
LEGAL CERTAINTY AND JUSTICE IN THE IMPLEMENTATION OF RESTORATIVE JUSTICE TOWARDS CHILD CRIMES IN INDONESIA

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Abstract

The implementation of restorative justice in the Indonesian juvenile criminal justice system represents a paradigm shift from a retributive approach to a more humanistic and contextual approach. Restorative justice is not only intended as a mechanism for resolving cases outside the courts, but also as a means to achieve substantive justice and legal certainty that is balanced between perpetrators, victims, and the community. This study aims to analyze two main aspects: legal certainty in the application of restorative justice to juvenile perpetrators of crimes and the extent to which this approach is able to create substantive justice. The method used is normative juridical with a qualitative-descriptive analysis of legal norms and their implementation practices. The results of the study indicate that although restorative justice has been normatively accommodated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, its implementation still faces various serious obstacles. The lack of uniformity in technical regulations, weak capacity of law enforcement officers, and minimal victim participation are the main challenges in ensuring legal certainty and justice in practice. This study recommends harmonizing cross-institutional regulations, increasing the capacity of officials, and establishing supporting institutions that can ensure the fair, transparent, and accountable implementation of restorative justice. With the right approach and consistent implementation, restorative justice has the potential to become a key milestone in juvenile criminal law reform that upholds the protection of children's rights and social justice.

Keywords: Restorative Justice, Legal Certainty, Juvenile Criminal Justice

INTRODUCTION

In the development of modern criminal law, the justice paradigm has undergone a fundamental shift from a retributive approach to a more humanistic and restorative one. In Indonesia, this shift is reflected in the growing acceptance of the concept of restorative justice in various legal systems, including the juvenile criminal justice system. This is not merely a response to the increasing number of children in conflict with the law, but also a recognition of the need for a legal system that is more responsive to the best interests of children and social sustainability. In this context, the need arises to critically examine the application of restorative justice to juvenile crimes, particularly in relation to the principles of legal certainty and justice as guaranteed under the national legal framework and international legal principles.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System affirms that the judicial process for children must prioritize a non-punitive approach, namely resolving cases outside the courtroom while upholding the principles of restorative justice. One implementation is through the diversion mechanism, which must be implemented during the investigation, prosecution, and examination stages in juvenile court. However, in practice, the application of restorative justice principles still faces various challenges, both normative and practical. Most law enforcement officers still prioritize a legal-formal approach in handling juvenile cases, thus the potential of restorative justice is not fully realized (Nurani, 2020).

On the other hand, the principle of legal certainty as stated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "Everyone has the right to recognition,

guarantees, protection, and fair legal certainty as well as equal treatment before the law." This is the main parameter in assessing the extent to which the application of restorative justice in children's cases can guarantee the protection of children's legal rights consistently and non-discriminatory. When restorative mechanisms are applied unevenly or even contrary to positive legal norms, the principle of legal certainty guaranteed by the constitution will be disturbed, and can even become a source of injustice itself (Saragih, 2021).

Justice in the context of juvenile criminal law cannot be separated from the principle of child protection as stipulated in the Convention on the Rights of the Child (CRC) which has been ratified by Indonesia through Presidential Decree Number 36 of 1990. In this document, it is emphasized that every child has the right to be treated in accordance with their dignity and human rights, and every legal action against a child must pay attention to the best interests of the child. Therefore, the juvenile criminal justice system in Indonesia is ideally directed not only to punish, but also to educate and restore social relationships that are disrupted due to criminal acts (Rahayu, 2018).

However, the reality on the ground shows that many diversion processes and other restorative justice efforts fail due to various obstacles, such as a lack of understanding among law enforcement officials, limited technical regulations, and a lack of institutional support. In some cases, the resolution of juvenile cases still prioritizes repressive formal legal processes and ignores the psychosocial impacts on child development. This is where the crucial issue lies: how to ensure that the application of restorative justice to juvenile offenders remains within the bounds of legal certainty and the principle of balanced justice between victims, perpetrators, and society (Fauzi, 2019).

Furthermore, legal certainty, as a fundamental principle in a state based on the rule of law, requires regulations that are not only written but also implementable and just. In this regard, restorative justice becomes a testing ground for the principle of legal certainty, as its flexible, contextual, and socially consensus-based nature is often considered at odds with the principle of legality in criminal law. Therefore, a deeper study is needed on how national law accommodates a restorative approach without sacrificing legal certainty, and how the principle of justice can still be upheld in processes that are not entirely formal (Marzuki, 2017).

Within this framework, the primary challenge that arises is how to balance the desire to provide protection and recovery for children through restorative justice with the state's obligation to ensure legal certainty and justice for all parties involved in the legal process. A tension often arises between the values of substantial justice sought through restorative justice and strict and sometimes rigid legal procedures. When these two interests are not managed harmoniously, the juvenile criminal justice system will experience normative and institutional disorientation (Wahyuni, 2021).

This situation is further complicated when law enforcement officials have broad discretion in determining whether a case is suitable for resolution through a restorative approach. The lack of clear and uniform standards for assessing the suitability of diversion cases often creates legal gaps and uncertainty in implementation. In some cases, children who commit minor crimes are still prosecuted simply because law enforcement officials deem the case "unsuitable" for diversion without objective consideration. This is where the role of consistent, child-protection-based criminal law policies becomes crucial (Hutagalung, 2022).

Thus, this research is highly relevant in answering fundamental questions: to what extent is the implementation of restorative justice in Indonesia's juvenile criminal justice system able to guarantee the principles of legal certainty and justice? How have its regulations and implementation been implemented, and where does the disharmony between legal ideals and practice lie? These questions are crucial to explore in order to provide policy recommendations and a more progressive and humanistic direction for juvenile criminal law reform.

To address these issues, this paper will examine two main aspects in depth. First, the legal certainty aspect in the implementation of restorative justice for juvenile offenders, which will be discussed by examining the normative framework and practices of diversion implementation. Second, the fairness aspect in the implementation of restorative justice, from the perspective of the perpetrator, the victim, and the community, which serves as a parameter for the effectiveness of a restorative

justice-based juvenile criminal justice system. It is hoped that this study will not only be theoretical but also offer normative and practical solutions for improving the juvenile criminal justice system going forward.

METHOD

This study uses a normative juridical approach with qualitative methods, which is based on a review of laws and regulations, official state documents, and relevant legal doctrines regarding the juvenile criminal justice system and the implementation of restorative justice in Indonesia. The main data sources in this study include Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, its implementing regulations, jurisprudence, and various scientific literature discussing the principles of legal certainty and justice in the context of handling juvenile cases. This study also uses secondary data in the form of study results, academic journals, and relevant legal articles to identify normative and implementative issues in the implementation of restorative justice. The analysis was conducted descriptively and analytically, with the aim of describing and evaluating the extent to which the principles of legal certainty and justice are reflected in restorative policies and practices for children in conflict with the law.

RESULTS AND DISCUSSION

Aspects of Legal Certainty in the Implementation of Restorative Justice for Children in Indonesia

Legal certainty is a fundamental principle in the Indonesian legal system, constitutionally guaranteed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This principle is the main support in carrying out all legal processes, including in handling juvenile crimes. In the context of restorative justice, the principle of legal certainty is tested by an approach that tends to be flexible, participatory, and relies on deliberation as a method of conflict resolution. The gap between the formal form of law and this restorative approach creates a dilemma in law enforcement for children in conflict with the law. While positive law demands certainty through standard procedures, restorative justice emphasizes contextual justice and the restoration of social relations. This is what makes the implementation of restorative justice a testing ground for the state's commitment to guaranteeing legal certainty while upholding substantial justice.

The application of restorative justice to children is explicitly regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), specifically in Article 6 letter c, which states that the juvenile criminal justice system prioritizes case resolution through diversion. Diversion is part of the concept of restorative justice, namely the process of transferring the resolution of juvenile cases from the criminal justice process to a process outside the criminal justice system by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution. However, in practice, the implementation of diversion is often inconsistent and influenced by subjective factors of law enforcement officials. Many cases that actually meet the requirements for diversion are still processed formally until they reach the courts (Hasanah, 2020).

This uncertainty stems from several factors. First, there remains a gap in the technical regulations regarding restorative justice mechanisms at various stages of the juvenile criminal justice system. Although the Juvenile Justice and Child Protection Law mandates diversion at all stages (investigation, prosecution, and court hearings), not all law enforcement agencies understand or have uniform technical guidelines. As a result, the implementation of diversion relies heavily on the discretion of each agency, which can lead to disparities in the treatment of children in conflict with the law (Rinaldi, 2019).

Second, there are no clear quantitative and qualitative parameters for assessing the appropriateness of juvenile crimes for resolution through a restorative approach. The law only states that diversion can be implemented for cases with a sentence of less than seven years and not involving a repeat offense (Article 7 of the Juvenile Justice and Child Protection Law), but there are no detailed guidelines on how to assess the "appropriateness" of a case. This leaves room for arbitrary interpretation by law enforcement officials, which can lead to legal uncertainty. Often, due to ignorance or reluctance on the part of law enforcement, the diversion process is ignored and cases are referred directly to the courts, even though they are normatively appropriate for resolution through restorative channels (Yuliarti, 2022).

Third, there is an overlap between the principles of restorative justice and the principle of legality in criminal law. The principle of legality requires that every criminal act and its sanctions be regulated in writing by law (*nullum crimen sine lege*). On the other hand, restorative justice often involves informal processes and does not always result in a binding written decision, as is customary in court decisions. When a case is resolved through restorative justice without being recorded in a formal and legal document, there is a risk of ignoring the principle of legality, which can ultimately undermine the integrity of the legal system as a whole (Marzuki, 2017).

This is where the importance of restorative justice regulations and implementation systems lies, with a strong, structured legal basis and the ability to be implemented uniformly throughout Indonesia. The government, through the Attorney General's Office, has issued Attorney General Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice as part of an effort to standardize the RJ mechanism. However, this regulation is not yet legally binding for other institutions such as the police and courts, resulting in implementation gaps that lead to inconsistencies. Therefore, legal certainty cannot be fully guaranteed if it relies solely on sectoral regulations from each law enforcement agency (Fauziah, 2020).

From a legal perspective, restorative justice should not conflict with the principle of legal certainty, but rather should be seen as an alternative mechanism that remains within the framework of positive law. Therefore, strengthening legislation is necessary to align restorative justice values with the national criminal law structure. One approach is to harmonize regulations between the Child Protection and Child Protection Law (UU SPPA), the Criminal Procedure Code (KUHAP), and other implementing regulations, so that the implementation of restorative justice is not merely optional but becomes part of an integrated and binding system (Putri, 2021).

Furthermore, legal certainty also concerns the protection of children's rights in the legal process. In many cases, uncertainty in the implementation of restorative justice actually creates loopholes for child rights violations. For example, when the diversion process fails due to the dominant role of law enforcement without adequate participation of children and their families, this can be categorized as a violation of the participatory principle guaranteed in the Child Protection Law (Law No. 35 of 2014 in conjunction with Law No. 23 of 2002). This is exacerbated by the fact that in some areas, supporting facilities such as Correctional Centers (BAPAS) or social workers competent in mediating children's cases are lacking, resulting in diversion failing to be implemented optimally (Nugroho, 2022).

Therefore, to ensure legal certainty in the implementation of restorative justice for children, three strategic steps are necessary. First, there needs to be a binding national regulation that applies across institutions regarding standard procedures for restorative justice for children. This regulation must include criteria for cases eligible for restorative justice, implementation mechanisms, mandatory participation of relevant parties, and formal documentation of the results of the restorative justice process. Second, the capacity of law enforcement officers regarding the concept, principles, and implementation of restorative justice must be strengthened through ongoing training, including certification for investigators or prosecutors qualified to handle children's cases. Third, the development of supporting institutions, such as independent and legally legitimate child mediation centers, to facilitate the restorative justice process professionally (Simanjuntak, 2021).

Within the framework of legal certainty, it is also important to consider the victim's position in the RJ system. When the RJ process focuses solely on the child perpetrator without providing adequate reparation to the victim, it can be a form of injustice. Therefore, in addition to legal guarantees for children, it is also necessary to explicitly regulate the victim's rights in the restorative justice process, including the right to refuse RJ if they feel they have not received justice, and the right to compensation or social rehabilitation. This aspect remains very weak in RJ practice in Indonesia and needs to be addressed more deeply in the discourse on juvenile criminal law (Prasetyo, 2023).

Thus, the aspect of legal certainty in the application of restorative justice to juvenile crimes concerns not only the existence of legal regulations, but also their consistent, fair, and accessible implementation for all children without discrimination. When the legal system continues to create room for unequal treatment and positions children solely as objects of the law, the principle of justice will never be achieved. Therefore, restorative justice must be seen as an opportunity to improve the juvenile criminal justice system, but it must also be managed within a clear, structured legal framework that guarantees the rights of all parties proportionally.

Aspects of Justice in the Implementation of Restorative Justice for Child Criminals

The concept of justice in the juvenile criminal justice system does not solely lie in punishing the perpetrator, but rather in how the legal system responds to violations of the law committed by children with an approach that ensures restoration, protection of rights, and social balance. In the restorative justice paradigm, justice is defined as the restoration of social damage caused by criminal acts by involving all affected parties—the perpetrator, the victim, and the community—in a fair and equal dialogue process (Zehr, 2002). This principle is an important foundation for juvenile criminal law reform in Indonesia, as mandated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. However, a fundamental question that needs to be examined is the extent to which this approach truly reflects substantive justice, not merely procedural or symbolic.

The justice that is the goal of restorative justice is both corrective and reconciliatory. Corrective means restoring the loss or suffering experienced by the victim, and reconciliatory means restoring social relationships damaged by the child's criminal actions. In practice, this kind of justice cannot be achieved through a retributive approach that emphasizes revenge and punishment. Instead, a restorative approach prioritizes dialogue, acknowledgment of wrongdoing, and a commitment to improvement (Latimer, 2005). Therefore, ideally, any application of restorative justice to child offenders must meet the indicators of substantive justice: active participation by all parties, equal voice in the dialogue process, and a just and restorative outcome for both victims and offenders.

However, this substantive justice often deviates in its practical implementation. Many cases demonstrate that restorative justice is merely an administrative formality to fulfill the diversion requirements of the Child Protection Act. The mediation process is often carried out hastily, without the full involvement of all parties, let alone the active participation of the victim. In fact, in many cases, there is a tendency for law enforcement officials and legal counsel to dominate the process, while child perpetrators and victims are merely the objects of the procedure (Fauzi, 2019). This clearly contradicts the essence of restorative justice, which requires an inclusive, honest, and equitable process.

Another weakness is the imbalance between the perpetrator and the victim in the RJ process. Because the perpetrator is a child, law enforcement officials often overemphasize child protection, neglecting the victim's right to justice. In some cases, victims are not involved or even adequately informed about their rights in the RJ process. This leads to victim dissatisfaction and even rejection of the mediation outcome, as they feel the process only benefits the perpetrator (Prasetyo, 2023). In such circumstances, restorative justice can actually create new injustices, namely ignoring the victim's rights in the name of child protection.

Therefore, justice in the context of RJ must be understood in a balanced and inclusive manner. Restorative justice does not mean ignoring children's criminal responsibility, but rather establishing new ways to place that responsibility in a more constructive manner. For example, by encouraging perpetrators to directly apologize, repair the harm, or undergo a mutually agreed-upon rehabilitation program. This form of accountability not only benefits victims and society but also positively impacts children's moral development by internalizing legal awareness without experiencing the stigma of the criminal justice process (Wahyuni, 2021).

In restorative justice theory, the primary principle that must be maintained is a balanced social relationship between the perpetrator, victim, and community. In the context of child offenders, the RJ process must be facilitated in a non-repressive environment, while remaining firm in upholding the child's moral responsibility. This process requires a neutral, trained facilitator capable of building trust among all parties. Unfortunately, Indonesia currently lacks a national training system for RJ facilitators, so mediation remains dependent on regional initiatives or specific institutions. This results in highly variable quality and a lack of national standardization (Putri, 2021).

Furthermore, justice in RJ must also consider the factor of equal access. Not all child offenders have an equal opportunity to participate in the RJ process. Some regions that lack supporting resources (such as BAPAS, Peksos, or Family Consultation Institutions) ultimately prefer to process children's cases through formal channels. However, justice should be equally accessible to every citizen, including children. This unequal access creates discrimination that is not visible formally but is very pronounced in practice. This contradicts the principle of equality before the law guaranteed by the constitution (Saragih, 2021).

Justice must also be viewed from the perspective of the child as the perpetrator. In many cases, children who commit crimes do not act entirely of free will, but rather due to environmental pressures, structural poverty, or negative adult influences. Therefore, punishment for children must take into account their social, economic, and psychological backgrounds. Restorative justice allows for a contextual and personalized approach to children, so that the resulting solutions are educational, not repressive. For example, in the case of a child stealing food due to hunger, the RJ process can lead to family economic empowerment, rather than simply admitting guilt and apologizing (Hasanah, 2020).

Based on the above, justice in Reconciliation (RJ) is not sufficient merely through a peaceful resolution between the perpetrator and the victim. Justice can only truly be achieved if the process also considers aspects of social recovery, psychological recovery, and structural recovery. In this regard, the state is responsible for providing the infrastructure and support systems that enable the RJ process to run fairly and effectively. For example, this could include providing compensation funds for injured victims, psychological counseling for the perpetrator's children, and certified neutral facilitators. Without these, RJ will remain merely a policy slogan with no real impact on substantive justice (Simanjuntak, 2021).

The implementation of restorative justice also requires regular monitoring and evaluation to prevent it from being misused as a mechanism to "close" cases without a just resolution. There is a tendency for some law enforcement officials to use restorative justice as a means to expedite the resolution of cases without ensuring that the process truly provides justice for all parties. For example, in cases of violence against children among schoolmates, restorative justice is conducted without psychological assistance, merely through teacher-facilitated mediation, and without official documentation or follow-up. As a result, the perpetrator does not change, and the victim remains traumatized (Rinaldi, 2019). This is a deviation from the principles of justice, even though the restorative justice process has been "completed" administratively.

In order for justice to truly be realized in RJ practice, it is necessary to emphasize operational principles as a universal guide in all RJ processes for children. These principles include: (1) full voluntary participation of all parties; (2) admission of guilt by the perpetrator as a primary requirement of the process; (3) active involvement of the victim and the right to reject the results; (4) the presence of a neutral and professional facilitator; (5) settlement based on a legally binding written

agreement; and (6) monitoring the follow-up of the results of the RJ agreement. These principles must be included in national regulations to become non-negotiable operational standards.

Furthermore, justice must also be linked to the ultimate goal of the juvenile criminal justice system, namely social reintegration. The success of juvenile justice can be measured by its ability to reduce recidivism rates, improve social relationships, and restore the psychological well-being of both perpetrators and victims. Studies in various countries show that children who resolve their cases through juvenile justice tend to have lower rates of reoffending than those who undergo formal processes leading to sentencing (Latimer, 2005). Therefore, juvenile justice should be viewed as a long-term investment in the development of a just and sustainable criminal law system.

CONCLUSION

Based on the above description, it can be concluded that the application of restorative justice in Indonesia's juvenile criminal justice system represents a significant breakthrough toward a more humanistic legal system oriented toward child protection. However, its implementation still faces serious challenges, particularly in ensuring legal certainty and realizing substantive justice. The absence of uniform technical regulations, the dominance of formalistic approaches by law enforcement officials, and the lack of supporting infrastructure often result in the restorative justice process being suboptimal, even creating uncertainty and new injustices. Restorative justice should be a mechanism that bridges legal certainty and social justice, not a tool for procedural compromise without real redress.

Therefore, the state needs to immediately take strategic steps to develop binding and standardized national regulations regarding the application of restorative justice in juvenile criminal cases, including establishing an accountable monitoring system for the mediation process and its outcomes. Law enforcement officers must be systematically trained to properly understand the values, principles, and techniques of restorative justice. Furthermore, there must be an institutional commitment to ensure equal involvement of victims, perpetrators, and the community in every RJ process. If implemented consistently and fairly, the restorative justice approach will not only be an alternative solution but also a key path to reforming Indonesia's juvenile criminal justice system.

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