



## **RESTORATIVE JUSTICE FOR CHILDREN IN CONFLICT BY LAW REVIEWED LAW NUMBER 11 YEAR 2012 ABOUT THE JUVENILE CRIMINAL JUSTICE SYSTEM**

**Aruf Bahirra<sup>1\*</sup>, Ismaidar<sup>2</sup>, Aulia Rahman Hakim Hasibuan<sup>3</sup>**

<sup>123</sup>Fakultas Sosial Sains Program Studi Ilmu Hukum Universitas Pembangunan Panca Budi

Email : [arufbahirra@gmail.com](mailto:arufbahirra@gmail.com)

**Received: 02/03/2026 | Revised: 11/03/2026 | Accepted: 01/04/2026 | Published: 25/05/2026**

### **Abstract**

This study examines the application of restorative justice to children in conflict with the law from the perspective of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). The purpose of the study was to analyze the application of restorative justice principles, identify obstacles to their implementation, and assess the extent to which the juvenile justice system in Indonesia has prioritized the best interests of children. This study uses a normative juridical method with a statutory approach and conceptual approach, supported by secondary data in the form of laws and regulations, legal literature, and previous research results. The results of the study show that normatively, the SPPA Law has provided a strong legal basis for the application of restorative justice through the Diversion mechanism as stipulated in Articles 6-15. The main principle of the juvenile justice system emphasizes protection, justice, the best interests of children, and makes detention and punishment as the last resort (*ultima ratio*) as stated in Article 2 letters i and j. However, empirically, the implementation of this principle is not optimal. Diversion often fails to be carried out due to the lack of understanding of the authorities of Article 9 and Article 10 which regulate the consent of victims and the limits of minor crimes. In addition, the implementation of child protection as stipulated in Articles 30-38 has not been maximized, because children are still often detained even though they do not meet the conditions of detention.

**Keywords: *Restorative Justice, Children in Conflict with the Law, Diversion, Child Criminal Justice System,***

### **INTRODUCTION**

In recent decades, attention to the protection of children's rights in the criminal justice system has increased, both at the national and international levels. This awareness has led to the birth of various regulations that aim to shift the approach to juvenile criminal justice from a repressive pattern to a more humanistic and rehabilitative pattern. In Indonesia, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) was born. Because according to Priska, children are the main pillars in building the future of a nation, therefore they must be protected with various rules and legal policies that guarantee their rights and welfare (Khairunnisa & Rasji, 2024).

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) is a regulation designed to protect children's rights in the legal process, as well as directing law enforcement against children to be more oriented towards recovery rather than punishment. This law is important because it mandates the application of the principles of restorative justice and diversion as an effort to prevent children from the negative impact of the repressive criminal justice process, as well as to prevent the formation of stigma and criminal behavior that will be repeated in the future (Rismawati & Djanggih, 2022). In the case of children facing the law, restorative justice is considered a more humane solution compared to conventional criminal law. The ordinary criminal system tends to emphasize punishment through formal judicial processes, which often negatively impact the child's psychology, create social stigma, and hinder the rehabilitation process. On the contrary, restorative justice provides space for children to take responsibility for their actions without having to resort to restorative justice in a repressive criminal process. This approach also pays attention to the needs of the victim, improves the relationship between the perpetrator, the victim, and the

community, and prevents children from becoming recidivists. Thus, restorative justice is in line with the principle of child protection that prioritizes recovery, not retribution (Chazawi, 2014, p. 74).

Restorative justice in criminal law has the main goal of restoring the state as it was before restorative justice was committed by a crime. When restorative justice is a violation of the law, social conditions and relationships between individuals will change. It is in this context that the law plays an important role in protecting the rights of crime victims (Chazawi, 2014, p. 75). In principle, restorative justice is a philosophy or guideline that prioritizes the resolution of criminal disputes through a peace process outside the formal judicial channels. This mechanism is carried out using mediation or deliberation involving the perpetrator and his family and the victim and his family, in order to find the best solution that can be accepted and agreed upon by all parties involved.

However, even though it has been in place for more than a decade, the effectiveness of the SPPA Law in reducing the number of child involvement in criminal acts has not shown significant results. Kharani emphasized that the implementation of this law has not been optimal because there are still many obstacles in its implementation in the field. This is in line with data from the Indonesian Child Protection Commission (KPAI) as reported by Rizaty (2023), which noted that In 2022, the number of ABH reached around 1,800 children, up from around 1,700 children in 2020 and 2021, and nearly 2,000 children involved in legal cases) in 2023, with 1,467 children in custody status and 526 children having served sentences. As data provided by the ICJR, the percentage of children who are still undergoing detention process in Indonesia is still 94% and only 3% of children are not undergoing detention process (Alicia & Napitupulu, 2019).

Although it has been regulated normatively, the implementation of restorative justice in Indonesia still faces many obstacles. Research by Nugroho and Wijaya (2020) found that the implementation of restorative justice in big cities is still limited to a pilot project and requires a clearer implementation framework. Meanwhile, Hartanto (Hartanto, 2020) revealed that existing research tends to only discuss theoretical concepts without exploring their application in the local context of Indonesia which has complex social, cultural, and legal infrastructure. Based on this description, this research is entitled "Restorative Justice Against Children in Conflict with the Law Reviewed from Law Number 11 of 2012 concerning the Child Criminal Justice System." This study aims to examine the implementation of the principle of restorative justice in law enforcement against children, identify factors that hinder its implementation, and assess the relevance of the implementation of the SPPA Law in realizing a more humane and just criminal justice system for children in Indonesia.

The definition of a child in various laws and regulations in Indonesia has variations in age restrictions and certain legal contexts. Based on Article 45 of the Criminal Code (KUHP), a child is defined as someone who has not reached the age of 16. Meanwhile, Law Number 23 of 2002 concerning Child Protection defines children as individuals who are not yet 18 years old or legally married, with the emphasis that children are a vulnerable group and require special protection from the state and society. Furthermore, according to Law Number 4 of 1979 concerning Child Welfare, children is someone who is not yet 21 years old and has never been married. This means that the child's status can end when they reach the age of 21 or after marriage, depending on which happens first. Then, Law Number 39 of 1999 concerning Human Rights in Article 1 point 5 states that a child is any human being under the age of 18 and unmarried, including the fetus in the womb if it is necessary for his or her interests.

In the context of juvenile criminal law, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) provides more specific limits. Article 1 paragraph (3) states that a child is an individual who is 12 years old but not yet 18 years old and is suspected of committing a criminal act. The SPPA Law also distinguishes the definition of children into three categories. First, Children in Conflict with the Law, namely children aged 12 to 18 years who are suspected of committing criminal acts (Article 1 number 3). Second, the Victim's Child, namely children under 18 years old who experience physical, mental, or economic suffering due to criminal acts (Article 1 number 4). Third, Child Witnesses, namely children under 18 years of age who provide information in the investigation or trial process related to criminal acts that they experience, see, or hear themselves (Article 1 number 5).

Overall, these laws show that the age limit for children in Indonesia is not uniform, but is adjusted to the purpose of the regulation—both for protection, welfare, and criminal law aspects. Restorative justice is an approach to relationship recovery and efforts to make amends for wrongs committed by the perpetrator or his family against the victim and his family. This process aims to achieve peace outside the formal judicial channels, with the hope that legal problems due to the criminal act can be resolved properly through understanding and agreement between the two parties (Arief & Ambarsari, 2021). This approach opens up space for perpetrators and victims to resolve problems peacefully with assistance from prosecutors who act as neutral parties. The process is carried out voluntarily, without any coercion or pressure from any party (Andrianto et al., 2025).

## METHOD

This research uses a normative juridical method, which is legal research that focuses on the study of laws and regulations and applicable legal principles. Normative research includes research on legal principles, legal systematics, legal comparison, positive legal inventory, and the philosophical basis (dogma or doctrine) of positive law (Azward Rachmat Hambali, 2020). The approaches used include a statute *approach* and a *conceptual approach* to analyze the application of *restorative justice* principles in the juvenile criminal justice system based on Law Number 11 of 2012 concerning SPPA.

## RESULTS AND DISCUSSION

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) shows that the entire juvenile justice system is designed based on the principle of protection and restoration, not retribution. Article 2 of the SPPA Law explicitly contains ten main principles that are the basis for the implementation of the juvenile justice system, namely: "protection, justice, non-discrimination, the best interests of children, respect for children's opinions, survival and development of children, child guidance and guidance, proportionality, deprivation of independence and punishment as a last resort, and avoidance of retaliation". In Articles 3, 4, and 5 of the SPPA Law, it is clear that every child who is in conflict with the law has basic rights such as humane treatment, legal assistance, separation from adult custody, and protection from torture. Article 5 paragraph (1) emphasizes: "The *Juvenile Criminal Justice System is obliged to prioritize a restorative justice approach.*" This is the philosophical basis that the juvenile justice process is not to punish, but to restore social balance by involving all relevant parties—children, victims, families, and society.

Articles 6 to 15 of the SPPA Law systematically regulate the Diversion mechanism as a form of real application of *restorative justice*. The goal is clear: to achieve peace, to keep children out of prison, and to instill moral responsibility. Based on Article 7 paragraph (1), diversion must be sought at every level of the legal process starting from investigation to trial as long as the criminal act is threatened with a prison sentence of less than seven years and not a repetition of the crime (Article 7 paragraph (2)). Article 8 paragraph (1) emphasizes that the diversion process is carried out through deliberation involving children, parents, victims, community counselors, and professional social workers. This shows that diversion is not just a legal decision, but a *social process based on deliberation and empathy*. In practice, the results of the study found that this deliberation mechanism is often formal, not fully paying attention to the interests of the victim and the welfare of the child as stipulated in Article 8 paragraph (3). The biggest obstacle arises in the application of Article 9 paragraph (2) which states that the Diversion agreement must obtain the consent of the victim and/or the family of the Child of the Victim as well as the willingness of the Child and his family, except for:

- a. criminal acts in the form of violations;
- b. minor offenses;
- c. A non-violent crime; or
- d. The value of the victim's losses is no more than the value of the local provincial minimum wage."

This provision explains the balance between the interests of victims and the principle of child protection. However, in practice, law enforcement officials often refuse to diversion if the victim does not give consent, even for minor cases or no victims. In fact, Article 10 paragraph (1) provides a strict exception that diversion agreements for minor crimes and without victims *can still be carried out by investigators with perpetrators, community supervisors, and community leaders*.

The principle of child protection is reaffirmed in Articles 30 to 38, which regulate the arrest and detention of children. Based on Article 32 paragraph (1), detention of children may not be carried out if there is a guarantee from parents or institutions that the child will not flee or repeat the crime. In addition, Article 2 letter i emphasizes that criminalization is the last resort (*ultima ratio*). However, the results of the interpretation show that violations of this provision are still frequent. Many children remain in custody despite being eligible for non-detention, on the grounds that they are "in the interest of investigation". This condition is contrary to Article 33 paragraph (1) which stipulates that detention can only be carried out for a maximum of seven days and can be extended for eight days. In addition, Articles 35 to 38 regulate the time limit for detention in the court, appeal, and cassation stages, where each extension must be strictly carried out and ended with a legal release when the time has elapsed. Empirical facts show that there are still violations of this principle, where children are detained longer than the provisions of the law. This indicates weak supervision and low sensitivity of the authorities to children's rights. Of all the articles analyzed, the SPPA Law has provided a comprehensive and progressive legal framework, but its implementation still faces three main problems:

1. The lack of institutional facilities such as LPAS, LPKS, and Bapas as mandated by Articles 84-87 causes the implementation of diversion and child guidance to be suboptimal.
2. The paradigm of the community and law enforcement officials is still retributive, not yet understanding the value of recovery as referred to in Article 5 paragraph (1).
3. There is no operational guidelines and ongoing training for the proper implementation of Articles 9–10 and 32–38

## CONCLUSION

1. Normatively, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System has emphasized that the juvenile criminal justice system must prioritize a restorative justice approach as stipulated in Article 5 paragraph (1). This law guarantees the rights of children to protection, humane treatment, and avoidance of legal reprisals as stated in Articles 2–4. These principles are a strong legal foundation to realize an educational and humane juvenile justice system.
2. The implementation of Diversion as stipulated in Articles 6 to 15 is a tangible manifestation of *restorative justice*. However, in practice, the diversion mechanism still often fails to be carried out due to the ignorance of the authorities about the exceptions stipulated in Article 9 paragraph (2) and Article 10 paragraph (1), which actually allow diversion without the consent of the victim in cases of minor offenses, violations, or without victims. As a result, many child cases are still formally processed and lead to prison sentences, contrary to the principle of child protection.

## REFERENCES

- Alicia, G., & Napitupulu, E. A. . (2019). *Anak dalam Ancaman Penjara: Potret Pelaksanaan UU SPPA 2018 (Riset Putusan Peradilan Anak Se-DKI Jakarta 2018)*.
- Andrianto, Prawesthi, W., Handayati, N., & Sidarta, D. D. (2025). *Restorative Justice Terhadap Anak Sebagai Pelaku Tindak Pidana Penganiayaan*. 5(2), 1169–1180.
- Arief, H., & Ambarsari, N. (2021). *Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia*. X, 167–186.
- Azwad Rachmat Hambali. (2020). Penegakan Hukum Melalui Pendekatan Restorative Justice Penyelesaian Perkara Tindak Pidana. *Kalabbirang Law Journal*, 2(April), 69–77.
- Chazawi, A. (2014). *Pelajaran Hukum Pidana Bagian 1: Stelsel Pidana, Tindak Pidana, Teori-teori Pemidanaan, dan Batas Berlakunya Hukum Pidana*. PT. RajaGrafindo Persada.
- Hartanto, B. (2020). Challenges and Opportunities in Implementing Restorative Justice in Indonesia. *Indonesian Law Review*, 8(1), 105–124.
- Khairunnisa, P., & Rasji, R. (2024). Menilik Penjatuhan Sanksi Kumulatif Terhadap Tindak Pidana Yang Dilakukan oleh Anak Yang Berhadapan dengan Hukum Ditinjau dari Perspektif Kepastian Hukum. *Journal Of Multidisciplinary Research and Development*, 6(4), 1–19.
- Nugroho, S., & Wijaya, F. (2020). Pilot Project of Restorative Justice in Indonesia: An Initial Analysis. *Journal of Indonesian Legal Studies*, 5(2), 200–218.
- Nuroini, I. (2024). Efektivitas Penerapan Restorative Justice Dalam Kasus Pidana Di Indonesia. *Jurnal Cahaya Mandalika*, 5(1), 1–23.
- Rismawati, & Djanggih, H. (2022). Pelaksanaan Diversi Terhadap Anak Sebagai Pelaku Tindak Pidana: Studi Di Pengadilan Negeri Watampone. *Journal of Lex Theory (JLT)*, 1(31), 82–98.