

## Protection of Children in The Criminal Supervision System Viewed from The Perspective of Justice's Restorative

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**Abstract.** Children are an inseparable part of both human and nation and state survival. Children need to get the widest possible opportunity to grow and develop optimally both physically, mentally and socially. The Unitary State of the Republic of Indonesia has regulated and guaranteed the welfare of each of its citizens, including the protection of children's rights which are Human Rights as stated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The law states that every child has the right to survival, growth and development as well as protection from violence as well as discrimination as mandated in the 1945 Constitution of the Republic of Indonesia. Referring to Law Number 23 of 2002 concerning Child Protection Article 1 Paragraph (1), a child is someone who is not yet eighteen years old, included in the womb. Criminal supervision for children is a special punishment imposed on children, namely supervision carried out by the public prosecutor over the child's behavior in daily life at the child's home and providing guidance carried out by social counselors. The purpose of scanning expressly says that punishment is not just to retaliate or repay people who have committed a crime but has certain useful purposes and retaliation is only a means to protect the interests of society. Restorative Justice is a victim-centered reaction to crime that allows victims, perpetrators, families and communities to pay attention to losses due to criminal acts. Restitution emphasizes the restoration of material or physical and psychological losses to victims of child crime. In imposing criminal offenses on children, it is necessary to emphasize the conditions for criminal supervision in the application of restorative justice so that juvenile crimes that cause loss and suffering to victims can apply fair and good child protection without having to deprive the child of independence.

**Keywords:** Child Protection, Criminal Supervision, Restive Justice

### Introduction

Every child has the right to live, grow and develop, participate and is entitled to protection from acts of violence and violations as well as civil rights and freedoms. The legal state of Indonesia is reflected in the 1945 Constitution of the Republic of Indonesia in Article 1 paragraph (3) it is stated that "Indonesia is a state based on law". The provisions in Chapter X Article 27 paragraph (1) emphasize that "all citizens are equal before the law and the government is obliged to uphold the law and government without exception. Furthermore, Article 28 paragraph (5) reads "for the enforcement and protection of human rights guaranteed, regulated and set forth in laws and regulations. State protection is not excluded for children as perpetrators and victims of child crimes. Children are a mandate as well as a gift from God Almighty, which we absolutely must protect because they have inherent dignity and rights as human beings which must be upheld.

In addition to child protection, generally every child can be given special protection. Special protection is a form of protection received by children in certain situations and conditions to get a guarantee of a sense of security against threats that endanger themselves and their lives in their development. Special protection can be given to child victims of physical and/or psychological violence and to child victims of abuse and neglect (Article 59 paragraph (2) letter i and letter m). Forms of violence and neglect are regulated in Article 1 point 15a, which stipulates that violence is any act against a child which results in physical, psychological, sexual, and/or neglect of misery or suffering, including threats to commit acts, coercion, or deprivation of liberty. against the law.

Protection of children has been regulated in Article 34 of the 1945 Constitution which reads that the state provides protection to the poor and neglected children. The Declaration on the Rights of the Child also states that children, because of their physical and mental immaturity, need special protection and care, including proper legal protection before and after birth. The life that is increasingly complex and diverse from the flow of globalization causes positive and negative influences on the progress of the times followed by changes in behavior man. Negative behavior that is not in accordance with social norms is considered a social problem by society. Behavior that violates this norm can not only be seen in adult society, but children are also not immune from

deviant behavior and often break the law. There are many factors why children commit criminal acts so that they break the law, not even a few minors are in prison. However, it should be noted that the handling of criminal cases against children is different from the handling of criminal cases against adults. The handling of criminal cases against children is regulated separately in the regulations that regulate them. There are several provisions that regulate the handling of children in conflict with the law, namely Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, Law No. 3 of 1997 concerning Juvenile Justice.

Juvenile criminal justice is regulated in Law No. 3 of 1997 concerning Juvenile Courts deviating from the Criminal Code. Considering that children have special characteristics that cannot be equated with adults, for this reason special handling is needed by taking into account the interests of the child, so that children as perpetrators of criminal acts are not harmed physically or mentally. This distinction has a purpose, namely to provide protection for the psychological development of children who have a long future. So as to avoid the assumption that children think their cases are as scary as adult criminal cases.

Based on Law No. 3 of 1997, it can be said that the treatment of children who commit crimes has provisions; Every child has the right not to be separated from his parents, unless there are valid legal reasons and regulations indicating that such separation is in the best interests of the child. Furthermore, children have the right not to be subjected to abuse, torture or imposition of inhumane punishment.

Furthermore, the death penalty or life imprisonment cannot be imposed on juvenile offenders. Arrest, detention or imprisonment of children may only be carried out in accordance with applicable law and can only be carried out as a last resort. Finally, every child who is deprived of his liberty has the right to be treated humanely and with due regard to integrity personal development according to age and must be separated from adults, except for the sake of their interests. In addition to protecting children who commit crimes, child convicts must receive the fulfillment of the rights of child convicts, namely the right to grow and develop, the right to participate, the right to education, the right to eat and drink and housing rights. Child convicts also need to receive social guidance to develop their personality and social life. Activities that can be carried out by child convicts are by facilitating guidance on good social life and informing them of religious norms, decency, social etiquette and meetings with victims' families to maintain emotional relationships. can determine and regain his natural identity as a human being who lives and has a better purpose in life.

In handling this case in reviewing that there is no deprivation of a child's independence, then in the criminal justice system it is carried out with a criminal supervisory system which is reviewed in restorative justice. Restorative Justice is an approach to solving problems that involves victims, perpetrators, and elements of society for the sake of creating justice. In relation to criminal law enforcement, restorative justice is an alternative settlement of criminal cases, which originally focused on punishment, to become a process of dialogue and mediation involving perpetrators, victims, families of perpetrators/victims, and other related parties, to jointly create an agreement. for the settlement of criminal cases that are fair and balanced for victims and perpetrators by prioritizing restoration to their original state, and restoring the pattern of good relations in society.

The future sustainability of children in conflict with the law as in the case study on the decision of the Ungaran District Court Case Register Number 3/Pid.Sus-Anak/2023/PN. UNR in criminal supervision is reviewed in restorative justice.

## **Methods**

The research method used in this research is normative juridical method (legal research) with the approach used is empirical juridical approach (field research). cases through the Supervisory Board. Determination of supervision punishment and court decision whether or not it is successful and its legal consequences (case study) and normative juridical approach (legal research) are to answer the problem of how procedures and statutory provisions are applied in criminal supervision efforts in terms of restorative justice.

Specifications in analytical descriptive research. A research that seeks to describe legal issues, the legal system, statutory regulations and examine them or analyze them in accordance with reality. The legal events that apply at a certain time are very dependent on the situation and the dynamics of the society that is developing.

The types and sources of data used in this study are:

Secondary legal material

Namely data obtained through library research, namely literature on Victim Protection,

Child Crime, Juvenile Crime Court Decisions and Criminal Code regulations, Criminal Procedure Code, the NRI Law on Child Protection, the NRI Law on the Juvenile Criminal Justice System and other regulations that related.

Primary legal materials are legal materials obtained directly from research subjects by means of observation, interviews, questionnaires (open or closed questionnaires, face to face), samples and so on. It is hoped that the questionnaire data can be processed to explain the extent to which the secrecy of children's identities is implemented from a legal perspective as a form of protection.

Tertiary legal material

Namely supporting legal materials that provide instructions and explanations of primary legal materials and secondary legal materials, namely legal dictionaries, journals, websites

Data collection techniques used in order to obtain accurate data in this study are as follows:

Primary data

The primary data in this study were obtained by direct observation of the research subjects.

Secondary data

The secondary data in this study are secondary data originating from the research location, namely the Ungaran District Court.

Furthermore, through this research the author will analyze and conclude by using qualitative data analysis methods. Qualitative data analysis, namely the data obtained, then systematically arranged to be analyzed qualitatively to achieve clarity of the problem to be discussed.

## **Results and Discussion**

### **Criminal Supervision in the Application of Protection of Offenders Against Child Violence**

Children are part of the younger generation as one of the human resources who are potential and successors to the ideals of the nation's struggle, which have a strategic role and have special characteristics and characteristics, requiring development and protection of physical, mental and social as a whole. For the Indonesian people, children are the subject and capital of national development in order to achieve a just and prosperous society according to the mandate of the 1945 Constitution. Therefore, children need guidance, special guidance so that they can develop optimally physically, mentally and spiritually. In the process of guidance and coaching, there will be a process of forming the values of adolescents. These values are formed from various factors, both internal and external. Therefore, families understand the process of forming the values of their adolescent children because they will inevitably encounter these aspects in everyday life. These values are important because they affect the pattern of relationships and interactions of a person with other people. The main factors forming the values of a teenager include family, religion, school, and the environment. There is always a double impact that arises from the environment on the values of adolescents. For example, association will have a positive impact because it brings values the value of goodness if it is in the right corridor. However, association also often drags teenagers into unlawful acts, committing immoral, immoral, even criminal acts.

Deviant behavior committed by adolescents in the sense of juvenile delinquency (Juvenile Delinquency) is an act or action committed by someone who is not yet an adult who deliberately violates the law and is aware by the child himself that his actions can be subject to sanctions or punishment (criminal). Article 1 point (1) Law Number 3 of 1997 concerning juvenile courts states that a child is a person who in a child case has reached the age of 8 years but has not yet reached 18 years and is not yet married. The provisions of this article are exempt if a person has not reached 18 years old but has married/married, then the child is still considered an adult even though he is not yet 18 years old.

It is also explained in Article 1 paragraph (2) of Law Number 23 of 2002 concerning child protection, that "child protection is all activities to guarantee and protect children and their rights so that they can live, grow and develop and participate optimally in accordance with dignity. and human dignity, and receive protection from violence and discrimination.

Every child has the right to freedom according to the law. Arrest, detention or punishment of imprisonment for children is only carried out if in accordance with applicable law it can only be carried out as a last resort. Child legal protection is an effort to protect the law against various freedoms and children's human rights. Forms of legal protection for children, for example assistance from community officers, shorter detention periods compared to adults, facilities by special law enforcement officers for children, including the separation of child prisoners from adult custody is

one form of legal protection for children.

The penal system, which until now sometimes still treats children who are involved as perpetrators of crimes, is like perpetrators of crimes committed by adults. The child is placed in a position as a perpetrator of a crime deserves to get the same punishment as an adult and applies in Indonesia. Punishment itself is more oriented to individual perpetrators or commonly referred to as individual or personal responsibility (Individual responsibility) where the perpetrator is seen as an individual who is able to take full responsibility for the actions he has committed.

The Juvenile Justice System must also prioritize the Restorative Justice approach, as well as criminal supervision with the aim of achieving peace between the victim and the child; resolve cases of children outside the judicial process; resolve cases of children outside the judicial process; prevent children from deprivation of independence; encourage people to participate; and instill a sense of responsibility to children.

This type of crime is also related to criminal prosecution, for this reason it must be prepared in a systematic framework based on the facts of the occurrence of a crime as the foundation for the legal construction of prosecution. Prosecution must be in accordance with the conditions of the perpetrators and victims as well as the social conditions of the community and their local wisdom, besides that optimizing criminal prosecution can be carried out through values that are supported by access to justice, so that it can be in line with the spirit of mutual cooperation, honesty and sincerity in society, especially justice seekers.

Reconstruction of the regulation of imprisonment in the Criminal Code based on the values of justice is to realize the regulation and implementation of imprisonment in accordance with the values of justice. Alternative criminal formulation policies for imprisonment in the reform of criminal law, namely supervision punishment, combined punishment between imprisonment and supervision punishment and social work punishment. The judge's decision must take the principle of benefit by considering the lightness of the act, personal circumstances, circumstances at the time of committing the act and considering the aspects of justice and expediency. It is also likely that this aspect will be considered as explained in Article 75 of the Criminal Code Bill which states that a defendant who commits a crime that is punishable by imprisonment for a maximum of 5 (five) years can be subject to criminal supervision.

The implementation of legal protection in the transfer process is reviewed from restorative justice in criminal supervision as according to the decision of the Case Court Number 3/Pid.Sus-Anak/2023/PN Unr

**Demand:**

In order for the Panel of Judges of the Ungaran District Court who examined and tried this case to decide:

1. Declare that Benedict's son Hendra Dwi Pratama, the son of Bernadus Beny Dwiantoro, has been legally and convincingly proven to have committed the crime of "abusing children" in violation of Article 76 C in conjunction with Article 80 Paragraph (1) of Law Number 35 of 2014 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection
2. Imposing a crime on the child with imprisonment for 2 (two) months
3. Stipulates that the sentence does not need to be served, by imposing a sentence on condition that it is in the form of a "Criminal Supervision" at the child's place of residence by placing the child under the supervision of a General Prosecutor for 3 (three) months
4. Determine that the supervision punishment is carried out without interfering with the child's learning obligations
5. Establish special conditions in the form of a child having to report 1 (one) time in 1 (one) week, notifying the schedule of the child's activities to the Public Prosecutor while the child is serving a criminal period with conditions, provided that during coaching the child violates special conditions based on the recommendation of the Development Official The supervisory judge can extend the coaching period which does not exceed a maximum of 2 (two) times the coaching period that has not been implemented.
6. Establish evidence in the form of:
  - 1) 1 (one) pair of black glasses
  - 2) 1 (one) blue plastic raincoatReturned to the child of the victim, Joshua Refael Mahendra

7. Stipulates that the child pays a court fee of Rp. 2.500,- (two thousand five hundred rupiah)

Aggravating circumstances:

- a. The child's actions cause the child to suffer pain
- b. The child regrets what he did
- c. Kids are still in college
- d. The victim's family has forgiven the child's actions

court fees.

Considering, that because a child is sentenced to a crime, he must also be burdened with paying Noting, Article 76 C and Article 80 Paragraph (1) of Law Number 35 of 2014 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law -Law Number 8 of 1981 Concerning Criminal Procedure Code and other relevant laws and regulations;

**JUDGE:**

1. Declare that Benedict's son Hendra Dwi Pratama, the child of Bernadus Beny Dwiantoro mentioned above, has been legally and convincingly proven guilty of committing the crime of violence against children as stated in the single indictment of the Public Prosecutor
2. Imposing a crime on the child with imprisonment for 1 (one) month and 15 (fifteen) days
3. Stipulates that the sentence does not need to be served, by imposing a conditional sentence in the form of "Criminal Supervision" at the child's place of residence by placing the child under the supervision of the public prosecutor for 3 (three) months
4. Establish general conditions, namely that children do not commit criminal acts again during their criminal period with conditions
5. Establish special conditions in the form of a child undergoing mandatory reporting 1 (one) time in 1 (one) week, notifying the child's schedule of activities to the Public Prosecutor while the child is serving a criminal period with conditions, with provisions if during coaching the child violates special conditions based on the recommendation of the Development Official, the supervisory judge can extend the coaching period which does not exceed a maximum of 2 (two) times the coaching period that has not been implemented
6. Order the Community Advisor to provide guidance so that the child fulfills the requirements that have been set
7. Determining that supervision punishment is carried out without disturbing the child's learning obligations
8. Determine whether evidence is in the form of:
  - 1) 1 (one) pair of black glasses
  - 2) 1 (one) blue plastic raincoat

Returned to the child of the victim, Joshua Refael Mahendra

Burden the child to pay court fees in the amount of Rp. 2,000.00 (two thousand rupiah)

The implementation of fostering students has different coaching methods from coaching adult prisoners, this is related to the inherent characteristics of children. Children are individuals who are in the process of growth and development so that all treatment of children must be able to create conducive conditions in order to support this growth and development process. According to the Judge, the development of students must be able to provide guarantees that the rights of children as stated in Law Number 12 of 1995 concerning Corrections can be fulfilled. The fulfillment of children's rights will be able to support the process of child development. In several legal instruments that regulate children, it has given a nuance in favor of children.

An agreement that manifests supervision punishment as stated in case No. 3/Pid.Sus-Anak/2023/PN.Unr has been carried out with a justice approach or also known as deliberation-based justice/restorative justice. Thus, in practice, it involves perpetrators, victims, families of perpetrators/victims, and other related parties to sit together to find solutions and solutions that are as fair as possible with more emphasis on restoration to their original state (*restitutio in integrum*), and not retaliation.

### **Restorative Justice in a case settlement related to Criminal Supervision**

Restorative justice contains the meaning, namely: "a rapprochement and redemption of mistakes that the perpetrators of criminal acts (their families) want to do to the victims of these crimes (their families) (peace efforts) outside the court with the intent and purpose that legal problems that arise as a result of the occurrence of these criminal acts can be resolved properly by reaching agreement and agreement between the parties. Restorative justice is not focused on retaliation for the perpetrators of criminal acts, but seeks a fair solution by emphasizing restoration to its original state. Then, the conditions that must be met to apply restorative justice when carrying out the functions of criminal investigation, investigation or investigation, that is, there is an agreement between the parties to make peace, not to repeat the crime, has been fulfilled victims' rights, and the application of restorative justice is not rejected by the community. Restoration includes restoring the relationship between the victim and the perpetrator.

Restoration of this relationship can be based on mutual agreement between the victim and the perpetrator. Victims can convey the losses they have suffered and the perpetrators are also given the opportunity to make up for it, through mechanisms of compensation, peace, social work, and other agreements. The conventional sentencing process does not provide space for the parties involved, in this case victims and perpetrators, to actively participate in solving their problems. Every indication of a crime, without taking into account the escalation of its actions, will continue to be rolled out to the realm of law enforcement which is only the jurisdiction of law enforcers. It is as if the active participation of the community is no longer important, everything only boils down to sentencing or punishment without looking at the essence.

In the process of conventional criminal procedures, for example, if there has been reconciliation between the perpetrator and the victim, and the victim has forgiven the perpetrator, then this will not affect the authority of law enforcement to continue to forward the case to the realm of crime which will eventually lead to the conviction of the perpetrator. The formal criminal process which takes a long time and does not provide certainty for both the perpetrator and the victim certainly does not necessarily fulfill or restore the relationship between the victim and the perpetrator, the concept of restorative justice offers a recovery process that involves the perpetrator and the victim directly in solving the problem. The conventional criminal process only makes the victim later as a witness at the trial level which does not greatly affect the sentencing decision, the prosecution task is still given to the Prosecutor who only receives investigative files to be further processed to become the basis for criminal charges, without knowing and understanding the real condition of the problem. and the perpetrator is in the prison chair ready to accept the punishment that will be imposed on him.

The authority to set aside criminal cases is itself known as a manifestation of the opportunity principle which only belongs to the Attorney General. In practice, even at the police investigation level, they often collide with formal criminal procedural procedures terminated, the measure is limited to sufficient evidence of a crime. If there is evidence that a crime has occurred, the police will continue the case. Therefore, in the latest Draft Criminal Procedure Code, it is necessary to encourage a more humane approach to handling criminal acts, emphasizing and prioritizing a restorative justice approach compared to formal legalistic considerations.

Former Chief Justice of the Supreme Court Prof. Dr. H. Bagir Manan, SH, MCL once wrote that obstacles in carrying out peace between victims and perpetrators often stem from a very formalistic attitude of law enforcers by saying the legal process will continue even though there has been peace, the nature against the law will not be erased because of peace. According to him, is there still a goal of sentencing that has not been achieved if the parties have reconciled with each other? the aim of law enforcement is not to apply the law, but to achieve order, peace, tranquility, in a harmonious and just society.

As with criminal supervision as an alternative to criminal deprivation of liberty, it is hoped that it can reduce the economic costs of carrying out a crime and can prevent convicts from negative impacts such as worsening behavior after completing their sentence, negative thoughts from society that consider convicts to be bad people so convicts cannot socialize well in society and does not rule out the possibility of the convict to commit crimes again. The existence of supervision punishment for convicts is also expected to be able to make these convicts live normally in society.

The successful implementation of restorative justice as a process of resolving acts of law violations that occurred was carried out in meetings led by a mediator (facilitating judge) whose job was to provide the clearest description of the actions he had taken. In addition, there were members of the public who represented the interests of the community. The community representatives

provide an overview of the losses caused by the occurrence of criminal acts carried out by the perpetrator, so that the perpetrator performs an act or action to recover the shock/damage that has occurred due to his actions

The juvenile justice system in handling juvenile criminal cases with child defendants must be handled carefully. Priority with handling procedures takes precedence not to get out of legal provisions. Avoiding press publications, so that children are not mentally and socially disturbed. The implementation of supervision punishment in restorative justice through the process of law enforcement is either achieved or vice versa, the position of the child which causes a child to deal with law enforcement is partly due to the lack of attention from the family, so that the child is physically or mentally neglected, social and environmental factors, the development of globalization in the field of communication and information, advances in science and technology and changes in lifestyle in daily life have a fundamental influence on social development that makes changes to children's values and behavior.

### **Conclusion**

Completion of the process of examining cases of criminal acts of children in case No. 3/ Pid. Sus- nak/2023/PN. Unr. Criminal Supervision in the review of Restorative Justice as the application of the criminal system with the aim of not depriving children of independence. Victim protection is essentially the protection of human rights, then the law must focus on children's rights in general, and in the criminal justice process in particular it will be highlighted as a social study of children. The background and causes of criminal offenses can be examined individually. , therefore, in juvenile criminal cases, law enforcement agencies at the District Court which have the authority to decide child cases, the identity of the child must be kept confidential. In its application, it is strongly influenced by social forces in the operation of law in society. So that it becomes an obligation to realize together with lawmakers to supervise and control, law enforcers and society, obligations for parents, society, press institutions.

Based on Law No. 11 of 2012 concerning the Juvenile Criminal Justice System provides special treatment for children, in the sense that there must be a separation of treatment for children. Participation in educational, coaching and mentoring programs in this provision includes social rehabilitation and psychosocial rehabilitation. Children's rights must still be given. Children who are still in school can still attend formal education, whether organized by government or private agencies. In the implementation of educational programs, coaching and mentoring can involve the education office, social service, Community Advisors or educational institutions, and LPKS.

Victim protection is essentially the protection of human rights, then the law must focus on children's rights in general, and in the criminal justice process in particular it will be highlighted as a social study of children the background and causes of criminal offenses can be examined individually, because of the criminal cases of children, law enforcement agencies at the District Court which have the authority to decide on children's cases, the identity of the child must be kept confidential. In its application, it is strongly influenced by social forces in the operation of law in society. So that it becomes an obligation to realize together with lawmakers to supervise and control, law enforcers and society, obligations for parents, society, press institutions. All of them are systems that determine and play a role. have a shared awareness of understanding and implementing the rights and obligations as stipulated by law.

Settlement of criminal cases through the judiciary often does not guarantee a sense of justice between victims and perpetrators. Therefore, a settlement through restorative justice is needed to create a balance between victims and perpetrators. In addition, the handling of criminal cases can run flexibly and not be rigid. This research answers the problem of how far restorative justice can be applied in the criminal justice system in Indonesia to achieve justice and how to create a balance between perpetrators and victims of crime in order to lead to a flexible way of sentencing. This research is included in empirical legal research which is descriptive in nature by using a case and statutory approach. Based on the research results it was concluded that restorative justice in Indonesia so far can be applied in the settlement of criminal cases to achieve justice. In addition, restorative justice is proven to be able to create a balance between perpetrators and victims of crime. Therefore it is recommended that law enforcement officials have operational standards to use restorative justice in every handling of criminal cases.

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