

# The Concept of Restorative Justice in the Juvenile Criminal Justice System: A Narrative Review of the Indonesian Context

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## Abstract

Indigenous Indonesians have practiced restorative justice for centuries, particularly in Papua, Bali, Toraja, Minangkabau, and other traditional groups that retain their culture tenaciously. Indigenous tribes manage problems locally, without contacting state authorities. The standard of justice is not retributive justice in the form of punishment or vengeance, but conviction and forgiveness. The notion of Indonesian customary law as a venue for customary justice institutions also includes a concept that is the origin of restorative justice. The current method of resolving criminal matters outside of court is either the outcome of a lengthy voyage of study and examples or experimental programs, or it is a social tradition. The fundamental ideas of restorative justice are still present in current practices. Victim-Offender Mediation, Conferencing/Family Group Conferencing, Circle, and Reparative Board/Youth Panel are the four practices that pioneered the application of Restorative Justice.

**Keywords:** Restorative Justice, Juvenile Criminal, Customary Law, Indonesia.

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## INTRODUCTION

In his writings, British criminologist Tony F. Marshall suggests that the definition of restorative justice (Marlina, 2010) is: "restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future."

Restorative justice is bound to criminal justice by a compelling social context rather than isolating it in a closed manner. Tony F. Marshall's formulation is highly useful for understanding restorative justice. However, it does pose a lot of concerns, such as: who are the people who have a stake in the offense? How do they collectively reach a conclusion? What does it mean to address the consequences of an offense? What are the future ramifications that need to be addressed (future ramifications)? Therefore, the responses to these questions must be provided in whole sentences.

The most significant aspect of the history of restorative justice is, of course, the explanation of the notion of restorative justice. Restorative justice is a philosophy of justice based on the experience of

employing punishment in various nations and the cultural roots of the community in addressing criminal issues prior to the establishment of the regular criminal justice system.

The concept evolves with time passing from moment to moment (Marlina, 2010). Some of those who have stated this include Braitwaite (Australia), Elmar G. M. Weitekamp (Belgium), Howard Zehr (United States of America), Kathleen Daly (Australia), Mark S. Umbreit (United States of America), and Robert Coales (United States of America).

The history of contemporary law's application of restorative justice started in the 1970s in Canada with the adoption of victim-offender mediation, a community-based settlement program outside the conventional judicial system (Alisan Morris & Gabrielle Maxwell, 2001). This program was first adopted as an alternative method for punishing juvenile offenders, in which the perpetrator and the victim were permitted to meet prior to the execution of the penalty to create legal suggestions, which became one of the judges' numerous considerations. This program implies that the perpetrator will gain from this stage and that the victim will also get particular attention and advantages

in order to minimize the number of recidivist child offenders and increase the number of children responsible for compensating victims. When the program was implemented, both victims and criminals were more satisfied with the result than when they had gone through the conventional legal system.

Observers and practitioners who examine restorative justice reach the conclusion that victims are basically excluded from the regular criminal justice system. Victims are simply required as witnesses if necessary; they play no role whatsoever in policymaking. On the basis of examinations conducted throughout the court procedure, only judges make decisions. The majority of a perpetrator's participation in court is represented and expressed by his or her attorney.

In victim-offender mediation, individuals are handled and engaged in a manner distinct from conventional justice. This approach entails the engagement of victims who are directly engaged in determining a sentencing agreement so that they may influence the result of a judgment. The victim-offender mediation process incorporates not only the victim, who assumes the central position, but also the perpetrator, who may participate in the formulation of choices, so that appreciation is real and direct.

## LITERATURE REVIEW

Several countries, including Australia, Canada, England, Wales, New Zealand, and a number of others in Europe and the Pacific area, have witnessed remarkable growth in the notion of restorative justice during the previous two decades. Similarly, the United States government, as a nation that often makes alliances with states to implement oppressive punitive measures, cannot avoid the significant effect of the emergence of restorative justice.

Michael Tonry began a survey of American criminal policy in 1999, with the results of his research yielding several living concepts regarding punishment to the present day (Alisan Morris & Gabrielle Maxwell, 2001): structured sentencing, risk-based sentencing, indeterminate, and restorative/community justice. Thus, restorative justice is one of the established and already operational concepts of punishment in the United States.

According to Alisan Morris and Gabrielle Maxwell (2001), Michael Tonry's arguments for restorative justice in these four categories of criminal conceptions are as follows: "A fully elaborated system exists nowhere, but there is considerable activity in many states, and programs based on community/restorative principles are beginning to deal with more serious crimes and criminals and to operate at every stage of the justice system, including within prisons." It is spreading rapidly and into applications

that a decade ago would have seemed visionary. These include various forms of community involvement and emphasize offender accountability, victim participation, reconciliation, restoration, and healing as goals.

Michael Tonry's perspective on restorative justice is very influential due to the concept's capacity to bring advantages to all phases of the judicial process and correctly position offenders. In a short period of time, the program of restorative justice has spread to all corners of the globe. The impetus for altering the juvenile justice system in a number of nations and the stated reasons for dealing with juvenile offenders are motives for establishing a new paradigm, namely restorative justice. The transition of all components of the criminal justice system to the correct procedure implies that law enforcement personnel may be moved to the restorative justice process at every level of the court or institution.

When implementing this concept, it is necessary to consider the current condition of the community and the community where implementation will begin, including cultural conditions, the readiness of law enforcement officers, the existing rules of the criminal justice system, legal support, and the availability of state funds to implement the concept, beginning with a pilot project. The concept of Indonesian customary law as a venue for customary justice institutions also contains a concept that is the origin of restorative justice. In Indonesia, the peculiarities of each region's customary law are often particularly conducive to the implementation of restorative justice. Regarding infractions of custom or customary crimes and their resolution, customary law has its own perspective. As mentioned before, the concept of customary infringement is associated with the imbalance of the cosmos in society. This includes behavior that disrupts the peace or violates public decency. Here, the breach of customary law occurs when: (a) An event of action of the community's parties; (b) The action causes a balance disturbance; (c) The disturbance of this balance causes a reaction; and (d) The reactions that arise cause the balance disturbance to be restored to its original state.

The notion of restorative justice refers to the practice of addressing breaches of the law by bringing the victim and the offender (suspect) together for a discussion. At the meeting, the mediator gives the offenders a chance to present a detailed account of their actions.

The criminal really thought that the victim would be able to accept and comprehend that he or she had committed a crime that caused the victim pain. The perpetrator's justification outlines how he is accountable to the victim and the community for his conduct. As long as the perpetrator describes the steps he has chosen and the reasons why, until the perpetrator executes the

action, the victim must attentively listen to the perpetrator's explanation. reaction to the offender's explanation There are community parties that reflect community interests. The community representatives offer an account of the damage incurred as a result of the criminals' unlawful conduct. The community anticipates that the offender will take some action or measures to repair the shock or damage caused by his conduct.

The current method of resolving criminal matters outside of court is either a social tradition or the outcome of extensive study and a lengthy journey of instances or pilot programs. Existing practices still adhere to the fundamental concepts of restorative justice, which have been acknowledged in several countries and which, in their present application, have been applied according to a variety of laws, patterns, or methods. Restorative justice practices that have been developed in Europe, the United States, Canada, Australia, and New Zealand can be put into four categories. These four practices are Victim-Offender Mediation, Conferencing/Family Group Conference, Circle, and Reparative Board/Youth Panel. All of these practices were first used in a number of countries.

### **Victim-Offender Mediation**

The first new restorative justice process is Victim-Offender Mediation. The victim-offender mediation program was first implemented in 1970 in North America and Europe, such as Norway and Finland (Marlina, 2010).

Analysis of the implementation of Victim Offender Mediation, among others: (1) Purpose. Implementing Victim Offender Mediation is intended to provide resolutions to occurrences, such as by imposing alternative punishments on offenders or giving training in designated locations for really grave offenses. The basic form of this procedure is to bring the victim and the offender before a mediator who sets up and runs the meeting. (2) Target. Victim-Offender Mediation aims to provide a healing process for victims by providing a forum for all parties to meet and talk with perpetrators voluntarily and by providing opportunities for perpetrators to learn about the consequences of their actions and assume direct responsibility for their actions. Provide chances for victims of offenders to formulate strategies for resolving losses. (3) Mediation Participants Participants in this mediation include (voluntary) victims, offenders, parties who empathize with both sides, parents or guardians of both parties who are crucial if necessary, and mediators with specialized training. (4) Implementation Procedures In the early stages of victim-offender mediation, it is very important for mediators to prepare victims and perpetrators to carry out mediation events (Mark Umbreit & S. Stacy, 1995). The initial preparation for mediation or pre-mediation should also include at least one meeting that involves the victim and the perpetrator

in a face-to-face meeting, as this is very helpful for achieving maximum agreement in the actual mediation later. In this pre-mediation meeting, the mediator listens to how the incident occurred, identifies important issues to discuss, invites their participation to attend, and explains the process of the Victim Offender Mediation event so as to minimize anxiety and increase their role in the dialogue so that the role of the mediator is not too much anymore. The role of this pre-mediation greatly determines the actual mediation process.

### **Family Group Conferencing**

Conferencing was first developed in New Zealand in 1989 and in Australia in 1991 and was originally a reflection or description of aspects of the traditional community process obtained from the indigenous people of New Zealand, namely the Maori people. The process carried out by the Maori people is known as *wagga-wagga*, and has been used to solve problems in traditional societies and is a tradition that has existed for a long time. A large country is looking for alternative forms of case settlement, so this community tradition is brought to the surface to be researched and a pilot project made for the settlement of criminal cases in that country. On the next occasion, this traditional settlement can be accepted as an official process in the country, as conferencing is a conference, negotiation, or deliberation. Subsequent developments: Conferencing has been taken out of the country of origin, New Zealand, and is used in many other countries such as Australia, Asia, South Africa, North America, and Europe.

Conferencing includes not only the principal victim (primary victim) and the major offender (primary offender), but also secondary victims (secondary victims), such as the victim's relatives and friends. These individuals are involved because they are likewise impacted or are affected in a variety of ways by the crime. They may also contribute by expressing and convincingly explaining the effects of the agreement so that both parties, namely the victim and the offender, can carry it through (Allison Moris & Garbielle Maxwell, 2001).

Conferencing implementation analysis, among others: (1) Purpose. Clarify the events by supporting the perpetrators, compensating the victims for their losses, reintegrating the victims into the community, and accepting shared responsibility. (2) Target. Provide chances for victims to participate directly in conversations and decision-making about the violations that have happened to them, with appropriate punishments for the offenders, and to hear directly from the perpetrators about the violations that have occurred. This will increase the perpetrator's knowledge of the effects his acts have on others and offer him the chance to accept full responsibility for his actions. After mediation, the family or the perpetrators may mutually choose the culprits' punishments and nurture them. (3)

Participation. In the Family Group Conferencing process, people from the community, offenders, victims, mediators, families or parties of victims and perpetrators, and institutions that care about children all take part. (4) Implementation Procedures. Prior to the real Family Group Conferencing, the mediator conducts telephone contact with the participants who will become participants, notably victims, abusers, community members, and supportive institutions, to assure their participation in mediation later (Gordon Bazemore and Mark Umbreit, 1995). If not practicable by telephone, the mediator must visit the participant in person.

In the actual mediation event, the members of the facilitator team in conferencing are tasked with arranging the meeting, namely the place and time, and ensuring that each participant can participate fully and actively in the event, but these facilitators cannot decide unilaterally or impose substantive decisions as a result in the sense that they are only controlling and facilitating the course of conferencing. Several conferencing forms that became the agenda and minutes were written by the facilitator correctly with the intention that the participants must follow a standard pattern of rules and regulations in carrying out discussions in conferencing. Participants who are involved in this form of mediation are victims, perpetrators, parties who sympathize with both parties, parents or guardians of both parties, and people who are considered important if needed, as well as mediators who are specially trained in admission of guilt.

There are other types of conferencing that work within the guidelines of a common philosophy, which is to allow conferencing to take various forms, and the fact that the process is carried out depends on the local culture and the expectations of the participating participants. As a target, a criminal justice system can be realized that is in favor of all the people involved in the crime.

In practice, the mediator initiates the dialogue by offering the offender the chance to explain what he is doing and what he believes about the misery he has caused to others. The next chance is for the victim to share his narrative and the effect of the loss he sustained due to the perpetrator's conduct. Following the victim and offender's statements, the victim's family and close friends (victim's supporters) were given the floor, followed by the offender's family and friends (offender's supporters).

This chance to speak is provided to either the offender or the victim in an effort to determine and describe the exact circumstances that led to the violation. The dialogue is conducted in an open, comfortable, and pleasant environment for the kid, without any pressure from either side. The mediator continues to give direction and advice during the

mediation in order to maintain a positive atmosphere. Opportunities are established simultaneously. Collectively, the group determines what the offenders should do to make amends and what they must do to become accountable parties. The mediator's recording officer records and schedules all group ideas to be resolved collectively. The agreement is written down and signed by everyone involved. A copy of the agreement is sent to the official criminal court of the government for a decision.

### **Circeles**

Circeles were first implemented in Yukon, Canada, around 1992. Circeles was identical to conferencing, which, in its execution, increased the number of participants in the mediation process beyond the victim and the principal offender. Families and supporters might be involved as criminal justice participants. Several members of the community engage in the Circeles procedure. Circeles expands the definition of "parties having a stake in the offense" to include the community as a whole. This is because the community has a vested interest in the mediation process since it was harmed by the crime.

Analysis of Circeles Implementation, among others: (1) Purpose. Resolving a crime by bringing together victims, perpetrators, the community, and other parties having an interest in the occurrence of a crime. (2). Target. Via the Circeles procedure, it is hoped to facilitate a healing process for those harmed by the perpetrator's acts and offer the perpetrator a chance to better himself through the responsibility of fulfilling the agreement. Communities are urged to monitor the reasons for children's misbehavior and to care about the issues of the children in their communities. (3). Membership. Participants in Circeles include victims, abusers, institutions concerned with children's issues, the community, and, in extreme situations, judges and prosecutors. The presence of law enforcement personnel is to guarantee that the process is carried out in line with the principles of restorative justice and not to interfere with or meddle in the current process. (4). Procedure for Implementation. At first, Circeles was taken from the existing practice in Canada while maintaining its purity. Prior to the actual implementation of Circeles, the mediator held separate meetings with victims and perpetrators as a priority in their presence to explain the process to be carried out and what its objectives were. In practice, the Circeles implementation is All participants sit in a circle (like a circle). The way the actor starts by explaining everything he does. Then all the participants who sit in a circle are given the opportunity to talk. The discussion went from one participant to another in a roundabout way by conveying what they hoped for. The discussion continued until all who wished to express their wishes were finished. The end of the discussion will come if an agreement is reached and a settlement with restitution or compensation or other sanctions, or even without

sanctions but forgiveness of the perpetrator by the community and the victim. An officer to oversee the Circle process (keeper of the Circles) performs his duties as a mediator and facilitator in the process of victim-offender mediation and conferencing. The duty of the Circle guard is to maintain and keep the Circle process running as expected. There is a "talking piece," which is a peacemaker who politely and courteously will always arrange the schedule for participants to speak in Circle. The officer walked around Circle, and only those he gave permission to told others what he wanted (Gordon Bazemore and Mark Umbreit, 1995).

Circle's success lies in its collaboration with the formal justice system and the community. The formal justice system needs to play a role in ensuring that the processes carried out provide justice and are honest for all parties and without coercion. Circle participants will be more closely knit as a result of their shared concern for overcoming child crimes. Circle's success was obtained from a little research by Judge Barry Stuart in 1996 in Canada. It was found that fewer children who were brought into the Circle process returned to being recidivists than children who underwent a formal judicial process. With the condition that the Circle process follows conditions such as continuing to monitor or supervise the settlement of agreements by actors; coordinating consistently and mutual understanding between mediators, the community and the formal justice system; and making settlements that are not rigid and monotonous.

### **Reparative Board/Youth Panel**

The State of Vermont and the Bureau of Justice Assistance's companion agency began implementing this program in 1996 after observing the positive citizen response to a study conducted by Spring in 1994 that described community participation in the reparative program and the nature of the improvements on which it was based.

Analysis of the Implementation of the Reparative Board/Youth Panel, among others: (1) Purposes. Resolve criminal acts committed by children by involving perpetrators, victims, communities, mediators, as well as judges, prosecutors, and defenders together to formulate appropriate forms of sanctions for perpetrators and compensation for victims or the community. (2). Target. The active participation of community members directly in the criminal justice process then provides opportunities for victims and community members to have direct dialogue with perpetrators. In the meeting held, the perpetrators were directly responsible for the actions that had been taken. (3) Membership. In addition to well-trained mediators, institutions concerned with children's issues, victims of perpetrators, community members, and, in significant situations, judges, prosecutors, and attorneys should be present. (4). Procedure for Implementation. The

mediators who will facilitate this meeting are people who have been given special mediation education. The meeting was held face-to-face with all participants and was also attended by the court. The meeting participants discussed with the perpetrators their negative actions and the consequences that must be borne. The participants designed a sanction that was discussed with the perpetrators within a certain period of time to make improvements to the consequences of their criminal acts. After that, the involvement of the perpetrators ends.

Gordonan Bazemore states that the objectives of the juvenile criminal justice system are different depending on the paradigm of the juvenile criminal justice system adopted (Wahyudi, 2011). There are three well-known juvenile justice paradigms: the individual treatment paradigm, the retributive paradigm, and the restorative paradigm.

### ***The individual treatment paradigm***

The focus is on the difficulties suffered by the offenders, not on the actions/damages inflicted. This duty rests with the system's obligation to address the demands of the perpetrators. The administration of punishments in the juvenile justice system based on the premise of individual coaching is irrelevant, accidental, and typically improper. Indicators about whether the offender has to be identified, if the perpetrator has been requested to participate in a particular mentoring program, and the degree to which the program can be completed show the success of penalties. The judgement focuses on the program provider's recommendations for treatment and services. The primary emphasis is on identifying the culprits and implementing a positive strategy for resolving the issue. Conditions of delinquency are developed in the framework of instructing the offenders. Without therapy assistance, the culprit is deemed incompetent and incapable of acting sensibly. As a rule, offenders must be nourished since they will profit from therapeutic assistance.

Achievement of goals is known by looking at whether the perpetrator can avoid bad influences from certain people or environments; whether the perpetrator obeys the rules of the coach; whether the actor is present and participates in coaching; whether the actor shows progress in attitude and self-control, whether there is progress in interaction with family. Group and family counseling practices are underway; probation work packages have been prepared; and recreational activities have taken place. According to the criminal justice system with an individual paradigm, the aspect of community protection is directly not part of the judicial function.

### **The retributive paradigm**

When the culprit has been convicted and sentenced to a suitable, specific, proportional, and fair

penalty, the aim of imposing penalties has been accomplished. The penalty consists of incarceration, electronic monitoring, punitive punishments, fines, and fees. Monitoring, such as incarceration, confinement, and electronic surveillance, is the most effective method for community safety. The effectiveness of community protection may be determined by whether or not the number of repeat offenders is lowered via prevention or imprisonment.

### The restorative paradigm

The juvenile criminal justice system has a restorative paradigm, which means that in achieving the goal of imposing sanctions, the victim is included to have the right to be active in the judicial process. Indicators of achieving the goal of imposing sanctions are achieved by looking at whether the victim has been restored, the satisfaction of the victim, the amount of compensation, the awareness of the perpetrator or his actions, the number of repair agreements made, the quality of work services, and the overall process that occurs. The forms of sanctions are restitution, mediation of perpetrators of victims, victim services, community restoration, direct services to victims, or restorative fines.

The imposition of sanctions involves the perpetrators, victims, the community, and law enforcers actively. The perpetrators work actively to restore the victims' losses and deal with victims' representatives. The victim is active in all stages of the process and will assist in determining sanctions for the perpetrator. The community is involved as a mediator, helping victims and supporting the fulfillment of the perpetrator's obligations. Law enforcement facilitates mediation. The main focus of restorative justice is to benefit and promote positive development, so children and families are the main beneficiaries. Children are considered competent and have positive abilities, are preventive and proactive. They are actors who are learning by doing, counseling and therapy to motivate the active involvement of the parties.

Rehabilitation goals are achieved in terms of whether the perpetrator has started new positive things; whether the perpetrator is given the opportunity to practice and demonstrate norm-compliant behavior; whether stigmatization can be prevented; and whether there has been an increase in attachment to the community. Rehabilitation of perpetrators in the form of practical activities so that children gain work experience and children are able to develop their own cultural projects. This aspect of rehabilitation requires the roles of perpetrators, victims, the community, and law enforcement to work in synergy. Actors are active in developing their own quality of life in public. Victims provide input on the rehabilitation process. Communities develop opportunities for children to make productive contributions, develop new roles for child actors to practice and demonstrate their

competence, and access and build partnerships with the community.

Restorative justice is concerned with protecting the community via the joint efforts of the legal system and the community to establish prevention. The use of detention is a last resort. The community is accountable for actively supporting restoration implementation. Indicators of community protection achievement. If the number of recidivists falls while offenders are under community supervision, the community feels safer and more secure in the function of the juvenile justice system, which involves schools, families, and community institutions in preventing crime; social bonds and reintegration improve. Protection of the community, perpetrators, community victims, and the juvenile justice profession are all expected to play a significant role. In a balanced approach, perpetrators should be included constructively in growing skills and restorative activities inside the program, fostering internal control and commitment with peers and children's groups. Victims provide valuable information to the purpose of safeguarding communities from terror and the need for oversight. Professionals in juvenile justice create incentive scales and assure compliance with offender and supervision requirements, aiding schools and families in their attempts to monitor offenders and keep them in the community.

## DISCUSSION AND CONCLUSION

Indonesia's Juvenile Criminal Justice System is based on: 1) International Human Rights Instruments; 2) National Legislative Instruments Relating to Juvenile Criminal Justice.

International conventions that serve as references in administering juvenile criminal justice include:

*Universal Declaration of Human Rights, Resolution No. 217 A (III) of 10 December 1948*

The document formulated several principles relating to justice in general, namely that no one should be persecuted or cruelly treated, arrested, detained, or arbitrarily exiled. The principle of equality before the law was also formulated. In addition, that the judiciary is fair, independent, competent, and impartial.

*International Covenant on Civil and Political Rights, General Assembly Resolution 2200 A (XXI) of 16 December 1976*

This international convention on civil and political rights was established in 1976, and Indonesia subsequently ratified it by Law No. 12 of 2005 on the Ratification of the ICCPR. Several concepts relating to the administration of justice are outlined in this legal document. Everyone has the right to freedom and personal security, among other things. No one may be subject to being arbitrarily detained or detained. Those

deprived of their liberty by custody or confinement have the right to file charges before a court. Everyone who is detained or imprisoned must be treated humanely and with regard to their inherent dignity as human beings. Everyone who is deprived of their liberty via custody or confinement is immediately inspected.

This agreement also stipulates that anybody accused of breaking the law has the right to request the examination of witnesses against him and to accept the presence and examination of witnesses in his favor. Everyone accused of breaking the law has the freedom to refuse to testify against themselves or to enter a guilty plea. The accused and the guilty must be differentiated. Minor defendants must be segregated from adult defendants and tried as quickly as practicable. The person who has been found guilty gets a chance to think about his actions and the law, and if he made a mistake, he has the right to get his money back.

Children's rights in the criminal justice system are governed by the premise that juvenile offenders (children) must be segregated from adults and provided treatment commensurate with their age, status, and rehabilitation needs. Therefore, the court that positions children as suspects or defendants must be separated so that children in dispute with the law get a restorative and rehabilitative penalty rather than a severe one. *Convention on the Rights of the Child, Resolution No.109 of 1990*

The Convention on the Rights of the Child governs children's rights precisely. This convention establishes the concept of the rights of the child in order to defend such rights. No one may be arbitrarily or unjustly deprived of their liberty, or subjected to torture or other cruel, inhuman, or degrading treatment or punishment, the death sentence, or life imprisonment. Arresting, detaining, or imprisoning a kid must be done in line with the law, as a last option, and for the shortest time practicable.

Every child who is deprived of his freedom must be treated humanely and with regard to his human dignity, taking into consideration the special requirements of children who are separated from adults. Every child accused of breaking the law has the right to receive legal and other necessary assistance as soon as possible, to contest the legality of his loss of independence, to maintain familial ties, and to seek therapy without having to initiate judicial proceedings. Every child who is suspected or accused of breaking the law is presumed innocent unless proven guilty, in accordance with the law.

Every child who is suspected or accused of having violated the criminal law is immediately and immediately notified of the charges against him. Every

child who is suspected or accused of having violated the criminal law shall obtain a court decision without delay. Every child who is suspected or accused of having violated the criminal law is not forced to give testimony or admit guilt. Every child who is suspected or accused of breaking the law can question or order to question witnesses who could be used against them. They can also get the participation and examination of witnesses who could be used against them.

Decisions and any actions imposed have the right to be reviewed by a higher official, and their personal lives are fully respected at all stages of the court process. The state seeks to increase the formation of laws, procedures, authorities, and institutions that specifically apply to children who are suspected, suspected, accused, or declared to have violated criminal law. Care, guidance and supervision orders, advice giving, probationary periods, child care, vocational education and training programs, and other alternatives to admitting the child to a nursing institution should be provided. Any child who has been neglected, exploited, abused, tortured, or given any other kind of cruel, inhuman, or degrading treatment or punishment should be helped to heal on a spiritual and physical level and get back into society.

*The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Resolution 39/46 dated 10 December 1984, which was ratified by the Government of the Republic of Indonesia by Law No. 5 of 1998.*

Several of the International Convention's principles also apply to children in dispute with the law. Each state ensures that education and information on the prohibition of ill-treatment are fully incorporated into the training of law enforcement personnel, civil or military, medical personnel, government officials, and other individuals who may be involved in the detention, interrogation, or treatment of any person subjected to this form of arrest, detention, or imprisonment. Every person who claims to have been persecuted has the right to file a complaint and be quickly investigated by impartial authorities. Victims and witnesses are protected from any ill-treatment or intimidation as a result of their treatment or any evidence provided, and have the right to fair and adequate compensation, including the means for as full a rehabilitation as possible; any statement drafted must be the result of persecution and cannot be used as evidence in court.

By virtue of Law No. 5 of 1998 pertaining to the Ratification of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Indonesia has ratified this convention. This legislation was created under the presidency of B.J. Habibie. In the context of practicing Pancasila and implementing the 1945 Constitution, Indonesia has, according to the convention's general explanation, enacted laws and regulations that directly regulate the

prevention and prohibition of all forms of torture, inhuman treatment, and degradation of human dignity.

The law is deemed insufficiently compliant with the treaty. Improving national legislation will increase the efficacy of legal protection, thereby ensuring that the rights of every citizen to be free from torture and other cruel, inhuman, or degrading treatment or punishment of humans are better protected, in order to establish an orderly, civilized Indonesian society. *Standard Minimum Rules for the Treatment of Prisoners (Resolution No.663 C (XXIV)) of 31 July 1957, Resolution 2076 (LXII) of 13 May 1977*

On July 31, 1957 and May 13, 1977, the United Nations approved resolutions establishing the general concept that all detained or imprisoned children are entitled to all of the treatment guarantees outlined in these standards. Then there is the idea that discrimination should not occur. Every detention facility is required to maintain a registration book. Men and women should be incarcerated in separate facilities if feasible. Inmates who have not been tried will be held apart from those who have been convicted.

This resolution includes as a particular principle the separation of debtors and other civil prisoners from criminals. Prisoners who are too young must be incarcerated apart from adults. Each prisoner shall spend the night in a cell with a separate blanket, which is sufficiently clean and equipped with the necessary water and toiletries for health and hygiene. If he is not permitted to wear his own clothes, he must be provided with full, appropriate attire to protect his health without being degraded or humiliated. Food should be available at appropriate hours, have sufficient nutritional content for health and strength, be of good quality, and be well-prepared and presented. Water must always be accessible for consumption. At least one hour of appropriate practice every day, weather permitting, in the open air. *Codes of Conduct for Law Enforcement Officials, General Assembly Resolution 34/169 of 17 December 1979*

The administration of justice principles in this document say that law enforcement officers must serve the community by protecting everyone, respecting and preserving human dignity, protecting and upholding the human rights of everyone, and only using force when it is absolutely necessary. No law enforcement officer may impose, encourage, or condone torture or other cruel, inhuman, or degrading treatment, nor may they offer any kind of justification for such treatment or humiliating punishment. They must provide comprehensive health protection for people in their control. Officers of the law are not allowed to be corrupt, and they must fight corruption with all their might when they see it.

*United Nations Standard Minimum Rules Concerning the Administration of Juvenile Justice, Resolution No. 40/33 of 1985 (Beijing Rules)*

The Beijing Rules are one of the legal instruments on which the administration of justice for children is often based. Every adolescent or child who is involved with the juvenile justice system has the right to receive all of the therapy specified in this rule. In the meantime, the concept incorporates many formulations stating that the legal system for children will prioritize the child's wellbeing. They are consequently permitted to make choices at all phases of the judicial process and juvenile justice administration, including investigation, prosecution, decision-making, and following arrangements. Without having to use formal preliminary exams, the police, public prosecutors, and other agencies that deal with crimes involving minors will be able to decide cases on their own.

The right to be advised of the accusations against him, the right to stay quiet, the right to a counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses, and the right to appeal to a third party. At all phases of the judicial procedure, a higher authority will be assured. Immediately upon the arrest of a kid, the parents must be informed. As a last option, and for as little time as possible, individuals shall be detained prior to their trial.

The official or other competent authority will evaluate the issue of release without delay. Contracts between law enforcement agencies and juvenile offenders are governed so as to respect the legal position of the juvenile and to promote the child's welfare. All of the rights and protections outlined in the Standard Minimum Rules for the Treatment of Prisoners apply to children who are detained pending trial. Children facing pre-trial detention will be placed separately from adults and will be detained in a separate institution from an institution that also detains adults. They will receive care, protection, and all necessary individual assistance (social, educational, skills, psychological, medication, and physical) based on their age, gender, and personality. Officers whose primary duty is to prevent crimes against children or who deal with children often or especially will get specialized education and training.

The legal procedure will be favorable to the child's best interests and will be done in an atmosphere of mutual respect, allowing the youngster to participate and openly express himself. They have the right to be represented by an attorney or to seek free legal aid. The parent or legal guardian has the right to participate in the court process and may be ordered to do so by the competent authority.

Loss of liberty must not be imposed unless it is determined for a major conduct involving violence against another person, or for the intent to commit additional significant violations of the law, and there is no alternative suitable response. Children are exempt from corporate law. At any point, the competent authority may discontinue the legal proceeding. Children should only be placed in institutions as a last option and for the shortest period feasible, with the goal of providing them with care, safety, education, and specialized skills so that they may play socially constructive and useful roles in society. They are housed separately from adults and will be incarcerated in a different facility from that which houses adults. In an institution, parents or guardians will have the right to visit their children to look out for their interests and make sure they are safe.

The proper authorities will employ parole wherever feasible, and parole will be issued as soon as practicable. The state will establish semi-institutional arrangements, such as shelter houses, educational homes, day training facilities, and other arrangements that may aid in the successful reintegration of children into society.

*GA Resolution 43/173 of 9 December 1998 sets forth a body of principles for the protection of all persons under any form of detention or imprisonment.*

This text establishes the fundamental idea that all detained or imprisoned individuals must be treated with humanity and respect for their inherent dignity. If feasible, detained individuals should be kept apart from custody. Anyone who is detained should be quickly informed of the charges against him and the grounds for his arrest at the moment of his arrest.

*Riyadh Guidelines, Resolution No.45/112 of 1990, United Nations Guidelines for the Prevention of Juvenile Delinquency*

The principles formulated in the Riyadh Guidelines are that programs and community services for the prevention of juvenile delinquency should be developed and that official social control bodies should be used as a last resort. Law enforcement and other relevant officers of both sexes should be trained to respond to children's special needs and to become familiar with and apply programs and appointments for the transfer of children from the justice system to the greatest extent possible.

*United Nations Regulations for the Protection of Children Deprived of Their Freedom, Resolution 45/113 of 1990*

The UN resolution issued in 1990 is quite detailed in formulating the rights of children, especially those related to children who have lost their freedom. The general rule is that this rule must be followed the same way for all children, regardless of their beliefs, religious or cultural practices, or sense of right and

wrong. The juvenile justice system must uphold the rights and safety and promote the physical and mental well-being of children. Eliminating the freedom of children must be a last resort and for a minimum period of time and be limited to exceptional cases, without prejudice to the possibility of early release. Eliminating children's freedom must be done in a way that respects their human rights, and it can only be done in a way that takes into account their unique needs, status, and special requirements based on their age, personality, gender, and violations, according to the principles and procedures set out in these regulations and the United Nations Standard Minimum Rules concerning the Administration of Juvenile Justice.

*National Legislative Instruments Relating to Juvenile Criminal Justice*

The fundamental norms and a variety of national laws and regulations that are now in existence have various methods of describing juvenile justice.

The Fourth Amendment to the 1945 Constitution of the Republic of Indonesia states that there are several provisions regarding children listed in Article 28G, Article 28H, Article 28I, Article 29 and Article 34.

The Human Rights Law No. 39 of 1999 is one of the primary laws regulating human rights in Indonesia. The content of this legislation virtually totally follows the UN Universal Declaration of Human Rights. Every child has the right not to be exposed to torture, torture, or brutal penalties, and they cannot be deprived of their liberty in violation of the law, according to a number of principles concerning juvenile criminal justice. They cannot be sentenced to the death penalty or life in prison without the possibility of parole.

Law 23 of 2002 pertaining to Child Protection is directly related to special protection for children in conflict with the law through humane treatment in accordance with children's rights, provision of special assistant officers from an early age, provision of special facilities and infrastructure, imposition of appropriate sanctions for the best interests of children in conflict with the law, guarantees to maintain relationships with parents and families, and protection.

The Corrections Law of 1995, Law No. 12. Essentially, the purpose of the correctional system is to train people who are incarcerated to become productive and responsible members of society once again. Particularly, the growth of children in Child Correctional Institutions is based on the classification: age, gender, length of time the sentence/construction was imposed, kind of crime, and other factors based on the requirements or development of the child.

Children in Conflict with the Law: Joint Decree of the Chief Justice of the Supreme Court, the Attorney General, the Head of the National Police, the Minister of Law and Human Rights, the Minister of Social Affairs, and the State Minister for Women's Empowerment and Child Protection. The purpose of this joint decision is to integrate and coordinate efforts to settle instances involving children in conflict with the law, which are carried out by law enforcement officers and all parties involved. This joint resolution specifies several actions that must be taken by the appropriate authorities in order to prioritize children's rights while resolving instances involving children in conflict with the law.

## REFERENCES

- Marlina, M. (2010). Pengantar Konsep Diversi dan Restorative Justice dalam Hukum Pidana.
- Marlina, P. P. A. D. I. (2009). Pengembangan konsep diversi dan Restorative Justice. *Refika Aditama, Bandung*.
- Morris, A., & Maxwell, G. (2001). Restorative Justice for Junvile; Coferencing. Mediation and Cirlce.
- Tonry, M. H. (1999). *The fragmentation of sentencing and corrections in America* (No. 1). US Department of Justice, Office of Justice Programs, National Institute of Justice.
- Umbreit, M. S., & Stacey, S. L. (1996). Family group conferencing comes to the US: A comparison with victim-offender mediation. *Juvenile and Family Court Journal*, 47(2), 29-38.
- Umbreit, M. S., Coates, R. B., & Vos, B. (2002). The impact of restorative justice conferencing: A multi-national perspective. *British Journal of Community Justice*, 1, 21-48.