

## Philosophy Concept of Restorative Justice in Handling Juvenile Delinquent

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### ABSTRACT

Restorative justice in handling juvenile delinquent occurs because of the juvenile justice system growth. The increasing number of institutions that guarantee the rights of children in juvenile delinquent at the courts has led more implementation of the criminal justice system that applies restorative justice. Alignment between the 2000 UN declaration as the main principles regarding the use of restorative justice programs in criminal matters, the Vienna Declaration on crime and justice, the XI UN congress in 2005 on crime and criminal justice as a basis for researchers who passionate to examine how philosophical concept of restorative justice in juvenile delinquent and how the mechanism for applying restorative justice in juvenile delinquent uses normative juridical research. After conducting research, the philosophical concept of restorative justice in handling juvenile delinquent can be seen from before the rise of Law Number 3 of 1997 concerning Juvenile Court which refers to the provisions of the Criminal Code Articles 45, 46, and 47 which contain the authority of judges in making decisions regarding types of crimes, types of punishment and the length of punishment for children, Law Number 3 of 1997 concerning Juvenile Court and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In line with the philosophy of the mechanism for the application of restorative justice in handling juvenile delinquent, there are several regulations in Indonesia such as the Supreme Court Regulation Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System, Government Regulation Number 65 of 2015 concerning Guidelines for Implementing Diversion and Handling of Children who have not 12 years old and a certificate from the Director General of Badilum Number 1691/DJU/SK/PS.00/12/2020 dated 22 December 2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts.

**Keyword:** *Philosophical, Restorative Justice, Juvenile Delinquent*

## **ABSTRAK**

Keadilan restoratif dalam menyelesaikan perkara tindak pidana perkara anak terjadi karena perkembangan sistem peradilan anak. Bertambahnya lembaga-lembaga yang menjamin hak anak berhadapan dengan hukum di peradilan membuat semakin banyak pelaksanaan sistem pemidanaan yang menerapkan keadilan restoratif. Keselarasan antara deklarasi PBB Tahun 2000 tentang prinsip-prinsip pokok tentang penggunaan program-program keadilan restoratif dalam permasalahan pidana, Deklarasi Wina tentang tindak pidana dan keadilan, kongres PBB ke XI Tahun 2005 tentang kejahatan dan peradilan pidana sebagai dasar peneliti ingin meneliti bagaimana filosofis konsep keadilan restoratif dalam menangani perkara anak serta bagaimana mekanisme penerapan keadilan restoratif terhadap menangani perkara anak menggunakan penelitian yuridis normatif. Setelah melakukan penelitian, filosofis konsep keadilan restoratif dalam menangani perkara anak dilihat dari sebelum lahirnya Undang-Undang Nomor 3 Tahun 1997 tentang Pengadilan Anak yang merujuk pada ketentuan KUHP Pasal 45, 46, dan Pasal 47 yang memuat tentang kewenangan hakim dalam menjatuhkan putusan tentang jenis-jenis pemidanaan dan lamanya pidana untuk anak, Undang-Undang Nomor 3 Tahun 1997 tentang Pengadilan Anak dan Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak. Sejalan dengan filosofisnya mekanisme penerapan keadilan restoratif terhadap menangani perkara anak terdapat di beberapa peraturan di Indonesia seperti Peraturan Mahkamah Agung Nomor 4 Tahun 2014 tentang Pedoman Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak, Peraturan Pemerintah Nomor 65 Tahun 2015 tentang Pedoman Pelaksanaan Diversi dan Penanganan Anak yang Belum Berumur 12 Tahun dan Surat Keterangan Dirjen Badilum Nomor 1691/DJU/SK/PS.00/12/2020 tanggal 22 Desember 2020 tentang Pedoman Penerapan Restorative Justice di Lingkungan Peradilan Umum.

**Kata Kunci:** *Filosofis, Restorative Justice, Perkara Anak*

## Introduction

Indonesia in the criminal system still treats children which involved in juvenile delinquent as perpetrators of criminal acts like adults as criminals, with the condition of a criminal who deserves to be punished like an adult. Sentencing that leads to the individual perpetrator or individual responsibility with the view that the person is able to take full responsibility for his actions.<sup>1</sup>

The problem of juvenile justice in protecting children from the law in government policies is in special protection, namely legal protection in the judicial system and laws that specifically regulate justice and Law Number 3 of 1997 concerning Juvenile Courts<sup>2</sup> which has been replaced by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System<sup>3</sup>. These changes are for developments in protecting children for the better with the hope that juvenile justice will be more effective in protecting children who are caught in the law by realizing an "Integrated Criminal System".<sup>4</sup>

The development of the juvenile justice system starts from this definition which becomes more external and leads to the criminal justice system. It is making more and more institutions that can guarantee children's rights in undergoing the justice system and based on the law

principle clearly explain the upheld of children's rights. Thus, the settlement in the implementation of the criminal system in Indonesia for children can be done by applying restorative justice. Police, prosecutors and courts as well as community advisors or correctional centers, advocates or legal aid, special child development agencies (LPKA), temporary child placement institutions (LPAS) and social welfare administration institutions (LPKS) as determinants of whether children will be released or processed in juvenile court to the stage when the child is placed in choices, ranging from being released to being included in a sentencing institution in the corridor of restorative justice.<sup>5</sup>

Restorative justice is a philosophy, process of justice, theory, and intervention that emphasizes repairing losses caused by criminal acts, which in fourth Pancasila, namely deliberation, is a priority in making decisions as a benchmark for restorative justice. As with the application of criminal sanctions for children, it often creates dilemmatic problems, both juridically, sociologically and philosophically.<sup>6</sup>

The application of the characteristics concept of customary law in Indonesia can be described as the root of restorative justice, views on customary violations/customary offenses in a model

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<sup>1</sup> Bambang Hartono, "Analisis Keadilan Restoratif (Restorative Justice) Dalam Konteks Ultimum Remedium Sebagai Penyelesaian Permasalahan Tindak Pidana Anak," *Pranata Hukum* 10, no. 2 (July 2015), <https://doi.org/10.36448/PRANATAHUKU M.V10I2.197>.

<sup>2</sup> "Indonesia, Juvenile Court Act, Law No. 3 of 1997, State Gazette No. 3 of 1997, Supplement to the State Gazette No. 3668." (n.d.).

<sup>3</sup> Indonesia, Juvenile Court Act, Law No. 3 of 1997, State Gazette No. 3 of 1997, Supplement to the State Gazette No. 3668.

<sup>4</sup> Susana Andi Meyrina, "Restorative Justice Dalam Peradilan Anak Berdasarkan

Undang-Undang No.11 Tahun 2012," *Jurnal Penelitian Hukum De Jure* 17, no. 1 (March 2017): 92-107, <https://doi.org/10.30641/DEJURE.2017.V17.92-107>.

<sup>5</sup> "Mahkamah Agung Republik Indonesia," n.d.

<sup>6</sup> Ardini, "Restoratif Justice Sebagai Pertimbangan Hakim Menjatuhkan Putusan Pidana Terhadap Anak Yang Melakukan Penganiayaan (Analisis Putusan Nomor 4/Pid.Sus-Anak/2018/Pn.Skw)," *Jurnal Ilmiah Mahasiswa Hukum (JIMHUM)* 1, no. 4 (2021): 1-15.

and way of settlement offered. A simple model of restorative justice that already exists in Indonesia that resolves conflicts by way of deliberation, where the practice of non-adversary dispute resolution or outside the criminal justice process is a reflection of the consensus deliberation institution which is part of the Indonesian philosophy.<sup>7</sup>

Based on the description above, the author wants to discuss how the philosophical concept of restorative justice in handling juvenile delinquent and how the mechanism for applying restorative justice in handling juvenile delinquent.

### **Methodology**

The author uses a normative juridical method, referring to the legal norms contained in the legislation and the legal norms that exist in society.<sup>8</sup> Sources of legal materials obtained from official documents, books related to the research object of research results and statutory regulations. Literature research methods obtained through library research sourced from laws and regulations, official documents, publications and research results. Legal materials are analyzed qualitatively, referring to the legal norms that exist in the laws and regulations as well as the norms that live and develop in society.

So that the results of the analysis are descriptive analysis, the activity of determining the content or meaning of

the rule of law is used as a reference in solving legal problems that are the object of study.

### **Discussion**

#### **1. Philosophy Concept of Restorative Justice in Handling Juvenile Delinquent**

The philosophical basis for the concept of restorative justice when viewed from Pancasila has been explained in the introduction. In addition, the philosophical basis can also be found in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, namely that the state has the right to protect all Indonesian citizens, including children.<sup>9</sup>

Indonesian regulations that have been based on children's rights as contained in the Convention on the Rights of the Child by Presidential Decree Number 36 of 1990<sup>10</sup>, Law Number 23 of 2002 concerning Child Protection.<sup>11</sup> Responding the need of children protection in criminal proceedings, the Juvenile Criminal Justice System Act was formed, due to the lack of a Juvenile Court Law providing justice to children and adjudicating children's rights.<sup>12</sup>

The Juvenile Criminal Justice System Act contains several important changes originating from the paradigm of the Criminal Code, the change in child punishment from retributive to restorative using diversion in the judicial process. In addition, the perspective of

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<sup>7</sup> Susana Andi Meyrina, "Restorative Justice Dalam Peradilan Anak Berdasarkan Undang-Undang No.11 Tahun 2012."

<sup>8</sup> Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2009).

<sup>9</sup> Dwi Ratna and Kamala Sari, "Konsep Restorative Justice Dalam Undang-Undang Ri Number 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak Concept of Restorative Justice in the Law of the Republic of Indonesia Number 11 of 2012 Concerning Children ' S Criminal Court System," *Jurnal IUS* 6, no. 2 (2014): 588-600.

<sup>10</sup> "Indonesia, Presidential Decree on the Ratification of Convention on The Rights of the Child (Konvensi Hak-Hak Anak), KEPPRES No. 36 on 1990." (n.d.).

<sup>11</sup> "Indonesia, Child Protection Law, Law No. 23 of 2002, State Gazette No. 109 of 2002, Supplementary State Gazette No. 4235." (n.d.).

<sup>12</sup> Erasmus Napitupulu, *Pemidanaan Anak Dalam Rancangan KUHP* (Jakarta Selatan: Institute for Criminal Justice Reform, 2015).

imposing child punishment has changed with imprisonment as a last resort in accordance with the different dimensions of children. The current restorative justice process requires the community to play an active role in tackling crime. Even though law enforcement has a secondary role, society must take responsibility for healing the pain caused by crime.<sup>13</sup>

Juvenile Delinquent law enforcement not only looks at the concept of restorative justice from one angle to bring together victims and perpetrators to solve problems, but also recognizes that the interests of children are the main thing. In United Nations Standard Minimum Rules for the Administration of Juvenile Justice or The Beijing Rules declare that all competent authorities have the power to terminate the judicial process at any stage and at any opportunity in the best interests of the child.<sup>14</sup> To find out more about the development of sentencing can be seen from:

#### **A. Before the Enactment of Law Number 3 of 1997 concerning Juvenile Court**

Handling juvenile delinquent contained in the Criminal Code Article 45, Article 46, and Article 47 including the power of judges to make decisions about the type and duration of punishment for children who commit crimes. The Criminal Code does not provide a definition of children, but refers to the provisions of Article 45 is meant by children are every person who has not reached adulthood or has not reached 16 years. The types of crimes that cannot be imposed on children are death punishment, life imprisonment,

deprivation of certain rights and notification of judge's decision. However, there are alternatives for imposing sanctions on juvenile delinquent, both in the form of criminal behavior and actions, namely:<sup>15</sup>

- 1) Return to parent, guardian or caregiver.
- 2) Submitted to the State to receive education from the State.
- 3) Sentenced to a maximum sentence of less than a third of the maximum adult sentence.
- 4) If juvenile delinquent is punished by death or life imprisonment, it can only be sentenced to a maximum imprisonment of 15 years.

#### **B. Law Number 3 of 1997 concerning Juvenile Court**

The enactment of this law revokes the provisions of Article 45, Article 46 and Article 47 of the Criminal Code which regulates juvenile delinquent. This law states that juvenile delinquent is a naughty child, and sets a new standard for determining the age limit for children aged 8 years who are under 18 and unmarried. The form of punishment for children is lighter than previously regulated in the Criminal Code, namely:<sup>16</sup>

- 1) Imprisonment up to half of the principal punishment for adults.
- 2) The death penalty or life imprisonment is reduced to a maximum of 10 years in prison.
- 3) The threat of death penalty or life imprisonment for children under the age of 12 is reduced to surrender of the child to the state
- 4) If the fine is not paid and replaced with mandatory work training of up

<sup>13</sup> Napitupulu.

<sup>14</sup> Napitupulu.

<sup>15</sup> Bilher Hutahaeon, "Penerapan Sanksi Pidana Bagi Pelaku Tindak Pidana Anak," *Jurnal Yudisial* 6, no. 1 (March 2013): 64-79, <https://doi.org/10.29123/JY.V6I1.119>.

<sup>16</sup> Meril Tiameledau, "Percobaan Sebagai Alasan Diperingankannya Pidana Bagi Pelaku Tindak Pidana Menurut KUHP," *Lex Administratum* 4, no. 3 (March 2016).

to 90 days, the training time does not exceed four hours a day and it is not carried out at night, the maximum penalty is half of the adult law

- 5) Supervision sentence is a minimum of three months and a maximum of two years, which the child is supervised by a prosecutor and supervised by a local supervisor.
- 6) Additional sanctions in the form of confiscation of certain goods and/or payment of compensation.

The category of actions imposed on naughty children can be accompanied by a warning and conditions set by the judge. Such as:<sup>17</sup>

- 1) Return to parent/guardian/foster parent.
- 2) State submissions to take part in coaching and job training.
- 3) Submission to the social department or social organization that handles education, coaching or job training.

Based on the explanation above, the punishment in this law is a paradigm shift which was originally in the Criminal Code which was retaliatory, but the law is generally preventive in nature. Meanwhile, the purpose of punishment is not only to deter children who are the perpetrators but also to prevent the wider community from committing such acts.

### C. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

This law was formed because the Juvenile Court Law no longer meets the legal needs of the community and fails to

provide special protection for children in conflict with the law as a whole. Society, government and other national institutions have duties and responsibilities to improve children's welfare and provide special protection for children in situations of legal conflict. Such as:<sup>18</sup>

- 1) Restorative justice, together with diversion, is an effort to find solutions outside the judiciary and must be implemented first by law enforcement, families and communities. With the intention of:<sup>19</sup>
  - a) Seeking peace between victims and children.
  - b) Prioritizing out-of-court negotiations.
  - c) Keep children away from the bad effects of litigation.
  - d) Instilling responsibility in children.
  - e) Fulfills the best interests of the child.
  - f) Protection of children from deprivation of liberty.
  - g) Encourage people to participate.
  - h) Improve children's life skills.
- 2) Diversion, an effort to avoid resolving cases through formal channels or court decisions with the aim of diverting attention, avoiding negative views of children, or preventing problems with the law.
- 3) Certain minimum penalties and fines for sentencing have been abolished, and criminal offenses under this law are limited to imprisonment under conditions outside of community service or supervision institutions, job

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<sup>17</sup> T. W. (Tri) Widiastuti, "Penegakan Hukum Terhadap Kenakalan Anak," *Jurnal Wacana Hukum* 11, no. 1 (2012): 23573, <https://doi.org/10.33061/1.JWH.2012.11.1.730>.

<sup>18</sup> Suyanto Edi Wibowo et al., "Implikasi Berlakunya Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak Terhadap

Kelembagaan Dan Regulasi Pelaksana," *Jurnal Legislasi Indonesia* 13, no. 2 (May 2018): 121–33, <https://doi.org/10.54629/JLI.V13I2.107>.

<sup>19</sup> Reyner Timothy Danielt, "Penerapan Restorative Justice Terhadap Tindak Pidana Anak Pencurian Oleh Anak Di Bawah Umur," *LEX ET SOCIETATIS* 2, no. 6 (August 2014), <https://doi.org/10.35796/LES.V2I6.5364>.

training, coaching within institutions and imprisonment as a last resort when a crime commits a serious crime or involve violence or conditions that endanger society. There are also additional penalties such as deprivation of profits from criminal acts and compliance with customary obligations.

The punishments that can be given to juvenile delinquent children who are not yet 14 years old are as follows:<sup>20</sup>

- 1) Return to parent or guardian.
- 2) Leave it to someone.
- 3) Treatment in a mental hospital.
- 4) Treatment in a social welfare facility.
- 5) Must attend formal education and/or training organized by government agencies or private bodies.
- 6) Revocation of driver's license.
- 7) Repairs due to criminal acts.

## 2. The Mechanism of Applying Restorative Justice in Handling Juvenile Delinquent

In the previous discussion, restorative justice in handling juvenile delinquent is recovery counseling involving victims, perpetrators, and their respective families in coordination with law enforcement and community leaders, aiming to realize children's rights and protect children in conflict with the law. The conditions for applying restorative justice are:<sup>21</sup>

- 1) Conditions for the perpetrator such as the age of the child, the threat of punishment (maximum 7 years),

confession of guilt and remorse, consent of the victim and family, frequency of the perpetrator's crime.

- 2) If the child has previously violated the law, the nature and number of previous offenses must still be considered for restorative justice. When finding records that the child frequently violates the law, it becomes difficult to provide restorative justice.
- 3) Whether the child admits the crime and regrets it will be a positive consideration in resolving the case through a restorative justice approach if the child does so.
- 4) The impact of the act on the victim, the behavior of the child apologizing to the victim can be the basis for a settlement using restorative justice. If the violation has a serious impact on the victim, and the victim does not forgive the perpetrator, then they cannot use restorative justice as a solution
- 5) The attitude of the family of the child offender, if the family covers up the child's mistakes in the implementation of restorative justice, it will be difficult because support from parents and family becomes important in the implementation of restorative justice

There are several uses of the program in implementing restorative justice, namely:<sup>22</sup>

- 1) Restorative justice programs can be used at any stage of the criminal justice system.
- 2) A restorative justice process, which only sufficient evidence to prosecute the perpetrator with the freedom and

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<sup>20</sup> Napitupulu, *Pemidanaan Anak Dalam Rancangan KUHP*.

<sup>21</sup> Lilik and Purwastuti Yudaningsih, "Penanganan Perkara Anak Melalui Restorative Justice," *Jurnal Ilmu Hukum Jambi* 5, no. 2 (2014): 43277, <https://www.neliti.com/id/publications/43277/>.

<sup>22</sup>Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM Republik Indonesia, *Pengkajian Hukum Tentang Penerapan Restorative Justice Dalam Penyelesaian Tindak Pidana Yang Dilakukan Oleh Anak-Anak* (Jakarta: Kementerian Hukum dan HAM, 2013).

voluntarism of the victim and perpetrator, as well as the freedom of the perpetrator and victim to withdraw their consent at any time during the process. Contracts made voluntarily are also made and contain appropriate and proportionate obligations.

- 3) The settlement is based on basic facts that are relevant to the case, and the order of the perpetrators cannot be used as incriminating evidence in subsequent trials.
- 4) Disparities due to power imbalances and cultural disparities are taken into account when applying restorative justice.
- 5) The safety of the parties, this must also be considered in the restorative justice process.
- 6) If restorative justice is inappropriate or impossible, the case will be referred to a criminal justice officer for determination to avoid delays. Authorities encourage perpetrators to hold victims and affected communities accountable.

There are several types of treatments with a restorative justice approach, namely:<sup>23</sup>

- 1) Victim-perpetrator mediation, aims to resolve the dispute through negotiations to reach an agreement between the parties, with the help of a mediator
- 2) Family counseling, the facilitator facilitates the resolution of children's cases through family counseling, paying attention to the involvement of parties such as victims, perpetrators, families and people closest to the child, as well as providing information on the place, time and mechanism of the meeting offered.

- 3) Community deliberation, resolving juvenile delinquent through community consultations involving the perpetrator's family, victim's family and community/religious leaders by taking into account the involvement of parties who were harmed by the perpetrator's actions, supporting parties of the perpetrator and victim, as well as information related to the place, time and mechanism of the meeting.

The handling mechanism with a restorative justice approach is as follows:<sup>24</sup>

- 1) Investigators, public prosecutors, and judges must consider the type of violation, the age of the child, the results of the community survey of the correctional institution, and support from the family and the community
- 2) Stages in the deliberation, such as digging up information on the perpetrator regarding the actions and responsibilities of the perpetrator, information on the victim regarding the loss of the victim and things that can compensate for the perpetrator's mistakes. Family considerations related to bearing the blame and ways to prevent repetition of actions. Negotiations and agreements related to the needs of victims and the community, realistic and timely plans, protection of children's rights and child development as well as anticipation if plans are successful and not successful.
- 3) If the settlement results in a peace agreement, with or without compensation, surrender to parents, participation in community education or training and community service. Agreements are determined in the delegated delegation and considered

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<sup>23</sup> Indonesia.

<sup>24</sup> Indonesia.



by the public prosecutor and judge as decision making at the time of prosecution.

The mechanism for applying restorative justice can be seen more deeply as contained in several regulations in Indonesia such as the Supreme Court Regulation Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System<sup>25</sup>, Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 Years of Age<sup>26</sup> and Certificate of Director General of Badilum Number 1691/DJU/SK/PS.00/12/2020 dated 22 December 2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts.

#### **A. Supreme Court Regulation Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System**

The definition of diversion deliberation in Supreme Court Regulation Number 4 of 2014 is deliberation between parties involving children and their parents/guardians, victims and/or parents/guardians, community guidance, professional social workers, representatives and other parties to reach diversion agreements through restorative justice. The judge as a facilitator appointed by the head of the court in handling the case of the child concerned. Diversion means transferring the process to a long and very rigid child case settlement system where mediation

or deliberation is an integral part of diversion to achieve restorative justice.

Based on Article 2, diversion applies to children who are 12 years old but not yet 18 years old or 12 years old even though they have been married but are not yet 18 years old. The mediator appointed by the Chairperson of the Court must provide an opportunity for the child to be heard about the accusation, and the parent/guardian must refer to matters relating to the child's behavior and the expected form of settlement, and the child's victim.

The stages of implementing diversion in court are carried out after receiving a decision from the Court Chairman regarding the disposition of any diversion attempt and the determination of the diversion consultation date. After the case submitted, the public prosecutor signs the child and parent/guardian or assistance, victim and/or parent/guardian, community counselor, professional social worker, community official in diversion. The stages of the diversion deliberation consist of:

- 1) Opening with the facilitator outlining the charges, guiding the community as a provider of information on child behavior and social justice, and offering proposed solutions.
- 2) The facilitator provides an opportunity for the child to hear the accusation, the parents/guardian will handle problems related to the child's behavior and the expected resolution, and the child victim/victim/parent/guardian will provide the response to the expected settlement.

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<sup>25</sup>"Indonesia, Regulation of the Supreme Court Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System Number 4 of 2014, State Gazette Number 1052 of 2014." (n.d)..

<sup>26</sup> "Indonesia, Government Regulation Guidelines for the Implementation of

Diversion and Handling of Children Under the Age of 12 (Twelve) Years Number 65 of 2015, State Gazette Number 194 of 2015, Supplement to the State Gazette Number 5732,," n.d.

- 3) Professional social workers provide information about the social situation of child victims and suggest solutions.
- 4) After obtaining the results of deliberation regarding the avoidance agreement made with the consideration that the agreement does not violate the law, religion, public order and public decency, decency or cannot be carried out by the child, or does not contain anything that is not good.
- 5) Diversion deliberations are recorded in the Minutes of Diversion signed by the diversion facilitator and the substitute clerk/registrar and reported to the Chairperson of the Court.
- 6) The decision on the diversion agreement is made by the Chairperson of the Court and if it does not meet the requirements, so it is amended with diversion guidelines and a decision is made to terminate the examination.

**B. Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (Twelve) Years Old**

Based on government regulations regarding guidelines for the implementation of diversion and the handling of children who are not yet 12 years old. Diversion aims to achieve peace between victims and children, resolve child cases outside the judicial process, prevent children from deprivation of independence, encourage the community to participate, and instill a sense of responsibility in children.

The diversion agreement is carried out by investigators, public prosecutors and judges. The diversion process carried out must consider the category of crime, the age of the child, the results of community research and support from the family and community environment

in conducting diversion. The results of the diversion agreement are in the form of peace with or without compensation, handover to parents/guardians, participation in education or training in educational institutions or LPKS for a maximum of three months and community services.

A diversion agreement without the consent of the victim and/or the family of the victim's child can be carried out by the investigator together with the child and/or his family, and the community advisor by fulfilling the conditions if the crime in the form of a violation, a minor crime, a crime without a victim or the value of the loss of the victim is not more than the value of the local provincial minimum wage. With the results of the agreement such as the return of losses in the event of a victim, rehabilitation is returned. The diversion procedure is carried out as follows:

- 1) Investigators are required to report to the public prosecutor about the start of the diversion effort and the implementation of the diversion effort within a maximum of 1x24 hours.
- 2) Investigators inform and offer settlement of cases through diversion to children and/or parents/guardians, as well as victims or child victims and/or parents/guardians.
- 3) If an agreement is not reached, the investigator will continue the investigation and submit an official report regarding the diversion effort to the public prosecutor.
- 4) Diversion is completed within 30 days from the start of diversion, discussion of diversion is led by investigators, community counselors act as deputy facilitators. Attended by children and/or parents/guardians, victims or child victims and/or parents/guardians and professional social workers

- 5) The investigator issues a decision to stop the investigation if an agreement is not reached no later than three days after receiving the court's decision for a criminal examination with a copy to the Head of the local District Court.

**C. Certificate of the Director General of Badilum Number 1691/DJU/SK/PS.00/12/2020 dated 22 December 2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts**

A restorative justice approach can be applied to criminal acts, including:

- 1) Minor crimes with criminal threats regulated in Articles 364, 373, 379, 384, 407 and 482 of the Criminal Code with a loss value of not more than Rp. 2,500,000, a peace mechanism between the perpetrator and the victim as well as the victim's family and community leaders. Judges make peace efforts and prioritize restorative justice in their decisions. If restorative justice is achieved, it will be included in the consideration of the decision.
- 2) Child cases, a restorative approach with the stipulation of diversion is regulated in Law Number 11 of 2012 concerning the Juvenile Justice System.
- 3) Cases of women in conflict with the law, restorative justice based on the Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women Facing the Law.
- 4) Narcotics cases, the application of restorative justice can be applied only to addicts, abusers, victims of abuse, narcotics dependence, and narcotics used for one day. The panel of judges may order narcotics addicts and narcotics abuse newspapers to receive treatment, care, and recovery at

medical rehabilitation institutions and/or social rehabilitation institutions.

**Conclusions**

The philosophical concept of restorative justice in juvenile delinquent can be seen from the second principle of Pancasila and the preamble to the 1945 Constitution, followed by Indonesian regulations that have been based on children's rights as contained in the Convention on the Rights of the Child by Presidential Decree No. 36/1990, Law No. Law Number 23 of 2002 concerning Child Protection, Law Number 11 of 2012 concerning the Criminal Justice System for Children, because of the lack of Law Number 3 of 1997 concerning Juvenile Court in providing justice for children.

The mechanism for applying restorative justice to dealing with children's cases can be seen through the use of programs and other types of social justice approaches, and supported by Supreme Court Regulation Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System, Government Regulation Number 65 of 2015 concerning Guidelines for Implementing Diversion and Handling of Children Under 12 Years of Age and Certificate of Director General of Badilum Number 1691/DJU/SK/PS.00/12/2020 dated December 22, 2020 regarding Guidelines for the Implementation of Restorative Justice in the General Courts Environment.

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