

# The Effectiveness of Restorative Justice in Resolving Juvenile Criminal Cases: An Examination of Legal and Social Perspectives

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## Abstract

The objective of this research is to examine and address issues pertaining to the enforcement of the law in instances of violent criminal activity perpetrated by students of legal age who are enrolled in educational institutions. External factors, including association, education, and social environment, exert a significant influence on children's criminal behavior, which frequently originates from the tendency to emulate negative behaviors and the lack of adequate parental supervision. This research employs a normative legal approach to elucidate the nature of the penalties imposed upon minors who perpetrate criminal acts, as delineated in the Juvenile Criminal Justice System No. 11/2012. The findings indicate that to avert criminal conduct by minors, it is imperative to implement sustainable development initiatives that bolster the survival, physical, mental, and social advancement of children, while safeguarding them from threats that could jeopardize their future and the nation. The juvenile criminal justice system incorporates community involvement throughout the entirety of the case process. Crimes occurring within the community are shaped by the prevailing social conditions, along with individual factors pertaining to the perpetrators and victims. At the conclusion of each case, the community is tasked with facilitating the reintegration of offenders and victims back into the social milieu. This is achieved through either the establishment of new informal institutions or the reinforcement of existing formal ones.

**Keywords:** *restorative, justice, legal, juvenile*

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## INTRODUCTION

Children are a valuable national resource, and it is the responsibility of the government to ensure their well-being and development. To achieve this, it is essential to prioritize their needs and provide them with the necessary support and resources to become strong and capable individuals. In order to facilitate the development of children, it is essential to provide legal facilities and infrastructure that can anticipate and address potential issues that may arise. Such facilities and infrastructure are designed with the interests of children in mind, as well as those concerning deviations in attitudes and behavior that may result in the next generation of the nation being compelled to face the court.

Additionally, the term "children" encompasses those who have committed offenses classified as juvenile delinquency under criminal law. Romli Atmasasmita defines juvenile delinquency as any act or behavior of a child under the age of 18 years, unmarried, that violates applicable legal norms and may impede the child's personal development (Oematan et al., 2022).

The problem of access to justice remains a significant challenge for all stakeholders, including the government, academic institutions, and non-governmental organizations (NGOs). These groups are actively engaged in efforts to address this issue. The concept of access to justice in Indonesia is based on two fundamental objectives of the legal system: firstly, that it should be accessible to all individuals from diverse backgrounds; and secondly, that it should be capable of producing just outcomes for all, both as individuals and as members of groups. The fundamental premise of this concept is to attain social justice for all citizens, regardless of their background.

In the context of Indonesia, the concept of access to justice encompasses both the situation and process through which the state ensures the fulfillment of fundamental rights in accordance with the 1945 Constitution and the universal principles of human rights. It also entails guaranteeing that every citizen has the capacity to understand, realize, and exercise these basic rights through both formal and informal institutions. This is achieved through the provision of effective and responsive public complaint mechanisms, which enable individuals to obtain the optimal benefits and improve their quality of life (Apriliyanto & Sulchan, 2021).

As outlined in the 1945 Constitution, the state has four fundamental objectives: to protect the Indonesian nation and homeland, to promote general welfare, to educate the population, and to participate in the implementation of a global order based on independence, enduring peace, and social justice. It is imperative that Indonesia's legal and political economy policies be considered in conjunction with these four objectives.

In order to achieve the objectives set out in the Constitution, the State is engaged in the process of developing a range of social, legal and economic instruments, including the cultivation of human resources with a view to enhancing the conditions of social life. One of the most pivotal instruments is the protection of children.

The definition of a child, when examined further with respect to chronological age according to legal standards, may vary according to geographical location, temporal circumstances, and the particular objectives and purposes for which such a determination is made. This, in turn, affects the limits that are employed to ascertain the age of the child. With regard to the definition of a child, or the criteria for determining who is to be categorized as a child, a number of different opinions are in evidence. In Islam, for instance, the onset of adulthood is not determined by a specific age but rather by the physical and mental development of the individual. In the case of girls, this is marked by menarche, while in boys it is indicated by the experience of wet dreams. The criteria for adulthood in Islam are thus based on the observation of physical changes in boys and girls (Tutuko & Riany, 2024).

With the enactment of Law No. 11/2012 on Specialized Psychiatric Care and Treatment for Minors (SPPA), which officially replaced Law No. 3/1997 on Juvenile Justice, a new era of change has emerged. In the legal domain of juvenile criminal justice, the traditional approach has been to impose absolute punishment on children who commit criminal acts. This legal paradigm emphasizes that children who commit crimes must be punished in an appropriate manner, a concept known as the right to retaliate appropriately, or *ius talionis*. This approach is not significantly different from the one taken towards adults who commit crimes. The legal system has undergone a transformation, shifting its focus from a retributive approach to one that prioritizes restorative justice. This shift has led to the development of more effective processes for children involved in the judicial system. The legislative changes, including the establishment of the "Child Criminal Justice System," were enacted by the President in collaboration with the DPR.

## **METHOD**

This research employs normative juridical research methods, with the primary source of legal material being the subject of the study. This research utilises primary legal materials, namely Law No. 23/2002 on Child Protection, Law No. 35/2014 on Amendments to Law No. 23/2002 on Child Protection, and Law No. 11/2012 on Juvenile Justice System. Additionally, secondary legal materials, which can elucidate primary legal materials, are employed (Muhammad Riduan & Syaiful Asmi Hasibuan, 2023).

## **RESULT & DISCUSSION**

A review of the definition of a child in terms of chronological age according to the law reveals that it can vary depending on a number of factors, including the place, time, and purposes involved. This has an impact on the limits used to determine the age of the child. With regard to the question of the definition of a child or the criteria for someone to be categorized as a child, it is possible to identify a number of different opinions. In the Islamic tradition, the concept of baligh, or maturity, is not contingent on a specific age but rather on the individual's physical and mental development. In the case of girls, the criteria for adulthood can be identified by the onset of menarche. In contrast, boys are considered to have reached adulthood when they have experienced nocturnal emission. In Islam, the determination of adult criteria is based on the observation of physical changes in boys and girls (Tan et al., 2024).

In Indonesia, the definition of a child is set forth in several statutory provisions, as follows: The term "children" is defined in Article 1, Number 2 of Law No. 4 of 1979 concerning Child Welfare. In accordance with the aforementioned definition, a child is defined as an individual who has not reached the age of 21 years and has not entered into a marital union. An individual who has not yet reached the age of 21 years but has entered into a marital union is no longer considered a child, but rather an adult.

In accordance with the Civil Code (Article 330, paragraph 1), an individual is not considered an adult until they reach the age of 21, unless they have entered into a marriage contract prior to reaching that age.

In conjunction with Law No. 23 of 2002 concerning child protection, Law No. 35 of 2014 defines a child as a person under the age of 18 (Article 1, point 1). A child is defined as an individual who has not yet reached the age of 18, including those who are still in the womb. In accordance with the stipulations set forth in Law No. 11/2012 on Juvenile Justice System, Article 1, point 3, children are defined as individuals who have reached the age of 12 but have not yet attained the age of 18 (Mhd Tondi Irawan et al., 2023).

In Article 1 of the Convention on the Rights of the Child, the definition of a child is formulated as "every human being under the age of 18 years, unless under the law applicable to children it is determined that adulthood is reached earlier."<sup>4</sup> From the various interpretations of the definition of a child presented above, for the purposes of this research, the author refers to the definition contained in the SPPA Law. In the aforementioned legislation, the term "children" as defined in Article 1 of Law No. 11 of 2012 concerning the Child Criminal Justice System is defined as follows:

The term "children in conflict with the law" encompasses three distinct categories: (1) children who are involved in criminal activities, (2) children who are victims of criminal acts, and (3) children who are witnesses to criminal acts.

The term "children in conflict with the law" is used to describe children who have reached the age of 12 (twelve) years but not yet 18 (eighteen) years old and who are suspected of committing a criminal offense (Franciscus Xaverius Wartoyo., 2024).

A child who has been victimized by a criminal act is defined as a child who has not yet reached the age of 18 and has suffered physical, mental, and/or economic harm as a result of a criminal offense. A child who is a witness to a criminal offense, hereinafter referred to as a child witness, is a child who is not yet 18 years of age who is able to provide information for the purpose of investigation, prosecution, and examination in court about a criminal case that he or she has heard, seen, and/or experienced firsthand. Romli Atmasasmita posits that the criminal justice system is a law enforcement apparatus, encompassing a legal aspect that prioritizes the operationalization of laws and regulations in an effort to address criminality and achieve legal certainty. Conversely, if the criminal justice system is regarded as a component of social defense, which is concerned with the realization of public welfare, then the criminal justice system encompasses social elements that prioritize expediency. The overarching objective of the Ultimately, the criminal justice system's objective is to achieve public welfare, which is the immediate goal of social policy. This entails reducing both the incidence of crime and recidivism. If this objective is not met, it is evident that the system is not operating effectively (Shpak et al., 2021).

The term "criminal justice system" denotes a functional mechanism for crime prevention that employs a fundamental system methodology. This methodology entails the integration of all constituent elements into a unified system, wherein each element is interrelated and exerts influence over the others. In this approach, the police, prosecutors, courts, and correctional institutions represent pivotal elements, exhibiting interconnectivity and mutual influence (National Research Council, 2014).

The protection of children undergoing imprisonment is legally enshrined in the enforcement of their rights as stipulated in Article 4 of the relevant legislation. These rights include: a reduction in the criminal period; assimilation; the right to leave to visit family; parole; leave before release; conditional leave, and any other rights in accordance with the provisions of laws and regulations.

The Universal Declaration of Human Rights (UDHR), Article 25, Paragraph (2), asserts that mothers and children are entitled to special care and assistance. Furthermore, the document stipulates that all children, regardless of whether they were born within or outside of wedlock, are entitled to the same social protection (Nazeri & Dhanapal, 2019).

Restorative justice is a concept that originated in countries where the English language is the primary language, including Canada, Australia, New Zealand, and the United Kingdom. The continued use of the term "restorative justice" is intended to prompt an immediate and profound shift in our conceptual framework. The concept of restorative justice can be considered equivalent to the aforementioned concept. In essence, restorative justice is a concept of punishment that strives to establish a fairer and more balanced criminal justice system, taking into account the interests of the perpetrator, the victim, and the community (Rahman, 2019).

Restorative justice has been implemented in numerous countries worldwide, including the United Kingdom, Austria, Finland, Germany, the United States, Canada, Australia, South Africa, Jamaica, and Colombia. The concept of restorative justice has emerged as a response to the shortcomings of the criminal justice system in addressing juvenile criminal cases, more than two decades ago. The United Nations Working Group on Juvenile Justice defines restorative justice as a process in which all parties involved in a particular crime come together to resolve the issue at hand and consider how to address any future consequences. The process in question is essentially conducted through the medium of discretion and diversion, which entails the avoidance of the criminal court process and the resolution of the matter through deliberation outside the formal process. It is notable that the concept of settlement via deliberation is not a new phenomenon in Indonesia, where customary law does not differentiate

between criminal and civil cases and allows for the possibility of achieving equilibrium or restoring the situation through deliberation (Шиловская & Ситдикова, 2018).

In cases where a person is discovered committing an illicit act in the presence of an authority figure, the arrest is carried out without a warrant. The term "caught red-handed" is used to describe a number of situations, including the following: An individual is taken into custody while in the process of committing an offense; An individual is apprehended shortly after perpetrating a criminal act.

It is similarly of great consequence in the criminal process for children that due attention be paid to the following provisions with regard to detention: The decision to detain an individual is made with due consideration of the interests of the child and the interests of society at large. The rationale for the detention must be explicitly stated in the detention warrant. The location where children are held in custody must be distinct from the area where adults are detained. While a child is in detention, it is essential to ensure that their physical, spiritual, and social needs are met (Nashriana et al., 2023).

The detention provisions set forth in KUHAP also delineate the conditions, which are comprised of both subjective and objective elements. Subjective conditions are implemented as a means of deterring the suspect's actions, including: Such offenses include escape, destruction or alteration of evidence, and repeat criminal offenses.

In accordance with Article 1, paragraph 1 of Law No. 35/2014 on Child Protection, a child is defined as "a person who has not yet reached the age of 18 (eighteen) years, including children still in the womb." Meanwhile, Article 1, paragraph (3) of Law No. 11/2012 concerning the Juvenile Justice system elucidates the status of children in conflict with the law. These are defined as children who have reached the age of 12 (twelve) years, but not yet 18 (eighteen) years old, who are suspected of committing criminal acts.

In essence, the obligations and responsibilities of the state and government in matters of child protection are delineated in the Child Protection Law. All children have the right to be treated with respect and dignity, regardless of ethnic origin, religion, race, social class, sex, language, legal status, birth order or physical and/or mental condition (Article 21). Furthermore, the state must provide support for the development of appropriate facilities and infrastructure for the implementation of child protection measures (Article 22).

The obligations and responsibilities of the state in relation to child protection are as follows: The responsibilities of the community include ensuring the protection, maintenance, and welfare of children, while respecting the rights and obligations of parents, guardians, or other individuals with legal responsibility for children (Article 23). Additionally, children are guaranteed the right to express their opinions in accordance with their age and level of cognitive development (Article 24).

The enactment of Law No. 22/2002 on the Indonesian National Police, colloquially known as the Police Law, has served to provide a legal framework that offers significant assistance to the police in the fulfillment of their duties, obligations, and authorities in the context of law enforcement. The substance of the law has thus far provided indirect support, as evidenced by its inclusion of the authority of investigators, the classification of perpetrators, and provisions that accommodate all forms of investigation, including those pertaining to criminal cases involving children.

The fundamental issue pertaining to law enforcement is the potential influence of various factors. These factors may have a neutral meaning, such that the positive and negative impact depends on the content of the factors in question. These factors are interrelated because the essence of law enforcement is, in essence, a measure of the effectiveness of law enforcement. This results in a lack of harmonization in the performance of this judicial component. A more detailed description of the impact is provided below. The difficulty in self-assessing the success

or failure of each agency in relation to their duties, as well as the difficulty in self-solving the main problems of each agency, can be attributed to the fact that the responsibilities of each agency are often not clearly defined. As a result, each agency is not compelled to prioritize the overall effectiveness of the criminal justice system.

In the absence of a unified, collaborative working relationship and a shared understanding of the desired outcomes, the integrated justice system will be unable to effectively deter or reduce crime. It is essential that each component of the criminal justice system plays a specific and significant role in crime prevention by mobilizing all the potential members and resources available in their respective institutions (Wahyudi et al., 2022).

In the modern era, the role of law enforcement agencies has shifted from a pursuit of justice to one focused on adherence to established procedures and regulations. This shift has resulted in a significant decline in the prominence of justice within these agencies.

With regard to the juvenile criminal justice system, the objective of restorative justice can only be achieved if the judge, in making his decision, is oriented towards the best interests of the child. This entails paying attention to the growth and development of the child, as well as restoring the child to his original state. In addition, the judge must avoid negative stigma and retaliation, and must consider legal values and the sense of justice that exists in society.

## **CONCLUSION**

The intention to establish justice for children who have committed crimes is to implement the stipulations set forth in Law No. 11/2012 on the Juvenile Criminal Justice System. This legislation defines the juvenile justice process as a comprehensive endeavor, encompassing not only the processing of children who have violated the law but also the identification and remediation of the underlying causes of juvenile delinquency. Furthermore, it is essential to transition the resolution of juvenile cases within the criminal justice system to an out-of-court process through deliberation, engaging all stakeholders in the legal process. The use of restorative justice in children's criminal cases allows for a resolution that is designed to ensure the dignity of the child is upheld, and is conducted with the best interests of the child as a primary consideration. Additionally, it allows for the consideration of justice for victims. The fundamental principles of restorative justice encompass the healing of victims and offenders, moral education, community involvement and attention, dialogue, forgiveness, responsibility, and meaningful change for the child. However, the legal process commences with an investigation led by experienced professionals versed in the nuances of investigating crimes committed by adults and equipped to navigate challenges specific to children.

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