

Study of the Benefits of Law in the Implementation of Restorative Justice for Children as Victims and Perpetrators of Criminal Acts

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Abstract

Restorative justice is an approach to resolving criminal cases that prioritizes the restoration of losses and the repair of social relationships between the offender, the victim, and the community. In the context of children as either victims or perpetrators of criminal acts, this approach is considered more humane than formal judicial processes, which may generate adverse effects on a child's development. This article examines the implementation of restorative justice through the lens of the theory of legal utility (utilitarianism), which posits that ideal law is law that provides the greatest possible benefit to society. Using a normative analytical method, this study reviews the regulations governing restorative justice mechanisms within the Juvenile Criminal Justice System (SPPA) and analyzes the benefits produced for child victims and child offenders. The findings demonstrate that restorative justice yields tangible benefits, including psychological recovery for victims, avoidance of stigma for offenders, enhanced social responsibility, and strengthened family and community support. Nevertheless, its implementation still faces challenges such as limited understanding among law-enforcement officials, victim resistance, and insufficient supporting facilities. Overall, the application of restorative justice aligns with the principle of legal utility because it produces broad positive impacts for children and society and holds potential as a more effective and equitable model for case resolution.

Keywords: Restorative Justice, Legal Benefits, Children, Victims, Perpetrators, SPPA

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Introduction

Restorative justice has become an important paradigm in the development of the modern criminal justice system, particularly in handling cases involving children as perpetrators or victims. Global criminal law reforms are driving a shift from a retributive approach that emphasizes retribution against perpetrators to a more humanistic, dialogical approach that focuses on reparation. In Indonesia, the concept of restorative justice has found a place within the framework of the Juvenile Criminal Justice System (SPPA), which normatively prioritizes child protection and prioritizes their best interests. [1] This paradigm emphasizes that children, as individuals who are in a stage of psychological, emotional, and moral development, require a different legal approach from adults.

For children who are victims of crime, conventional criminal justice processes have the potential to cause new trauma, prolong their suffering, and even hinder their psychological recovery. Conversely, for children in conflict with the law as perpetrators of crimes, formal justice processes often leave them vulnerable to social stigma, loss of educational opportunities, and the risk of further criminalization. [2] This situation demonstrates the limitations of the retributive criminal justice system in providing substantive justice for children. Therefore, restorative justice exists as an alternative that not only prioritizes recovery but also fosters constructive communication between the perpetrator, victim, family, and community.

Philosophically, the application of restorative justice is in line with the theory of legal utility (utilitarianism) which emphasizes that the ideal law is the law that provides the greatest benefit to as many people as possible. [3] The utilitarianism of Jeremy Bentham asserts that the purpose of law is to maximize happiness or social welfare. Law should be judged not only by its formal certainty but also by its ability to improve the quality of life for the community. In the context of juvenile criminal justice, the intended benefits extend beyond crime prevention to minimizing new victims, mitigating social conflict, and rebuilding positive relationships among affected parties. Restorative justice is seen as a means to achieve these utilitarian goals. Through mechanisms such as diversion, penal mediation, family conferences, and consensusbased resolutions, restorative justice seeks to create outcomes that benefit all parties. For victims, this approach provides a space to be heard, receive an apology, receive compensation, and improve their psychological well-being. For perpetrators, restorative justice enables them to understand the impact of their actions, develop moral responsibility, and avoid the negative labeling that often arises from formal justice processes. For the community, restorative justice plays a role in maintaining social harmony, preventing recurrent conflicts, and encouraging community participation in maintaining environmental security.

Within the Juvenile Justice System (SPPA) framework, the principle of restorative justice has been accommodated through diversion regulations, a mandatory measure at every stage of juvenile justice. Diversion is implemented to prevent children from being excluded from the formal justice process, provided they meet certain requirements, such as a sentence of less than seven years or a non-serious crime. This regulation demonstrates the state's commitment to adopting restorative values as the basis for resolving juvenile cases. However, despite being enshrined in legislation, the implementation of restorative justice is not always effective in practice. [4] Berbagai persoalan struktural dan kultural masih menjadi hambatan, seperti kurangnya pemahaman aparat penegak hukum mengenai konsep restorative justice, keterbatasan tenaga mediator profesional, serta adanya persepsi publik yang masih bersifat retributif.

Sociologically, Indonesian society still tends to view justice as punishment commensurate with the perpetrator's actions. This perspective often makes victims or their families reluctant to accept reparation mechanisms, as they are considered insufficient deterrents. A similar situation also occurs among law enforcement officers who are accustomed to working within a formal and hierarchical legal system. [5] This phenomenon shows that the success of restorative justice does not only depend on regulations, but also on changes in legal culture in society.

Furthermore, another challenge that arises is the lack of supporting facilities and infrastructure, such as mediation rooms, counseling facilities, and psychological support systems for perpetrators and victims. Many regions lack institutions or professionals trained in juvenile penal mediation. Without such support, the restorative justice process will remain a mere formality without producing the substantive benefits expected. Another obstacle is resistance from victims or their families, particularly in certain cases deemed to be significantly detrimental or impinge on the family's dignity. [6]. This resistance demonstrates the need for a more sensitive communication approach, transparency in the process, and strengthening the role of victim assistance.

In terms of benefits, various studies show that restorative justice has a significant positive impact. For victims, this approach helps accelerate psychological recovery because they can express their experiences and feelings directly to the perpetrator. For perpetrators, restorative justice is considered more effective in preventing reoffending than formal punishment, because they are encouraged to understand the impact of their actions. For families and communities, this approach strengthens solidarity and prevents the breakdown in social relationships that often occurs after formal justice processes.

Taking these various aspects into consideration, it is important to examine in more depth how the implementation of restorative justice can be optimized within a theoretical, normative, and practical framework. This study is relevant not only for the development of juvenile criminal law policy but also for the development of more inclusive and equitable justice practices. From the perspective of legal utility theory, restorative justice can be seen as an approach capable of generating significant benefits for society, both in the short term through the restoration of social relationships, and in the long term through crime prevention and character development in children.

Furthermore, the concept of restorative justice aligns with Indonesian philosophical values, such as deliberation, kinship, and peaceful conflict resolution. These values have long been part of Indonesian culture. The implementation of restorative justice, therefore, is not merely an adoption of global concepts but also a revitalization of local values aligned with social justice and the restoration of relationships. However, harmonization of local values and international standards remains necessary to prevent deviations such as forced peace or neglect of victims' rights.

Considering the complexity of the challenges and potential benefits of restorative justice, research into its application from a legal utility perspective is crucial. This research is expected to provide a comprehensive overview of the extent to which restorative justice provides tangible benefits, the obstacles encountered, and future strategies to improve the effectiveness of its implementation. The results of this study are expected to contribute not only to the development of legal theory but also to the formation of policies that are more responsive to the needs of children and society.

Literature Review 2.1 Conceptual Framework of Restorative Justice in Juvenile Criminal Justice

Restorative justice is a sentencing paradigm that emphasizes efforts to restore social relationships and repair the harm caused by criminal acts. This concept emerged as a critique of the retributive criminal justice system, which is considered incapable of addressing the needs of victims, causing psychological impacts on perpetrators, and neglecting social recovery. [7].

In the context of children as perpetrators and victims, restorative justice is seen as more appropriate because it positions children as individuals who are experiencing moral and emotional development, thus requiring a more educational and rehabilitative approach. [8] In the theory of restorative justice, as proposed by Howard Zehr, crime is understood as a violation of interpersonal relationships, not merely a violation of the state. Therefore, resolving it through punishment alone is not sufficient; it requires dialogue, understanding, and reparation. This approach aligns with the principle of the "best interest of the child" recognized in various international human rights instruments, including the Convention on the Rights of the Child (CRC), which Indonesia has ratified. [9]. This principle emphasizes that in every legal process, children must be treated humanely and prioritize protection for their development.

A major advantage of restorative justice in the context of children is its ability to provide direct interaction between the perpetrator, victim, and community. The dialogue process at the heart of this mechanism helps victims express their feelings and needs, while also encouraging perpetrators to understand the concrete impact of their actions. Through this process, perpetrators are not merely held accountable in the abstract but are directly required to repair the harm caused, for example through an apology, compensation, or specific social activities. [10] Restorative justice mechanisms in juvenile justice also include diversion, which is the process of transferring a case from formal to alternative channels. Diversion is clearly regulated in the Juvenile Justice System (SPPA), specifically in Articles 6, 7, and 8 of Law Number 11 of 2012. Diversion is mandatory at the investigation, prosecution, and court hearing levels, provided certain requirements are met. This regulation demonstrates the state's strong commitment to minimizing children's involvement in the formal justice process, which has the potential to cause stigma and long-term impacts.[11]

Thus, normatively, the national legal framework has provided a strong foundation for the implementation of restorative justice in the juvenile criminal justice system. However, empirically, its effectiveness remains influenced by complex social, cultural, and institutional factors. The following section will analyze this implementation from a legal utility perspective.

Research Methodology

This research uses a normative juridical method with an analytical-conceptual approach. The normative juridical approach is used to examine various legal provisions governing the application of restorative justice in the Juvenile Criminal Justice System (SPPA), including Law Number 11 of 2012, implementing regulations, and international human rights instruments such as the Convention on the Rights of the Child. Meanwhile, an analytical-conceptual approach is used to examine the concept of restorative justice through legal theories, particularly the theory of legal utility (utilitarianism), to assess the extent to which the application of restorative mechanisms in juvenile criminal cases can provide social, psychological, and legal benefits for victims, perpetrators, and the community. Data analysis is conducted qualitatively on primary,

secondary, and tertiary legal materials to produce comprehensive scientific arguments regarding the effectiveness of the application of restorative justice in the SPPA.

Results 4.1 The Theory of Legal Utilitarianism as an Instrument of Analysis

The theory of legal utility (utilitarianism) provides a relevant philosophical framework for assessing the effectiveness of legal policies, including the application of restorative justice in the juvenile justice system. According to Jeremy Bentham, the purpose of law is to produce "the greatest happiness of the greatest number," that is, the greatest possible well-being for the greatest number of people. [12]. In the context of criminal law, this approach requires that the law enforcement process is not only oriented towards retaliation, but more importantly towards the resulting social benefits.

From a utilitarian perspective, juvenile criminal law policies should provide both shortterm and long-term benefits for child perpetrators, victims, their families, and society. If a legal approach provides more benefits than harms, it can be considered to have high utilitarian value. Conversely, if a legal approach creates new victims or leads to greater social conflict, it fails to meet the standards of legal utilitarianism. [13]. Restorative justice aligns with utilitarianism because of its focus on restoration, prevention of further impacts, and the achievement of social well-being. This approach emphasizes constructive reconciliation, not just repressive punishment. In the context of children, these benefits are even more significant because they can protect their future, prevent criminalization, and protect them from the negative environments often posed by formal justice processes.

Theoretically, the relationship between utilitarianism and restorative justice is strong because both prioritize "results" or "consequences" as a measure of legal success. Therefore, analyzing the implementation of restorative justice from a legal utility perspective will provide insight into the extent to which the policy meets social welfare goals.

4.2 Benefits of Restorative Justice for Child Victims

One of the groups that most benefit from the implementation of restorative justice in the Child Protection and Child Protection Program (SPPA) is child victims. The formal criminal justice process often forces victims, especially children, to undergo repeated questioning, face-to-face contact with the perpetrator in the courtroom, and experience emotional distress. Fear, anxiety, and trauma often emerge as side effects of this process. Restorative justice offers an alternative mechanism that is much more sensitive to the psychological condition of the victim. Second, this approach can reduce feelings of anger or revenge arising from a crime. Through restorative meetings, victims can gain clarity about the perpetrator's motivations and assurance that such incidents will not recur. Dialogues that occur in a safe and structured context can create a sense of relief and heal emotional wounds better than conventional justice processes.

Third, restorative justice can provide compensation or restitution more quickly and effectively. Formal court proceedings often take a long time, while restorative mechanisms allow concrete agreements on restitution to be reached in a relatively short time.

Thus, restorative justice provides significant benefits for victims, particularly in terms of psychological recovery, empowerment, and accelerated case resolution. This demonstrates that the restorative approach has high utilitarian value because it results in greater well-being for victims.

4.3 Benefits of Restorative Justice for Child Perpetrators

Children as perpetrators of crimes require special treatment within the legal system, as they are in a developmental phase that can still be guided and shaped. A retributive approach that emphasizes punishment can have long-term negative impacts on children, including stigmatization, reduced educational opportunities, and the risk of further involvement in crime. Restorative justice offers a solution to mitigate these negative impacts and improve children's functioning within society. [14].

First, restorative justice provides an opportunity for child offenders to gain a deeper understanding of their mistakes. They are encouraged to recognize the impact of their behavior on the victim, their family, and the community. This understanding is crucial for developing a sense of moral responsibility and preventing future reoffending.

Second, restorative processes allow children to avoid the stigma of the formal justice system. Being labeled a "criminal" often has long-lasting impacts on a child's social life. With diversion mechanisms and consensual resolution, children can correct their mistakes without leaving a criminal record that could harm their future.

Third, restorative justice helps strengthen family relationships and the social environment. Families are often involved in the mediation process, providing the emotional support children need to change. The social environment involved in resolving the case also helps provide broader support, preventing children from feeling isolated.

Fourth, a restorative approach provides interventions that are more educational than repressive. Children may be required to participate in coaching, social activities, or psychological counseling as part of the recovery process. These measures are oriented more toward learning and rehabilitation than toward retribution.

Based on these benefits, it can be concluded that restorative justice produces significant legal benefits for child offenders. This approach not only protects children's rights but also creates opportunities for positive change.

4.4 Benefits of Restorative Justice for Society

The restorative justice approach also has significant social benefits. Crime often creates tension in communities due to a decreased sense of security, the disruption of social ties, and the creation of stigma against the families of both the perpetrator and the victim. Restorative justice offers a more communal and participatory approach to resolving juvenile cases, ultimately strengthening social cohesion. [15]

First, restorative justice involves the community in resolving cases. The involvement of community leaders, teachers, or neighbors can create a more effective social oversight mechanism. Community support also accelerates the process of reintegrating children into society. Second, this approach reduces the potential for inter-family conflict that often arises in criminal cases. Through open dialogue, both parties can understand each other's circumstances and find mutual solutions without confrontation. This is crucial in a society with strong social ties like Indonesia. Third, restorative justice can reduce the burden on the formal criminal justice system. Many juvenile cases can be resolved through diversion, thereby reducing the number of cases handled by law enforcement officials. This reduced workload indirectly increases the effectiveness of the justice system as a whole. Fourth, restorative justice creates a more

harmonious social order. When communities are involved in conflict resolution, they become more concerned with crime prevention and child protection. [16].

Thus, restorative justice provides significant social benefits to the community, further strengthening the urgency of its implementation in SPPA.

4.5 Challenges of Implementing Restorative Justice in SPPA

Despite its many advantages, the implementation of restorative justice in Indonesia still faces a number of obstacles that can be categorized as structural, cultural, and technical barriers. Structural barriers are issues that arise from institutional unpreparedness in implementing the restorative justice concept. The main challenge is the lack of professional mediators and supporting facilities. Many regions lack specialized institutions to manage juvenile penal mediation processes. Furthermore, coordination between law enforcement agencies is often suboptimal, hampering the diversion process. A restorative approach requires a different legal culture than a retributive system. Many officials and communities still view justice as punitive. Resistance from victims or their families often arises because they believe the restorative approach lacks a deterrent effect. Furthermore, there are concerns that peace mechanisms can be manipulated to protect perpetrators.

Technical barriers include ineffective administrative and technical mediation procedures. The lack of detailed implementation guidelines often leaves officials confused about determining the appropriate steps when facilitating restorative meetings. Furthermore, limited time often hinders investigators or prosecutors from conducting mediation. These obstacles show that the success of restorative justice depends not only on regulations, but also on improving legal institutions and culture.

4.6 A Utilitarian Analysis of Restorative Justice Implementation

From a legal perspective, restorative justice can be seen as an approach that offers significant benefits to victims, perpetrators, and society. However, implementation challenges also need to be considered when assessing its overall level of benefit.

Utilitarianism dictates that a policy is considered effective if its benefits outweigh the risks or harms it causes. In the context of restorative justice, these benefits include victim recovery, perpetrator rehabilitation, and strengthening social relationships. Risks include the potential for abuse of peace mechanisms, unpreparedness of authorities, and cultural resistance.

Analysis shows that despite challenges, restorative justice overall still provides high legal benefits. Moreover, these risks can be minimized through officer training, improved mediation facilities, and public education on the importance of a restorative approach.

Conclusion

The application of restorative justice in the Juvenile Criminal Justice System (SPPA) is an important paradigm that offers a more humane, dialogical, and recovery-oriented approach than the traditional retributive system. Philosophically, this concept aligns with the theory of legal utility (utilitarianism), which emphasizes that ideal law is law that produces the greatest benefit for the greatest number of people. In the context of juvenile justice, restorative justice provides significant benefits for victims, perpetrators, families, and communities through relationship restoration, trauma reduction, recidivism prevention, and strengthening social cohesion.

Normatively, Indonesia has a strong legal basis through Law No. 11 of 2012 concerning the Child Protection and Juvenile Justice System (SPPA), which mandates diversion at every stage of the legal process. However, its implementation has not been optimal due to various structural, cultural, and technical obstacles. Lack of understanding among officials, limited professional mediators, inadequate facilities and infrastructure, and a retributive legal culture in society are key inhibiting factors. On the other hand, resistance from victims or families in certain cases demonstrates the need for a more empathetic and transparent communication approach.

From a utilitarian perspective, restorative justice has been shown to significantly contribute to social welfare. Its benefits include accelerating victims' psychological recovery, avoiding stigmatization of children of perpetrators, strengthening family support, and increasing community participation in conflict resolution. Despite the risk of abuse and implementation challenges, utilitarian analysis indicates that the overall benefits of restorative justice far outweigh its potential harms. Thus, optimizing the restorative justice paradigm requires strengthening the capacity of law enforcement officers, providing supporting facilities, community outreach, and harmonizing local values with international standards. These efforts are expected to foster a more just, inclusive, and future-oriented juvenile justice system for children and the well-being of the wider community.

References

- [1] L. Zehr, *Changing Lenses: A New Focus for Crime and Justice*, Herald Press 2015.
- [2] W. Nugroho, "Dampak Psikologis Proses Peradilan terhadap Anak," *Jurnal Perlindungan Anak*, Vol. 8 No. 2, 2020
- [3] J. Bentham, *An Introduction to the Principles of Morals and Legislation*. Oxford University Press, 1789.
- [4] A. Rahman, "Implementasi Diversi dalam SPPA," *Jurnal Hukum & Pembangunan*, Vol. 49 No. 1, 2019.
- [5] S. Maulana, "Budaya Hukum dan Restorative Justice," *Jurnal Kriminologi Indonesia*, Vol. 12 No. 1, 2021.
- [6] M. Sari, "Kendala Implementasi Restorative Justice dalam SPPA," *Jurnal Peradilan Indonesia*, Vol. 6 No. 1, 2021.
- [7] Tony F. Marshall, "Restorative Justice: An Overview," *Home Office Research Development and Statistics Directorate*, 1999.
- [8] Lode Walgrave, *Restorative Justice, Self-Interest, and Responsible Citizenship*, Cullompton: Willan Publishing, 2008.
- [9] United Nations Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programmes*, Vienna: United Nations, 2020
- [10] Bazemore, Gordon, and Mara Schiff, *Juvenile Justice Reform and Restorative Justice: Building Theory and Policy from Practice*, Portland: Willan Publishing, 2005.
- [11] Mark Umbreit, "Restorative Mediation and Dialogue: Strengthening Peacebuilding," *Peace Review*, Vol. 15, 2003.
- [12] Daly, Kathleen, "The Limits of Restorative Justice," dalam *Restorative Justice: From Philosophy to Practice*, Oxford: Hart Publishing, 2003.
- [13] Braithwaite, John, "Restorative Justice: Assessing Optimistic and Pessimistic Accounts," *Crime and Justice*, Vol. 25, 1999.

- [14] Van Ness, Daniel & Karen Strong, *Restoring Justice: An Introduction to Restorative Justice*, New York: Routledge, 2015.
- [15] Finkelhor, David, *Childhood Victimization*, Oxford: Oxford University Press, 2008.
- [16] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Jakarta: Kencana, 2010.