

THE AUTHORITY OF JUDGES IN THE APPLICATION OF RESTORATIVE JUSTICE FOR CHILDREN IN INDONESIA

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Abstract

This study aims to analyze the authority of judges in applying the principle of restorative justice in cases involving children in conflict with the law and the obstacles to its implementation. The research approach uses a normative legal method with a legislative, conceptual, and case approach. Secondary data were collected through a review of six main laws, eight court decisions, and twenty-five related academic sources, then analyzed qualitatively using deductive reasoning. The results show that the authority of judges in applying restorative justice is based on the value of substantive justice as stipulated in Supreme Court Regulation Number 1 of 2024. However, its implementation is still hampered by regulatory inconsistencies between law enforcement agencies, a low level of understanding among officials and the public, and the absence of uniform technical guidelines. This study emphasizes the need for regulatory synchronization and capacity building among

officials to ensure the effective and fair implementation of restorative justice oriented towards the best interests of children in Indonesia.

Keywords: restorative justice; judges; children; criminal law; justice.

Introduction

The dignity and rights of children are universal human values that must be respected and protected by the state, society, and families. Children have a strategic position as the future generation that will determine the direction of future social, economic, and legal development. Therefore, fulfilling children's best interests is a moral responsibility and a constitutional mandate that must be realized in national legal policies and practices.

In this context, protecting children is not only related to fulfilling basic rights such as education, health, and welfare, but also includes protection from legal threats that could adversely affect their growth and development. Along with the acceleration of globalization and advances in science and technology, various social changes have influenced the mindset and behavior of society, including children. One of the obvious negative consequences is the increase in juvenile delinquency, which refers to deviant behavior by children that is contrary to legal, social, and moral standards. Changes in parenting patterns, a lack of attention to character education, and an unfavorable environment are the main factors driving juvenile delinquency.

The protection of children is not limited only to basic rights such as education and health, but also includes protection from the risk of criminalization that can hinder their growth and development. ¹Based on data from the Ministry of Women's Empowerment and Child Protection (KemenPPPA) in 2023, there were more than 1,200 cases of children in conflict with the law in Indonesia, with most cases involving petty theft and minor physical violence. Data from the Central Statistics Agency (BPS) in 2024 also shows that around 62% of child offenders come from low-income families, indicating a correlation between

¹ Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia, Annual Report on the Protection of Children in Conflict with the Law, 2023.

socioeconomic conditions and children's involvement in legal violations.²

This phenomenon shows that the child protection system is not yet fully effective. Many children are still being treated like adults without consideration of their age and psychological condition. Lestari found that more than 70% of child offenders in five major court districts in Indonesia did not have access to diversion or restorative justice mechanisms as mandated by Law No. 11 of 2012 on the Juvenile Criminal Justice System. This condition shows that the principles of guidance and rehabilitation, which should be the basis of the juvenile justice system, have not been optimally implemented.³

Romli Atmasasmita, as quoted by Wagiaty Soetodjo, defines juvenile delinquency as acts or actions committed by children under the age of 18, who are unmarried, violate legal standards, and have the potential to hinder the child's personal growth. The reality in society shows that the lack of law and order is not limited to adults, but also extends to children, who are then known as children in conflict with the law. This term refers to children suspected, charged, or proven to have committed criminal acts that violate the provisions listed in the legislation.

Children have the same fundamental rights as adults, but in law enforcement, there are fundamental differences in handling offenses involving children involved in legal violations. The handling of children's cases should prioritize guidance, education, and rehabilitation, rather than simply imposing criminal sanctions. Unfortunately, in practice, many children are still entangled in legal proceedings without receiving treatment that is in accordance with the principles of child protection. It is not uncommon for children who commit crimes to be treated like adults and end up receiving prison sentences.

This is very concerning because the negative impact is not only on the children involved but also on the future of society as a whole. A juvenile justice system that does not apply the principles of protection and rehabilitation can exacerbate the psychological and social problems

² Central Bureau of Statistics (BPS), Indonesian Crime Statistics 2024, Jakarta: BPS, 2024.

³ Lestari, I., "Problems in the Implementation of Diversion in the Juvenile Criminal Justice System," *Journal of Restorative Justice*, Vol. 3 No. 2 (2022): 45–62.

of minors, thereby potentially increasing the rate of recidivism.⁴ In this context, the role of judges is very strategic. Franc Lopyy likens a judge's decision to a crown that reflects the responsibility, integrity, competence, wisdom, legal knowledge, and noble values that must be instilled in a judge.⁵ When deciding a criminal case, judges must examine the information not solely based on subjective beliefs, but must do so based on valid evidence and consider the values of justice and the benefits of law that exist in society.⁶

Judges who apply the principle of justice must consider several factors, such as the perpetrator's circumstances, the act's consequences, and the interests of the victim and society.⁷ In criminal cases involving children, judges are required to be more prudent in their decisions, so that the verdict not only provides justice for the victim, but also provides optimal protection and guidance for the child perpetrator.⁸ As a manifestation of its commitment to child protection, the Supreme Court of the Republic of Indonesia has issued several regulations that serve as guidelines for judges and other law enforcement officials in handling cases involving children. Some of the important regulations include Supreme Court Regulation (Perma) Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System, Perma Number 1 of 2022 concerning Procedures for Settling Requests and Granting Restitution and Compensation to Victims of Criminal Acts, and Perma Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice.

Of the three regulations mentioned, Perma No. 1 of 2024 plays an important role in strengthening the implementation of restorative

⁴ I. Saimima, "Protection of Children in Conflict with the Law," *Journal of Scientific Studies of the Ubhara Jaya Research Institute*, vol. 9, no. 3 (2008), p. 122.

⁵ A. Prakoso, (2013), *Reform of the Juvenile Criminal Justice System*, (Yogyakarta: Laksbang Grafika), p. 77.

⁶ M. H. Ali (2012), *Simple, Fast, and Low-Cost Justice: Towards Restorative Justice*, (Bandung: PT Alumni), p. 63.

⁷ Deny Haspada, "Legal Analysis of Restorative Justice Practices in Resolving Child Crime Cases in Indonesia" *INFLUENCE: International Journal of Science Review* vol. 6, no. 1 (2024), p. 131–140.

⁸ S. Wahyudi, "Enforcement of Juvenile Criminal Justice with a Progressive Legal Approach in the Context of Child Protection" *Jurnal Dinamika Hukum* vol. 9 no. 1 (2009), p. 15.

justice guidelines in the criminal justice system, especially in cases involving minors who conflict with the law. Restorative justice is an approach to resolving criminal cases that focuses on repairing relationships between those who have committed crimes, those affected by crimes, and the community, rather than punishment as the only solution.⁹ This approach emphasizes the principles of education, rehabilitation, and the full involvement of all individuals concerned, aiming to create justice oriented towards the child's best interests.¹⁰

The principle of *restorative justice* also provides space for judges to consider various social, psychological, and cultural factors in deciding child cases and provides alternatives to conventional court proceedings. However, the application of this principle does not always run smoothly. There are still various obstacles in the field, including the lack of regulatory integration between law enforcement agencies, low understanding of *restorative justice* among officials, and a lack of participation from the community, victims, and perpetrators due to various factors such as trauma or mistrust. Several previous studies have highlighted the application of restorative justice in juvenile cases, including those examining the urgent need for diversion in the juvenile justice system and the paradigm shift in law enforcement from a retributive model to restorative justice. However, studies on the authority of judges in implementing the principles of *restorative justice* based on Perma Number 1 of 2024, particularly in the context of children in conflict with the law, are still limited.

In fact, the position of judges is crucial in bringing the principle of restorative justice to life in the courtroom. Based on this, this study has the urgency to analyze (a) the extent of judges' authority in implementing the principle of restorative justice for children in conflict with the law based on the value of justice, (b) the various obstacles faced by judges in applying these principles, and (c) the extent to which the synchronization and harmonization of regulations between law enforcement agencies affect the effectiveness of the application of restorative justice in juvenile cases. This research aims to contribute to the improvement and development of practical solutions that can

⁹ E. Jaelani, "Enforcement of Diversion Measures" *Jurnal Kertha Patrika* vol. 40 no. 2 (2018), p. 200.

¹⁰ M. Mulyadi, "Protection of Children in Conflict with the Law" *Equality Journal* vol. 13, no. 1, p. 9.

encourage the implementation of restorative justice in the juvenile criminal justice system in Indonesia.

This article is structured into four main sections. The first section describes the background and urgency of the research. The second section explains the research methods used. The third section presents the results and discussion related to the authority of judges, obstacles to implementation, and the synchronization of regulations between law enforcement agencies. The final section summarizes the main findings and provides policy recommendations to strengthen the implementation of restorative justice for children in Indonesia.

Research Method

This research is a normative legal study that focuses on examining legislation, court decisions, and related legal doctrines in assessing the jurisdiction of judges in applying the principles of restorative justice to minors involved in legal disputes. Normative legal research was chosen because this study seeks to examine the law as written and unwritten social norms that govern human behavior.¹¹ This study combines several methods, using a statutory approach, namely by reviewing legislation related to the juvenile criminal justice system and the implementation of restorative justice, specifically Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice.

The Case Approach involves examining court decisions, especially in situations involving minors in the justice system, to understand how the principles of restorative justice are applied in the judicial process.¹² The Conceptual Approach involves studying concepts, doctrines, and legal theories related to the principles of justice, child protection, and restorative justice.¹³ The data used in this study is secondary data, consisting of primary legal sources (laws and regulations and court decisions) and secondary legal sources (textbooks, scientific journals,

¹¹ I. M. P. Diantha, *"Normative Legal Research Methodology in Legal Theory Justification,"* (Jakarta: Kencana, 2018), p. 11.

¹² J. Efendi & P. Rijadi, *"Legal Research Methods: Normative and Empirical,"* (Jakarta: Prenada Media 2023), pp. 129–130.

¹³ Hosnah, D. S. Wijanarko & H. P. Sibuea, *Characteristics of Legal Science and Normative Legal Research Methods,* (Jakarta: RajaGrafindo Persada, 2021), p. 145.

research reports, and academic publications). The inclusion criteria for secondary sources are: (1) the source must be published by an academic institution or official legal institution; (2) it must be relevant to the theme of restorative justice and juvenile justice; (3) published between 2010 and 2024 to ensure the data is up to date; and (4) using a verifiable scientific approach, such as research results, legal analysis, or official documents. These criteria were chosen because the study aims to produce a review based on modern legal theory that is also contextual to current regulatory developments.

Data collection was conducted through *library research*, including searching legal archives, regulations, court decisions, and relevant academic literature. All legal materials obtained were then processed through inventory, classification, and systematization to facilitate analysis. The analysis was conducted qualitatively using deductive reasoning, namely, drawing conclusions from general principles to specific cases related to the authority of judges in applying the principle of restorative justice.

In analyzing this research, a qualitative analysis methodology was used, specifically through the examination of legal materials, systematically, logically, and thoroughly describing and reviewing legal materials, without using statistical calculations or quantitative figures. The process of drawing conclusions was carried out deductively, where the analysis began with general legal principles, concepts, and theories, and then was applied to the specific context of the problem, namely, the authority of judges and the obstacles to the implementation of restorative justice for children in conflict with the law.¹⁴ This research is expected to provide a comprehensive overview of the legal issues studied and contribute scientifically to the development of a more equitable juvenile criminal justice system.

Results And Discussion

This section presents the results of a qualitative analysis of primary legal sources (laws, Supreme Court regulations, and court decisions) and secondary legal sources (academic literature, scientific journals, and research reports). The analysis was conducted deductively to interpret

¹⁴ J. Efendi & P. Rijadi, "*Legal Research Methods: Normative and Empirical*," (Jakarta: Prenada Media 2023), pp. 135–137.

the extent of judges' authority in applying the principle of *restorative justice* to children in conflict with the law, the obstacles to its implementation, and the extent to which the synchronization of regulations between law enforcement agencies affects its effectiveness.

A. Judicial Authority in Applying the Principle of *Restorative Justice* to Children in Conflict with the Law Based on the Value of Justice

Justice is an essential ideal that continues to be the goal in the administration of social and state life. Within the framework of the legal system, justice is the main pillar that is always sought to be realized in practice. According to his theory of the three objectives of law, justice, benefit, and legal certainty are basic components that must also be adjusted.¹⁵ Among these three objectives, justice is placed as the highest priority, followed by benefit, then legal certainty.

Justice as the Main Orientation of Law Enforcement, the application of law should not only be oriented towards procedures or formalities, but must also be able to provide substantive justice for all parties. According to Satjipto Rahardjo in "Hukum Progresif" (Progressive Law) (2009), substantive justice requires the law to read the social reality behind the facts of a case, especially in cases involving children, which require a holistic approach. Thus, it is not enough for the law to be enforced; it must also produce a sense of justice that can be felt by the wider community. Constitutional Court Decision No. 1/PUU-VIII/2010 emphasizes that justice is not merely compliance with the text of the law, but also an alignment with human values and social justice.

Challenges in Implementing Benefit-Oriented Justice: Although the idea of benefit-based justice offers a pragmatic approach, its application in law enforcement in the field is not always easy. An empirical study conducted by *the Indonesian Judicial Research Society* (2023) shows that 65% of judges find it difficult to balance the aspects of benefit and legal certainty, especially in cases involving children that require psychological and sociological considerations. One of the main issues is how to measure the benefit or happiness resulting from a court decision. For example, the measure of success in restorative justice

¹⁵ Fauzan, "Reconstruction of the Theory of Justice Distribution" *Varia Peradilan* vol. 23 no. 267 (2008), p. 17.

includes not only the resolution of cases, but also the ability to restore social relationships and ensure the future of children in conflict with the law. An important question arises: can a decision truly produce a sense of justice for everyone, or does it instead cause dissatisfaction among some groups?

Furthermore, there is a dynamic between the need for legal certainty and the desire for substantive justice. According to Gustav Radbruch, the tension between legal certainty and justice is a classic dilemma in legal philosophy that can only be resolved through the wisdom of judges in interpreting the law. On the one hand, legal certainty is an inevitable requirement because society needs laws that are definite, clear, and can be enforced consistently. However, the rigidity of criminal procedure law often clashes with casuistic needs, such as in cases involving children, where the factors causing the crime (poverty, social pressure, or lack of care) must be taken into consideration.

On the other hand, benefit-oriented justice requires flexibility in application so that the law can respond to concrete needs in society. A clear example of this can be seen in the North Jakarta District Court's decision No. 45/Pid.Sus-Anak/2023 (), in which the judge decided to transfer a child who committed petty theft to a social guidance program rather than imposing a prison sentence. This decision has sparked controversy: on the one hand, it is considered fair because it takes into account the child's background of poverty, but on the other hand, it has been criticized for weakening the deterrence effect of criminal law.

When we talk about the purpose of criminal law enforcement, we must talk about the purpose of punishment itself. This is due to the fact that criminal law enforcement is always related to efforts to punish individuals who commit criminal offenses as a way to hold them accountable for their actions. Within the framework of Indonesian law, the provisions regarding the purpose of punishment are explicitly regulated in Article 51 of Law Number 1 of 2023 concerning the Criminal Code (KUHP), which states that the main purpose of punishment is to resolve social problems and restore the social balance that has been disrupted as a result of criminal acts. This restoration must involve all elements, including the psychosocial aspects of children and their social relationships with their communities, which can be achieved through a more participatory restorative approach.

Emphasizing the importance of *the balance principle* in the criminal justice system.¹⁶ The concept of balance means that the resolution of a case serves as an additional punishment for the perpetrator, taking into account the needs of victims and citizens to live safely and peacefully. This means that judges do not only function as enforcers of the law; they must also encourage conversation, negotiation, and restoration within the framework of restorative justice.

Thus, if we return to the theory of justice as utility, in order to provide benefits and happiness to society at large, it is necessary to first provide benefits and happiness to the victims. The purpose of punishment should focus primarily on the perpetrator, but it must also consider the rights of the victims and maintain balance in society. The goal of punishment that adopts the principle of restorative justice is to create comprehensive justice.¹⁷ This approach focuses on the interests of each party, including the suspect, the victim, and the community, thus interrelating the principles consistent with the national punishment objectives stated in Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code.

According to the author's analysis, justice achieved through the judicial process cannot be measured solely by the final outcome of a court decision deemed fair. More than that, the justice referred to is justice that has a comprehensive meaning, where the entire series of processes leading to the verdict must also be based on the principle of justice. In other words, justice must be seen not only in the final result, but also in every phase of the case resolution, from investigation, examination, prosecution, to trial.¹⁸

In this case, the restorative justice approach is also known as restorative justice, which is one of the most relevant approaches to apply, especially in cases where children are involved in criminal acts. *Restorative justice* places the interests of victims at the center of case resolution by prioritizing recovery, peace, and the social responsibility

¹⁶ R. Saleh, *"The Indonesian Criminal System"* (Jakarta: Aksara Baru, R. 1987), p. 112.

¹⁷ H. Ali, H. "Implementation of Restorative Justice in the Indonesian Judicial System" *Varia Peradilan* vol. 28, no. 326 (2012), p. 22.

¹⁸ D. Putri, "Sounding The Justice For Child: Does Restorative Justice Matter" *Journal of Law and Legal Reform* vol. 4, no. 3 (2023), p. 303–324.

of perpetrators for their actions.¹⁹ This method argues that criminal offenses are also violations against the state, as well as disturbances to the social balance that need to be restored.

By applying the principles of restorative justice, the judicial system is expected to provide justice not only by punishing suspects but also by restoring the affected parties, repairing community relations, and avoiding the adverse effects of the traditional retributive judicial process. After being assessed as a more appropriate principle to complement the law enforcement system with a focus on participation and victims' rights, the next challenge for *restorative justice* is how to implement it. To be implemented, the principle of *restorative justice* must be preceded by a legal basis. The spirit of *restorative justice* was originally born on the basis of the principles of simple, swift, and affordable justice. Based on this spirit, a Memorandum of Understanding was issued by the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of the Indonesian National Police Number 131/KMA/SKB/X/2012, Number M.HH-07.HM.03.02 of 2012, Number KEP-06/E/EJP/10/2012, Number B/39/X/2012 dated October 7, 2012 concerning the Implementation of Adjustments to the Limits of Minor Crimes and the Amount of Fines, Expedited Proceedings, and the Application of *Restorative Justice*, hereinafter referred to as the Memorandum of Agreement.²⁰

This memorandum of understanding aims to create a simple, fast, and affordable judicial system while maintaining a sense of justice for the community. The principle of restorative justice is introduced in this joint memorandum of understanding as a solution for unlawful acts by involving the perpetrator, victim, and other relevant parties in an effort to seek a fair decision to restore the situation to its original condition.

¹⁹ T. Marshall, *Restorative Justice: An Overview*, (London: Home Office RDS Directorate, 1999), p. 5.

²⁰ Joint Agreement of the Chief Justice of the Supreme Court of the Republic of Indonesia and Others, Number 131/KMA/SKB/X/2012 concerning the Application of Restorative Justice.

More specifically, the principle of *restorative justice* at the meeting point of the parties is regulated in Article 4, which states that restorative justice is implemented through a peaceful approach. Furthermore, Article 4 paragraph (4) further regulates the conditions for the application of *restorative justice*, namely that this joint memorandum of understanding provides an opportunity for the parties to arrange the implementation of *restorative justice*, either jointly or by delegation, provided that the crime in question is not considered a repeat offense.²¹

Provisions regarding *restorative justice* are further regulated within the scope of the Attorney General's Office through Regulation of the Attorney General's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. In addition, restorative justice is also regulated in the Decree of the Director General of Badilum Number 1691/DJU/SK/PS. 00/12/2020, which stipulates guidelines for the application of restorative justice. In this provision, the conditions for criminal cases that can be resolved through the principles of restorative justice are minor offenses, as regulated in Articles 364, 373, 379, 384, 407, and 482 of the Criminal Code, with damages not exceeding Rp2,500,000.00 (two million five hundred thousand rupiah). In the judicial environment, the legal basis for the implementation of the principle of *restorative justice* is limited to the scope of the general court as stipulated in Supreme Court Regulation (Perma) Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice.

The requirements stipulated in Supreme Court Regulation (Perma) Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice tend to be more complex and limited compared to legal instruments applying the principle of *restorative justice* in the investigation and prosecution processes. Based on Article 6 paragraph (1) of Supreme Court Regulation (Perma) Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, it essentially stipulates that judges shall apply the implementation of *restorative justice* principles to criminal acts as follows:

- a. Criminal acts are classified as minor offenses if the victim's losses

do not exceed IDR 2,500,000.00 (two million five hundred thousand rupiah) or the provincial minimum wage, and the offense is considered a complaint offense.

- b. The crime is known as a subjective offense.
- c. For each charge, these criminal offenses are punishable by a maximum sentence of 5 (five) years in prison, including criminal offenses under Islamic law.
- d. Crimes involving children, where diversion efforts have failed; or
- e. Traffic offenses are classified as crimes.

These requirements establish clearer boundaries regarding the types of offenses that can be addressed through restorative justice processes.

In addition to the provisions on the application of the principle of *restorative justice*, Supreme Court Regulation (Perma) Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice also regulates the authority of judges in handling criminal cases by applying the principle of *restorative justice*. Based on Article 6, paragraph (2), judges are prohibited from applying the principle of *restorative justice* in the following cases:

- a. the victim or defendant refuses;
- b. there is a relationship of authority between the victim and the defendant;
- c. The defendant does not repeat a similar offense within three or three years after the sentence has been imposed.

Therefore, the requirements for applying the principles of restorative justice as a method of resolving cases have become more systematic. One of the requirements that is only found in Supreme Court Regulation (Perma) Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice is regarding the existence of a power relationship between the parties. Through this Perma, the Supreme Court explicitly stipulates that the restorative justice mechanism cannot be handled by judges in cases where there is a power relationship. Article 1 point 10 of Supreme Court Regulation (Perma) Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice explains that a power relationship is a hierarchical relationship or inequality between parties that causes harm to the lower party. For example, in a criminal case

between a superior and a subordinate in a workplace, the judge is not authorized to resolve the criminal case using *restorative justice* mechanisms because there is a high potential that the subordinate will not receive full justice due to concerns about their job, which depends on their superior.

Thus, it can be understood that the spirit behind the emergence and regulation of *restorative justice* mechanisms is none other than to provide accessibility to justice in society. The existence of power relations in a criminal case that will be resolved through deliberation and consensus can undermine the justice that is to be realized. Therefore, judges are prohibited from resolving criminal cases involving power relations. When discussing the role of judges in applying the principle of *restorative justice* to children in conflict with the law, we can see how their authority has a significant impact based on the value of justice. Therefore, judges must adhere to the provisions of Supreme Court Regulation (Perma) Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice in their decisions, particularly regarding the requirements in Article 6, which are alternative in nature and tend to be restrictive in their implementation. This is certainly an implication of the authority of the Perma itself, which specifically regulates judges in resolving the cases they handle.

B. Challenges Faced by Judges in Applying the Principle of *Restorative Justice* to Children in Conflict with the Law

An analysis of legal literature and national policy reports shows that the implementation of *restorative justice* principles in Indonesia faces four main obstacles, both structural and cultural.

First, there is no uniform legal standard among law enforcement agencies. The police use National Police Chief Regulation No. 8 of 2021, the prosecutor's office refers to Attorney General Regulation No. 15 of 2020, while the courts are guided by Perma No. 1 of 2024²². These differences in definitions and criteria often lead to overlap in the application of *restorative justice* principles.

Second, the lack of regulatory harmony between institutions has resulted in weak coordination and a lack of procedural clarity. The Ministry of Women's Empowerment and Child Protection reported

²² Supreme Court of the Republic of Indonesia Regulation No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice.

that 72% of law enforcement officials still favor a retributive approach and view restorative mechanisms as a form of "weakening the law."²³

Third, there is a low public and official understanding of the concept of restorative justice. Many officials consider the restorative approach to be ineffective as a form of punishment, even though empirical research shows that the recidivism rate among child offenders actually decreases after participating in restorative programs.²⁴

Fourth, the lack of readiness of victims and perpetrators to participate in the mediation process, especially in cases involving unequal power relations, such as between employers and child workers²⁵. A review of the Semarang District Court Decision Number 8/Pid.Sus-Anak/2022 shows that the judge rejected diversion because the victim did not attend the mediation, even though the perpetrator had submitted a written apology.¹⁰ This case shows that the application of restorative justice is not yet supported by flexible mechanisms to overcome non-legal obstacles such as trauma or fear on the part of the victim.

This condition confirms Lawrence M. Friedman's view that the effectiveness of the legal system depends on three components: substance, structure, and legal culture.²⁶ . Although the substance of Indonesian law has accommodated restorative principles, the legal culture of officials and society is still dominated by a retributive paradigm. Therefore, efforts to reform the juvenile justice system must involve a transformation of the legal culture, not just a revision of regulations.

As part of their commitment to law enforcement, this is even more important when the perpetrator of a crime is a child. Unfortunately, not all courts have specialized juvenile judges, so many cases involving children are handled by general judges who do not fully understand the restorative approach. The obstacles faced by judges in upholding the

²³ North Jakarta District Court Decision Number 45/Pid.Sus-Anak/2023.

²⁴ Republic of Indonesia, Law No. 11 of 2012 concerning the Criminal Justice System for Children, State Gazette of 2012 No. 153.

²⁵ Haspada, D., "Legal Analysis of Restorative Justice Practices in Resolving Child Crime Cases in Indonesia," *INFLUENCE: International Journal of Science Review*, Vol. 6 No. 1 (2024): 131–140.

²⁶ Friedman, L. M., *The Legal System: A Social Science Perspective*, New York: Russell Sage Foundation, 1975.

principles of restorative justice for children in conflict with the law include:

Table 1
Challenges in Applying the Principles of *Restorative Justice* to Children in Conflict with the Law

No	Main Obstacle	Description
1	Lack of uniform legal standards	<i>Restorative justice</i> arrangements are still sectoral in nature, with no synchronization between agencies.
2	Lack of harmony in regulations between law enforcement agencies	Each institution, such as the police, the prosecutor's office, and the courts, has its own technical rules.
3	Low level of understanding among the public and law enforcement officials	The lack of socialization and training means that both officials and the public do not yet understand this concept.
4	Not all victims or perpetrators are willing or able to participate	Factors such as trauma, dependency, or fear act as barriers to the <i>restorative justice</i> process.

Explanation:

- There is no uniformity of norms between agencies, creating legal uncertainty.
- Differences in substance in the regulations of the Police, the Prosecutor's Office, and the Courts.
- Lack of training for officials and public understanding.
- Victims/perpetrators are reluctant to participate due to psychological factors or power relations.

Source: Compiled from Indonesian Supreme Court Decision No. 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice; Romli Atmasasmita, The Juvenile Criminal Justice System in Indonesia (2021); and the author's findings, 2025.

C. Synchronization of Regulations Between Law Enforcement Agencies and Its Influence on the Effectiveness of *Restorative Justice* in Juvenile Cases

The effectiveness of applying the principle of restorative justice in juvenile cases is closely related to the harmony and synchronization of legal regulations between law enforcement agencies. The concept of *restorative justice* aims to resolve legal conflicts through dialogue, *recovery* of losses, and the establishment of peace between perpetrators, victims, and the community. However, the mechanism can also run optimally if it is supported by a coherent and integrated regulatory framework at all stages of law enforcement, from investigation and prosecution to trial. However, if the regulations at each stage of law enforcement are not integrated, the application of this principle will face serious obstacles in the field.

Currently, there are differences in regulations regarding restorative justice between law enforcement agencies. The Indonesian National Police regulates this in National Police Chief Regulation No. 8 of 2021, the Attorney General's Office refers to Attorney General Regulation No. 15 of 2020, while the Supreme Court issued Supreme Court Regulation (Perma) No. 1 of 2024 as a guideline for the application of *restorative justice* at the trial level. These differences cover the definition of *eligible* cases, mediation procedures, and criteria for the success of the restorative process, creating fragmentation in implementation. The differences in substance, requirements, and scope of application between these regulations often lead to inconsistencies in the implementation of *restorative justice* in the field.

This situation causes legal uncertainty for children in conflict with the law. For example, cases that have been resolved restoratively at the investigation or prosecution level can still proceed to trial because the judge considers that the requirements in Perma Number 1 of 2024 have not been met. A concrete example is the case of a child who committed petty theft and agreed to mediation at the police station, but the prosecutor's office still forwarded the case to court because there was no written statement from the victim, which is not regulated in Perkap 8/2021 but is mandatory according to Perma 1/2024. This shows the weak harmonization of regulations between institutions, which actually hinders the protection of children's rights in the legal process.

The lack of harmony between regulations creates confusion in interpretation at the implementation level, as each law enforcement institution operates according to its own guidelines without a unified reference.²⁷ Officials in the field are often "trapped" in sectoral egos, such as the police, who are reluctant to coordinate mediation with the prosecutor's office for fear of being considered overstepping their authority. As a result, the *restorative justice* process loses its effectiveness and can even create new injustices for children.

The successful application of restorative justice principles requires an integrated legal system that involves all stakeholders, from investigators to judges.²⁸ Without integration, restorative justice will only become a jargon, producing no substantive impact on social recovery. Without integration, restorative justice will only become a jargon, producing no substantive impact on social recovery.²⁹

The harmonization of regulations has caused law enforcement officials to focus more on sectoral bureaucratic procedures rather than the best interests of children, which should be the top priority in every stage of the legal process. Research by the Ministry of Women's Empowerment and Child Protection (2023) reveals that 72% of law enforcement officials place more importance on fulfilling administrative documents than on the substance of child protection, as a consequence of a performance evaluation system that is oriented towards the quantity of cases resolved rather than the quality of results. This phenomenon creates several crucial problems:³⁰

1. Excessive formalism - Diversion processes often fail simply because of administrative incompleteness, even though the substance of the agreement has been reached.
2. Sectoral ego - Each institution (police, prosecutors, courts) uses different document standards that are not mutually recognized.
3. High transaction costs - Families must repeatedly submit the same documents to meet the requirements at each stage of the process.

²⁷ Jaelani, *Law Enforcement Diversion Efforts*, p. 200.

²⁸ J. Braithwaite, *Restorative Justice and Responsive Regulation*, (Oxford: Oxford University Press, 2002), p. 23.

²⁹ Kathleen Daly, *The limits of restorative justice*. In D. Sullivan & L. Tift (Eds.) *Handbook of restorative justice*, (London: Routledge, 2006), pp. 134–145.

³⁰ Ministry of Women Empowerment and Child Protection, *National Evaluation Report on Restorative Justice*, (Jakarta: Deputy for Child Protection, 2023).

Conversely, if regulations between institutions are comprehensively integrated, the implementation of *restorative justice* can run optimally. This integration includes standardizing definitions, mechanisms for verifying victim participation, and document standards that apply across institutions. Regulatory synchronization is the key to realizing a child criminal justice system that is friendly, participatory, and recovery-oriented.³¹ This can be achieved through the formulation of joint policies between law enforcement agencies, the development of uniform technical guidelines, and the strengthening of cross-sector coordination mechanisms.

The experience of other countries, such as New Zealand, shows that the effective implementation of *restorative justice* is inseparable from the harmonization of regulations at all levels of law enforcement. In New Zealand, *Family Group Conferences* (FGCs) are regulated nationally through the Youth and Children Act 1989, with technical guidelines that are binding on the police, prosecutors, and courts. The results of mediation at the police level are automatically recognized by the courts as long as they meet the agreed criteria. The practice of Family Group Conferences in that country is a successful example of the application of restorative justice in juvenile cases because it is supported by harmonized rules and inter-agency collaboration.³²

In Indonesia, concrete initiatives are needed to unify *restorative justice* regulations between institutions. One possible solution is the drafting of a memorandum of understanding between the National Police's Criminal Investigation Agency (), the Attorney General's Office, and the Supreme Court, which contains integrated guidelines for the application of restorative justice, so that the implementation of this principle can be carried out consistently, efficiently, and in line with the objectives of child protection. The memorandum of understanding must include: (1) a list of criminal offenses that must be subject to diversion, (2) a mediation document format that is recognized by all institutions, and (3) a joint monitoring mechanism to ensure commitment.

³¹ Wahyudi, *Juvenile Criminal Justice in Indonesia*, (Yogyakarta: Genta Publishing, 2014), p. 65.

³² Umbreit et al., "Restorative Justice in the Twenty-First Century," pp. 251–304.

In addition, increasing the capacity of law enforcement officials, establishing inter-agency coordination forums, and involving the community in the process of resolving child cases are important steps to ensure that restorative justice does not stop at the normative level, but is actually implemented in daily judicial practice. Inter-agency training on mediation facilitation techniques and *trauma-informed approaches* should be mandatory, while the role of the community should be strengthened through the formation of restorative support groups at the village level.

Conclusion

The results of the study led to the following conclusions: the application of restorative justice principles by judges to children involved in the justice system is part of their judicial responsibility, which requires the courage to balance justice, benefit, and legal certainty. In the context of juvenile cases, judges not only carry out their duties as law enforcers, but also help others and promote social recovery that favors the future of children. Therefore, the approach used must be holistic and transformative, not only resolving cases administratively but also considering the best interests of the child in accordance with the mandate of Article 51 of the Criminal Code and the principles of substantive justice.

Second, the main obstacles for judges in applying the principles of restorative justice for children involved in the justice system include structural, regulatory, and cultural barriers. Not all law enforcement officials have an adequate understanding of this approach, and in practice, many judges are still stuck in the retributive paradigm. In addition, weaknesses in infrastructure, limited human resources who understand the concept of restorative justice, and low participation of victims and perpetrators are major obstacles. This results in the implementation of diversion and *restorative justice* often being ineffective, especially in areas with minimal technical support and resources.

Third, the synchronization of regulations between law enforcement agencies remains a serious test for the effectiveness of restorative justice in cases involving children. Differences in regulations between the Police (Perkap No. 8/2021), the Attorney General's Office (Perja No. 15/2020), and the Supreme Court (Perma No. 1/2024) create inconsistencies in implementation in the field. This disharmony

leads to legal uncertainty, confuses officials, and can harm the position of children who are undergoing the judicial process. Therefore, a memorandum of understanding between law enforcement agencies is needed to regulate the technical and substantive standards of *restorative justice* in an integrated manner, supported by inter-agency training, strengthening the role of the community, and reformulating the performance evaluation system to emphasize the quality of recovery rather than the quantity of cases handled.

Therefore, the effectiveness of applying the principles of restorative justice to children in conflict with the law depends heavily on the courage of judges to substantively interpret the value of justice, institutional readiness to support the restorative process, and the harmonization of regulations between institutions that guarantee legal certainty and consistency at the national level.

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