to the implementation of Restorative Justice, as well as reluctance to participate in the process (Umbreit, Coates, & Vos, 2004).
2. Limited Resources Implementing Restorative Justice requires sufficient resources, such as trained facilitators or mediators, funds, and infrastructure support (Latimer et al., 2005). In many countries, including Indonesia, limited resources can become an obstacle to implementing Restorative Justice effectively and efficiently (Suhartono, 2015).
3. Difficulties in Determining Suitable Cases Not all criminal cases involving child perpetrators are suitable for applying Restorative Justice (Umbreit et al., 2004). There are several factors that need to be considered, such as the perpetrator's child's willingness to admit wrongdoing, the victim's willingness to participate in the Restorative Justice process, and the severity of the crime (Latimer et al., 2005). Determining cases that are appropriate for Restorative Justice can be a challenge for law enforcement and the parties involved in this process (Umbreit et al., 2004).
4. Variability in the Implementation of Restorative Justice The implementation of Restorative Justice can vary depending on the cultural, legal and social context in a country or society (Latimer et al., 2005). This variability can result in uncertainty and inconsistency in the implementation of Restorative Justice, which can then influence the effectiveness and acceptability of this approach (Umbreit et al., 2004).
5. Recognition of the Rights of Children of Perpetrators and Victims In implementing Restorative Justice, it is important to maintain a balance between the rights of



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children of perpetrators and the rights of victims (Suhartono, 2015). There are challenges in ensuring that the rights of child offenders, such as the right to fair treatment, are not abused or compromised in the Restorative Justice process (Umbreit et al., 2004). Likewise, the victim's right to obtain justice, support and participation in the case resolution process must also be respected and taken into account (Zehr, 2002).

6. Difficulties in maintaining a balance between the rights of children who are perpetrators and victims can arise for several reasons. For example, pressure from society demanding justice for victims can affect the objectivity and impartiality of facilitators or mediators (Umbreit et al., 2004). Apart from that, there is also the risk that child perpetrators or victims feel forced to participate in the Restorative Justice process, thereby compromising their right to refuse or submit an appeal (Suhartono, 2015).
7. Lack of Cooperation Between Institutions Implementing Restorative Justice requires cooperation between various institutions, such as law enforcement, government, NGOs, and the community (Latimer et al., 2005). However, coordination and cooperation between these institutions is often a challenge, due to differences in views, interests and ways of working (Suhartono, 2015). A lack of collaboration between institutions can hinder the effectiveness and sustainability of Restorative Justice programs (Umbreit et al., 2004).
8. Limited Evaluation and Research One of the challenges in implementing Restorative Justice is the lack of evaluation and research regarding the effectiveness and impact of Restorative Justice in local and national contexts (Latimer et al., 2005). This limited evaluation and research makes it difficult to assess the success of the Restorative Justice program, as well as to identify areas for improvement and development (Suhartono, 2015).
9. Limited Resources One of the main obstacles in implementing Restorative Justice is limited resources, both in terms of finance, labor and infrastructure (Latimer et al., 2005). These limited resources can hinder the effectiveness and efficiency of Restorative Justice programs, as well as create challenges in implementing them in various criminal cases involving child perpetrators.

First, the lack of facilitators or mediators who are trained and experienced in carrying out the Restorative Justice process is a challenge in itself (Suhartono, 2015). Trained facilitators or mediators are very important to ensure an effective and fair Restorative Justice process, as well as to facilitate dialogue between victims, children of perpetrators, and other related parties (Umbreit et al., 2004). Apart from that, the facilitator or mediator is also responsible for ensuring that the rights of child perpetrators and victims are respected throughout the process (Suhartono, 2015).

Despite facing various challenges, Restorative Justice still offers great potential in handling cases of child perpetrators of crimes. In overcoming these challenges, there needs to be a commitment from the government, law enforcement, NGOs and society to continue to promote and develop the Restorative Justice approach. In addition, there is a need for broader research and evaluation to understand the impact and effectiveness of Restorative Justice in various contexts, as well as to identify strategies and best practices that can be adapted and implemented in various countries and communities. Below we discuss in detail the main points of challenges in implementing Restorative Justice.

## E. CLOSING

1. The implementation of restorative justice prioritizes open and honest dialogue between victims and perpetrators, which allows them to understand each other's perspectives and reach a just and satisfactory solution. This process involves various related parties, such as the families of victims and perpetrators, the community, law enforcement and the government. All of these parties must work together and collaborate to create a conducive environment for the implementation of restorative justice. Community involvement in the restorative justice process is very important, because they also feel the impact of crimes and can provide suggestions for solutions to restore damaged relationships. The government and law enforcement also have a significant role, such as creating policies and regulations that support the implementation of restorative justice, as well as integrating it into law enforcement practices. International cooperation is also needed to address crimes that transcend national boundaries. The application of restorative justice in the context of transnational crimes requires coordination between various parties from the countries involved. Overall, restorative justice offers a more fair, inclusive and recovery-oriented approach in dealing with crime. With support and cooperation between various related parties, restorative justice can help create a safer, fairer and more peaceful society. We are expected to continue to develop and perfect restorative justice practices, so that we can provide more effective and sustainable solutions in facing crime challenges in the future.
2. Some of the challenges in implementing Restorative Justice for children who have committed crimes include:
  - a. Lack of Understanding and Awareness One of the main challenges in implementing Restorative Justice is the lack of understanding and awareness regarding the concept and benefits of Restorative Justice among law enforcement, government, society, and even victims and perpetrators. This lack of understanding can result in distrust and resistance to the implementation of Restorative Justice, as well as reluctance to participate in the process.
  - b. Limited Resources Implementing Restorative Justice requires sufficient resources, such as trained facilitators or mediators, funds, and infrastructure support. In many countries, including Indonesia, limited resources can become an obstacle to implementing Restorative Justice effectively and efficiently.
  - c. Difficulties in Determining Suitable Cases Not all criminal cases involving child perpetrators are suitable for applying Restorative Justice. There are several factors that need to be considered, such as the child perpetrator's willingness to admit wrongdoing, the victim's willingness to participate in the Restorative Justice process, and the severity of the crime. Determining which cases are appropriate for Restorative Justice can be a challenge for law enforcement and the parties involved in this process.
  - d. Variability in the Implementation of Restorative Justice The implementation of Restorative Justice can vary depending on the cultural, legal and social context in a country or society. This variability can result in uncertainty and inconsistency in the implementation of Restorative Justice, which can then affect the effectiveness and acceptability of this approach.
  - e. Recognition of the Rights of Children of Perpetrators and Victims In implementing Restorative Justice, it is important to maintain a balance between the rights of children of perpetrators and the rights of victims. There are challenges in ensuring that the rights of child offenders, such as the right to fair treatment, are not abused or compromised in the Restorative Justice process. Likewise, the victims' rights to obtain justice, support and participation in the case resolution process must also be respected and taken into account.

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- f. Difficulties in maintaining a balance between the rights of children who are perpetrators and victims can arise for several reasons. For example, pressure from society demanding justice for victims can affect the objectivity and impartiality of the facilitator or mediator. In addition, there is also a risk that child perpetrators or victims feel forced to participate in the Restorative Justice process, thereby compromising their right to object or appeal.
- g. Lack of Cooperation Between Institutions Implementing Restorative Justice requires cooperation between various institutions, such as law enforcement, government, NGOs, and the community. However, coordination and cooperation between these institutions is often a challenge, due to differences in views, interests and ways of working. A lack of collaboration between institutions can hinder the effectiveness and sustainability of Restorative Justice programs.
- h. Limited Evaluation and Research One of the challenges in implementing Restorative Justice is the lack of evaluation and research regarding the effectiveness and impact of Restorative Justice in local and national contexts. This limited evaluation and research makes it difficult to assess the success of Restorative Justice programs, as well as to identify areas for improvement and development.
- i. Limited Resources One of the main obstacles in implementing Restorative Justice is limited resources, both in terms of finance, workforce and infrastructure. These limited resources can hinder the effectiveness and efficiency of Restorative Justice programs, as well as create challenges in implementing them in various criminal cases involving child perpetrators.

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