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Restorative Justice in Cases of Child Sexual Abuse by Children: Between Child Protection and the Enforcement of Justice

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Abstract

This study aims to evaluate the application of restorative justice in cases of child molestation by children, by analyzing its legal and ethical implications.

The method used was empirical jurisprudence with an interdisciplinary approach that integrated law, social sciences, and psychology, with a descriptive analytical research specification. Data were obtained through field studies and literature reviews, then analyzed qualitatively.

The novelty of this research lies in its specific examination of the legal and ethical implications of applying restorative justice in cases of child molestation by children, which have often been resolved through amicable agreements between parents without considering the best interests of the child victims.

The findings of this research show that restorative justice has the potential to neglect the protection of victims and the enforcement of justice, as well as eliminate the legal responsibility of the child perpetrator.

The conclusion of this study confirms that the application of restorative justice in cases of child molestation by children is not in line with applicable legal provisions and has the potential to cause injustice, so it is not appropriate to apply it given its serious impact on the psychological condition and future of the child victim.

Keywords: Restorative Justice; Molestation; Children

Abstrak

Penelitian ini bertujuan untuk mengevaluasi penerapan keadilan restoratif dalam kasus pencabulan anak oleh anak, dengan menganalisis implikasi hukum dan etisnya.

Metode penelitian yang digunakan adalah yuridis empiris dengan pendekatan interdisipliner yang mengintegrasikan ilmu hukum, ilmu sosial dan psikologi, dengan spesifikasi penelitian deskriptif analitis. Data diperoleh melalui studi lapangan dan kajian kepustakaan, kemudian dianalisis secara kualitatif.

Kebaruan penelitian ini terletak pada pengkajian secara khusus implikasi yuridis dan etis penerapan keadilan restoratif dalam perkara pencabulan anak oleh anak, yang selama ini kerap diselesaikan melalui kesepakatan damai antar orang tua tanpa memperhatikan kepentingan terbaik bagi anak korban.

Temuan penelitian menunjukkan bahwa keadilan restoratif berpotensi mengabaikan perlindungan korban dan penegakan keadilan, serta menghilangkan rasa tanggung jawab hukum anak pelaku.

Kesimpulan penelitian ini menegaskan bahwa penerapan keadilan restoratif dalam perkara pencabulan anak oleh anak tidak sejalan dengan ketentuan hukum yang berlaku dan berpotensi menimbulkan ketidakadilan, sehingga tidak layak diterapkan mengingat dampak seriusnya terhadap kondisi psikologis dan masa depan anak korban.

Kata Kunci: Keadilan Restorative; Pencabulan; Anak

1. INTRODUCTION

Providing protection to children in contact with the law is a fundamental principle of both national and international law. However, nowadays, juvenile delinquency is not limited to acts commonly committed by children of that age. In fact, serious criminal acts often involve children as perpetrators.¹ To protect children's rights, the application of restorative justice is often the preferred option in resolving cases involving juvenile crime. This is supported by Article 5 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that "The Juvenile Criminal Justice System must prioritize a restorative justice approach."² The Juvenile Criminal Justice System regulated in Law No. 11 of 2012 does prioritize restorative justice, but its application to serious crimes such as sexual abuse requires careful legal consideration.

Child molestation cases have become a crucial issue in society, both in terms of the number of cases and the psychological impact they cause.³ Even in Indonesia, sexual assault is one of the most common violent crimes compared to other physical violent crimes.⁴ Ironically, in recent years, a new phenomenon has emerged in which perpetrators of child sexual abuse are also still within the category of children. This situation not only adds to the complexity of handling cases, but also tests the limits of applying principles of justice in the juvenile criminal justice system.

Restorative justice ideally aims to repair relationships between perpetrators, victims, and communities by promoting peaceful resolution, dialogue, and restoration.⁵ A good restorative justice mechanism has at least five principles, including:⁶ First, voluntariness, meaning that neither party is coerced. Second, balance of interests, namely between the interests of the victim, the perpetrator, and society. Third, transparency and accountability; all processes must be legally accountable. Fourth, restoration rather than retribution, focusing on repairing social and moral relationships. Finally, justice and equality, meaning that all parties have equal standing in the process.⁷

¹ Sendrius Maduwu, *Penjatuhan Pidana Terhadap Anak Sebagai Pelaku Tindak Pidana Persebutuhan Terhadap Anak Yang Mengakibatkan Anak Hamil (14/Pid.Sus-Anak/2021/PN. Kka)*, 4, no. 1 (2025).

² Lihat Pada Pasal 5 Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak.

³ Muhamad Soleh Chandra Bakti dkk., "Tindak Pidana Pencabulan Anak di Lingkungan Sekolah," *Krisna Law : Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana* 7, no. 2 (2025): 1–19, <https://doi.org/10.37893/krisnalaw.v7i2.1140>.

⁴ "SIMFONI-PPA," diakses 13 Oktober 2025, <https://kekerasan.kemenpppa.go.id/ringkasan>.

⁵ Sabrina Hidayat dkk., "Analisis Hukum Penyelesaian Tindak Pidana Pencabulan Oleh Penyidik Melalui Restorative Justice," *Halul Oleo Legal Research* 5, no. 1 (2023): 217–33, <https://doi.org/10.33772/holresch.v5i1.296>.

⁶ Naim, Sokhib, et al. "Perwujudan Restitutio In Integrum Sebagai Hak Anak Korban Tindak Pidana." *Jurnal Usm Law Review* 8.3 (2025): 1683–1696. <https://doi.org/10.26623/julr.v8i3.12668>

⁷ Fauziah Lubis dkk., *Kajian Asas-Asas Equality Before The Law dalam Praktik Peradilan Perdata*, 5, no. 3 (2025):

In the context of children as perpetrators, this restorative approach is considered more humane and relevant. This is because children do not yet have complete emotional and psychological maturity. However, when applied to cases of sexual violence such as molestation by children against children, this approach raises serious debate. Molestation is a form of sexual crime that causes deep psychological trauma to the victim, especially if the victim is also a child.⁸ These wounds are often not only physical, but also affect self-esteem, sense of security, and long-term mental development, as in the case of LP/B/14/1/2022/SPKT/Polres Pandeglang/Polda Banten, where the perpetrator sexually abused the child victim and took photos of the incident using the victim's mother's smartphone, causing the child victim to suffer prolonged trauma. In situations like this, justice for the victim should be the priority and not just a formal settlement that benefits both parties.

The application of restorative justice in cases of child molestation by children poses a major dilemma. On the one hand, perpetrators have the right to receive guidance and not be punished repressively due to their age. However, on the other hand, victims also have the right to protection, a sense of security, and appropriate justice.⁹ If restorative justice is applied rigidly or without careful consideration, victims may experience revictimization or further injustice. In fact, in some cases in Indonesia, mediation between the perpetrator's family and the victim is carried out without the assistance of a psychologist or counselor, so that the decision to "make peace" does not always reflect a complete recovery for the victim. In fact, there are cases where victims are forced to make peace in order to maintain the "good name of the family" and ignore the psychological trauma they have experienced.¹⁰ This indicates that the implementation of restorative justice does not always run ideally.

Although the juvenile justice system aims to rehabilitate rather than punish,¹¹ however, there are moral and legal boundaries that must be upheld, especially for serious crimes such as sexual abuse. The application of restorative justice should not automatically ignore the aspects of law enforcement and accountability of the perpetrator for his actions, even though he is still a child. This situation highlights a conflict between two important principles: first, the principle of protecting children as perpetrators, and second, the principle of justice and recovery for children as victims. If not managed wisely, this conflict of principles can lead to biased policies that focus too much on the perpetrator and neglect the suffering of the victim.

It cannot be denied that in some situations, the child perpetrator is also a victim of an

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⁸ Indriastuti Yustiningsih, "Perlindungan Hukum Anak Korban Kekerasan Seksual Dari Revictimisasi Dalam Sistem Peradilan Pidana," *Lex Renaissance* 5, no. 2 (2020): 287–306, <https://doi.org/10.20885/JLR.vol5.iss2.art3>.

⁹ Bawole Y. A. Bawole, "Perlindungan Hukum Bagi Korban Dalam Sistem Peradilan Pidana," *LEX ET SOCIETATIS* 9, no. 3 (2021), <https://doi.org/10.35796/les.v9i3.36433>.

¹⁰ Rada Desviana, *Self Healing Korban Pelecehan Seksual di Kabupaten Tanah Datar*, Tesis, Program Studi Bimbingan dan Konseling Pendidikan Islam Program Pascasarjana Institut Agama Islam Negeri (IAIN) Batusangkar 2022,hlm. 46.

¹¹ Anik Iftitah dkk., "Pertanggungjawaban Hukum Anak Dalam Pelaku Tindak Pidana Berat: Pendekatan, Dampak, Dan Implikasi Dalam Sistem Peradilan Anak," *Birokrasi: Jurnal Ilmu Hukum Dan Tata Negara* 1, no. 2 (2023): 152–67, <https://doi.org/10.55606/birokrasi.v1i2.592>.

environment that has failed to provide education and protection.¹² However, this does not justify resolving sexual crimes informally without considering the impact on the victim. Protection for child perpetrators must remain within legal and moral boundaries that do not sacrifice the victim. It should also be understood that in cases of sexual abuse, the victim's recovery is not only related to an apology or compensation, but also includes a long process of psychological and social healing.¹³ Restorative justice, if not accompanied by professional intervention, can become a false solution that prolongs the suffering of victims and silences the voice of justice.

On the other hand, the state has an obligation to create a system that balances protection for child offenders and justice for victims.¹⁴ This is not easy, given that both parties are still developing and have rights that need to be equally guaranteed. In this context, the state needs to be careful in setting policies, especially regarding the use of non-litigation approaches such as restorative justice in cases of sexual violence.

Based on the literature review that has been conducted, the author found that there are previous studies that focus on the application of justice in cases of child sexual abuse. There are at least two previous studies in the form of theses that also discuss sexual abuse of minors. The following is one of the previous studies, namely the research conducted by Nurrahim, Master of Law Program, Faculty of Law, Riau Islamic University (2021). Nurrahim's research is entitled "Law Enforcement Against Minors Who Commit Sexual Abuse in the Rohil Police District". The focus of this study is on the rights of children as perpetrators, which are resolved through a diversion approach.¹⁵ The findings indicate that law enforcement against minors involved in sexual abuse cases in the Rohil Police District has not been optimal. In this case, law enforcement officials (investigators) should be able to take measures to resolve the case by returning or handing over the child to their parents/guardians or providing guidance.¹⁶

The second study was conducted by Litia Pratidina Sembiring from the Master of Law Program, Faculty of Law, University of Medan Area (2018). The title of Litia Pratidina Sembiring's research is "Legal Protection for Children as Perpetrators of Sexual Abuse Crimes." This study focuses only on the rights of child perpetrators of sexual abuse and does not discuss the rights of child victims. The results of this study show that children who commit sexual abuse must still have their rights protected even though they are undergoing legal proceedings because children are protected by the Child Protection Law. Furthermore, when

¹² Sabrina Hidayat dan Oheo Kaimuddin Haris, *Perlindungan Hukum terhadap Anak sebagai Pelaku Tindak Pidana Pornografi dalam Proses Penyidikan*, 4, no. 2 (t.t.): 128–48.

¹³ Denny Reynold Octavianus, "Penjatuhan Pemidanaan Terhadap Anak Sebagai Pelaku Tindak Pidana Pencabulan (Analisis Hukum Terhadap Pencabulan Anak oleh Pelaku Anak)" (Thesis, Universitas Sumatera Utara, 2019), <https://repositori.usu.ac.id/handle/123456789/45340>.

¹⁴ Uut Rahayuningsih dkk., *Pendekatan Restorative Justice dalam Perlindungan Hukum Anak sebagai Pelaku Tindak Pidana: Menyeimbangkan Keadilan dan Pembinaan*, 2, no. 2 (t.t.): Hal. 79-89, <https://doi.org/10.62383/amandemen.v2i2.883>.

¹⁵ "Penegakan Hukum Terhadap Anak Di Bawah Umur Yang Melakukan Pencabulan Diwilayah Polres Rohil," t.t., diakses 20 November 2025, <https://repository.uir.ac.id/12734/1/171022168.pdf>.

¹⁶ Octavianus, "Penjatuhan Pemidanaan Terhadap Anak Sebagai Pelaku Tindak Pidana Pencabulan (Analisis Hukum Terhadap Pencabulan Anak oleh Pelaku Anak)."

making a decision, judges must consider three things, namely justice, benefit, and legal certainty, and the rights of children as perpetrators of sexual abuse must also be taken into account.¹⁷ From the two previous studies, it can be seen that previous studies have not specifically examined the legal and ethical implications of applying restorative justice in cases of child sexual abuse by children. Both studies only focused on the rights of child perpetrators and did not discuss resolution through a restorative justice approach, as will be discussed in this study, which also examines the rights of child perpetrators and child victims whose sexual abuse cases were resolved through a restorative justice approach.

The urgency of further studying the application of restorative justice in cases of child sexual abuse by children is becoming increasingly important. Not only to assess the effectiveness of this approach in the context of sexual crimes, but also to formulate the ethical, legal, and psychological boundaries that must be considered in its implementation. With this background, research or studies on the application of restorative justice in cases of child molestation by children need to be conducted comprehensively. The main focus is not only on protecting the perpetrator, but also on fulfilling the rights of the victim, as well as how the state ensures that justice is upheld without neglecting the human values of the child. Therefore, the research question in this study is: What are the legal and ethical implications of applying restorative justice to cases of child molestation by children?

2. METHOD

The approach used in this study is an empirical legal research method with an interdisciplinary approach, which means that it is not only examined from written regulations, but also from the disciplines of psychology and social sciences.¹⁸ Psychological and social science approaches are integrated because cases involving children are not only related to legal norms, but also concern psychological conditions, mental development, and the influence of the social environment, so that the resulting legal studies are more comprehensive, humanistic, and oriented towards the best interests of the child. The empirical juridical approach is a method of legal research that relies on the study of applicable legal norms, which are then linked to practical circumstances in the field and the public's reaction to those applicable legal norms.¹⁹ The writing specifications for this research are descriptive and analytical. Descriptive and analytical writing specifications are a form of scientific writing that combines two main steps, namely descriptive and analytical.²⁰ Descriptive presents facts, data, or phenomena in a systematic, accurate, and objective manner, while analytical breaks down, interprets, evaluates, and explains the meaning or relationship of these facts. The data collection technique in this study was conducted by requesting data and conducting interviews directly with law enforcement officials who carried out the process of resolving child sexual

¹⁷ Antonio Reinaldo dkk., "Ilmu Interdisipliner dan Multidisipliner dalam Manajemen Pendidikan Islam," *Indo-Fintech Intellectuals: Journal of Economics and Business* 4, no. 3 (2024): 745–49, <https://doi.org/10.54373/ifiweb.v4i3.1390>.

¹⁸ Reinaldo dkk., "Ilmu Interdisipliner dan Multidisipliner dalam Manajemen Pendidikan Islam."

¹⁹ Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2021).

²⁰ Ali, *Metode Penelitian Hukum*.

abuse cases by children through restorative justice. The interview data was processed in depth by transcribing the interview results, coding important information, and grouping it into main themes relevant to child protection and the application of restorative justice. Thematic analysis was used to understand the patterns of thinking, considerations, and practices of law enforcement officials and related parties in handling cases. In addition, literature review techniques were also used in the form of laws and regulations, literature related to restorative justice and child sexual abuse by children, and other supporting legal materials.

3. DISCUSSION

3.1. The Application of Restorative Justice in Cases of Child Sexual Abuse by Children

Restorative justice is an approach to resolving cases that emphasizes restoring relationships between victims, perpetrators, and the community through dialogue and reconciliation. This approach is usually effective for minor crimes and cases involving adult perpetrators and adult victims who are willing to engage in dialogue to resolve issues between the perpetrator and the victim. Legally, restorative justice in the context of children is regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA).

Regulations related to the implementation of restorative justice include PERMA Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, Police Regulation No. 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, and Attorney General's Regulation No. 15 of 2020 governing the Termination of Prosecution Based on Restorative Justice. The implementation and application of restorative justice can be carried out at various stages of the criminal justice system, including at the police, prosecutor's office, and court levels.

A good restorative justice mechanism should be carried out in several stages, including: First, the case initiation stage, which begins when law enforcement officials, including police, prosecutors, and judges, find a case that meets the criteria for resolution through a restorative mechanism. The material requirements for restorative justice, as stipulated in Article 5 of Police Regulation No. 8 of 2021, include provisions that a case must not cause unrest or rejection among the community, does not cause or exacerbate social conflict, does not have the potential to divide national unity, does not involve perpetrators who have repeated criminal acts based on court decisions, and does not fall into the category of serious crimes. Generally, cases that can be processed are minor crimes, minor losses, do not cause fatalities, and there is a willingness on the part of the parties to reconcile.²¹

Second, restorative justice can in principle only be applied if all parties involved, namely the perpetrator, the victim, and the families of each party, consciously and freely agree to resolve the case. This consent reflects a shared desire to pursue a resolution outside of formal judicial proceedings, prioritizing the restoration of relationships, the perpetrator's responsibility, and the fulfillment of a sense of justice for the victim.

²¹ Jaenudin, Rasyida Rofiatun Nisa, "Klasifikasi Penyelesaian Perkara Pidana dengan Sistem Restorative Justice, Journal of Mandalika Literature, Vol. 6, No. 1, 2024, e-ISSN: 2745-5963," t.t.

Third, law enforcement officials act as facilitators who mediate meetings between perpetrators and victims. In this process, perpetrators are held accountable by admitting their actions, apologizing, and showing sincerity in restoring the damage caused. On the other hand, victims are given the opportunity to openly express their feelings and demands.

Fourth, if the parties successfully reach an agreement in the restorative justice process, the agreement is then formally documented in a written agreement. This agreement clearly and comprehensively outlines the forms of restoration agreed upon, such as the obligation to compensate the victim for damages, the delivery of a public or private apology, and the implementation of other forms of social responsibility deemed fair and proportionate.

Fifth, based on the agreement reached through the restorative justice mechanism, law enforcement officials have the authority to terminate ongoing investigations or prosecutions. This authority is exercised by considering the fulfillment of all the stipulated conditions, including the voluntary agreement of the parties and the implementation of the agreed-upon restorative obligations. The termination of the investigation or prosecution is intended to provide space for a more humane and recovery-oriented resolution of the case, without neglecting the principles of legal certainty, justice, and benefit for all parties involved.

Sixth, after the restorative justice agreement has been implemented by the parties, law enforcement officials have an obligation to conduct ongoing monitoring and evaluation. The purpose of this monitoring is to ensure that all provisions contained in the agreement have been implemented in accordance with the mutual agreement by both the perpetrator and other related parties. In addition, evaluations are carried out to assess the impact of the implementation of the agreement on the social environment, so that the settlement of the case does not cause unrest, further conflict, or other negative impacts in the community, but rather creates a sense of justice, order, and social harmony.²²

Cases of child sexual abuse committed by perpetrators who are also minors remain an issue that has yet to find a solution that provides balanced protection for both parties, both for the child as the victim and the child as the perpetrator, especially in terms of fulfilling their respective rights. In practice, the majority of law enforcement in regencies in Indonesia, specifically for child molestation by children, often excludes restorative justice. This shows that although there is a basis for a restorative approach, there are significant legal restrictions related to the type of crime and the severity of the acts committed by child perpetrators.

One of the weaknesses of the restorative justice system is that victims in the restorative justice process may feel psychologically pressured to forgive or accept the perpetrator's apology.²³ The success of this process depends heavily on the perpetrator's willingness to admit their mistakes and take responsibility. If the perpetrator is not sincere or is only pretending in order to avoid punishment, then the main objective of restorative justice will not

²² Muhammad Rif'an Baihaky dan Muridah Isnawati, "Restorative Justice: Pemaknaan, Problematika, Dan Penerapan Yang Seyogianya," *Unes Journal of Swara Justisia* 8, no. 2 (2024): 276–89, <https://doi.org/10.31933/4mqgaj17>.

²³ Masahiro Suzuki and Tamera Jenkins, "Redefining forgiveness in restorative justice", *School of Social Sciences, Loughborough University, Loughborough United Kingdom 2 School of Criminal Justice and Park University, Parkville, Missouri, United States*.

be achieved. In some cases, victims may agree to participate due to social pressure or discomfort rather than because they are truly ready to reconcile. Another weakness of the restorative justice system at present is the lack of clear guidelines or restrictions on the types of juvenile crimes that can and cannot be resolved through restorative justice. As a result, many serious cases, including sexual abuse, are still facilitated through this approach simply for the sake of efficiency or social pressure. Without a strong legal framework, such practices can undermine the sense of justice. This issue is not only a matter of law, but also concerns the moral and social values of society. When society considers sexual violence to be something that can be "resolved within the family," it indicates a crisis of understanding about the rights of victims and the importance of respecting the bodies and dignity of children. Therefore, the legal approach must be accompanied by public education.

Although restorative justice is touted as the best solution for handling cases involving children, the use of restorative justice in cases of child sexual abuse has sparked controversy. Those who agree believe that cases resolved through the courts are excessive and shameful, which ultimately leads to a problem where some cases of sexual violence in the community are not reported because they are considered shameful and a great disgrace to a family. On the other hand, those who disagree believe that child molestation cases resolved through restorative justice do not adequately protect the child victims.²⁴ The application of restorative justice in cases of child molestation by perpetrators who are also children has many limitations and serious risks, making it inappropriate to implement.

Child molestation is a very serious crime with long-term psychological effects on the victim. Resolving molestation cases through restorative justice is considered a violation of applicable regulations. As explained in Article 7 paragraph 2 of Law Number 11 of 2012 concerning the Criminal Justice System for Children (SPPA), reconciliation cannot be carried out for children who commit criminal acts in the following cases: When the child is threatened with a punishment of more than 7 (seven) years and the child has committed the criminal act repeatedly,²⁵ cases of sexual abuse are classified as crimes against morality, and cases involving children carry serious penalties and have a significant impact on the children involved. Therefore, the state has an important role to play in this regard, as it is essentially considered capable and has the authority and ability to provide security for all its citizens, including children who are vulnerable to crime, whether they are victims or perpetrators.²⁶

Investigators who use a restorative justice approach usually consider several factors, including the age of the perpetrator (if they are a minor), the severity of the offense, the consequences of the act, and the willingness of both parties, the perpetrator and the victim, to reconcile. However, in cases of sexual abuse, it is generally not recommended to use

²⁴ Diyariesta Caesari dan ' Subekti, "Penerapan Restorative Justice Dalam Penyelesaian Tindak Pidana Kekerasan Seksual Terhadap Anak di Kabupaten Magetan," *Recidive: Jurnal Hukum Pidana dan Penanggulangan Kejahatan* 11, no. 3 (2022): 312–20, <https://doi.org/10.20961/recidive.v11i3.67463>.

²⁵ Lihat Pasal 7 ayat 2 Undang-undang Nomor 11 Tahun 2012 tentang sistem peradilan pidana anak.

²⁶ Lies Sulistiani, *Hukum Perlindungan Saksi dan Korban Telaah pada Regulasi, Kelembagaan Teori Maupun Praktik Perlindungan Saksi dan Korban Tindak Pidana di Indonesia*, Bandung: PT Refika Aditama, 2023, hlm. 78.

restorative justice. This is because child victims of sexual abuse are in a very vulnerable psychological and emotional position. Forcing victims to engage in dialogue with perpetrators can exacerbate their trauma.

Restorative justice requires agreement and active involvement from both victims and perpetrators. However, child victims of sexual abuse are often unable to give conscious and independent consent due to the pressure of trauma and their inability to fully understand the consequences of the process. In this context, restorative justice could risk becoming a platform for perpetrators to manipulate victims or their families into withdrawing charges or softening the legal process. This could hinder substantive justice for victims. Furthermore, restorative justice emphasizes the restoration of relationships. However, in cases of child sexual abuse, the relationship between the victim and the perpetrator is very difficult to restore due to the profound violation of the victim's physical and psychological integrity. Perpetrators who are still children do require special treatment in the juvenile justice system, but this approach must continue to prioritize the protection and recovery of the victim, not just the rehabilitation of the perpetrator.

The application of restorative justice in cases of child molestation can ignore the needs of child victims for firm legal protection and fair punishment, which aims to deter child perpetrators. In addition, restorative justice tends to be informal and voluntary, which can create the impression that child molestation is a negotiable matter that does not need to be resolved through strict legal means. This is very dangerous because it can lower public awareness of the seriousness of child molestation crimes and can trigger a permissive attitude towards perpetrators. Child molestation cases have very detrimental long-term effects, including mental disorders, depression, and psychological development disorders.²⁷ Therefore, a clear and decisive legal process is very important to provide a sense of justice and protection to victims.

If restorative justice is applied, there are rules and conditions that must be met before restorative justice can be implemented, such as the basic provisions in Article 7 of the Juvenile Criminal Justice System Law, which states that the perpetrator must be a child under 18 years of age, the criminal penalty must not exceed 7 years or be a serious (grave) crime as listed in Article 2 paragraph (1) of Supreme Court Regulation Number 4 of 2014 concerning Guidelines for diversion in the juvenile criminal justice system, it must not cause unrest in the community, and there must be an effort towards reconciliation that is agreed upon by all parties involved.²⁸

Legal implications also arise in the authority of officials such as the police, prosecutors, and judges. However, the decision to use restorative justice still requires the consent of the victim and perpetrator and must be in accordance with applicable regulations. If an agreement cannot be reached, the formal legal process can still continue. Criminal acts of sexual abuse

²⁷ Rahul Pieter S. Yapen, Wahab Aznul Hidaya, and Muharuddin Muharuddin. "The Role of Correctional Institutions in the Development of Prisoners to Prevent Recidivism of Crimes in Sorong City". *Journal of Law Justice (JLJ)* 2 (3): (2024) 162-76. <https://doi.org/10.33506/jlj.v2i3.3354>.

²⁸ Auliah Andika Rukman, "Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia," *Restorative Journal* 1, no. 1 (2023): 97-118.

against children by children fall into the category of serious crimes and therefore do not qualify for resolution through restorative justice. This is also because law enforcement officials must first determine whether the case falls into the category of crimes eligible for diversion. If not, restorative justice cannot be a legal option to stop the formal process.²⁹ However, according to Jean Calvijn Simanjuntak, problems often encountered in implementing restorative justice at the police level include institutional barriers: First, restorative justice is prone to abuse. Second, there are differences in understanding among investigators regarding the types of crimes that can be handled through restorative justice mechanisms. Third, infrastructure readiness. Fourth, the need for coordination of regulations and implementation.³⁰

In addition, legal certainty in the application of restorative justice for sexual abuse cases also presents challenges, including that in sexual abuse cases, victims or the community often demand certain punishments as a deterrent. As law enforcement officials who have an obligation to uphold justice, courts or judges must maintain a balance between legal certainty and restorative flexibility. In carrying out their duties, judges are not only required to provide legal certainty, but also to consider the justice that exists in society.³¹ Kepastian hukum berarti adanya aturan yang tegas dan dapat diprediksi, sedangkan keadilan restoratif memberi ruang pada pendekatan yang lebih humanis dan memperhatikan kebutuhan korban, pelaku dan masyarakat.

3.2. Problems in the Implementation of Restorative Justice by Law Enforcement Officials

The lack of clarity regarding when restorative justice can be applied can also lead to inconsistent decisions.³² As we all know, in cases of child sexual abuse as regulated in Article 82 of the Child Protection Law, the punishment is between 7 and 15 years imprisonment. If this is the case, then sexual abuse cases cannot be resolved through a restorative justice approach if the reference is based on normative law. However, to date, there have been several cases of child perpetrators of child molestation that have been resolved using a restorative justice approach, with the final agreement being a peace agreement between the families of the child perpetrator and the child victim.

Victims of child sexual abuse often experience not only physical trauma but also social and psychological trauma. This poses a major challenge for law enforcement officials to protect the rights of children, especially child victims, so that they are not revictimized either during the case resolution process or in their social environment. Law enforcement officials should

²⁹ Dewa Ayu Kirana Putri, *Optimalisasi Restorative Justice Dalam Penghentian Penyidikan Tindak Pidana Narkotika: Perspektif Keadilan Substantif Dan Efektivitas Hukum Acara Pidana*, 3, no. 10 (2025), <https://doi.org/DOI:%252010.62281>.

³⁰ "Restorative Justice: Metamorfosa Kearifan Lokal Indonesia - Dr. Jean Calvijn Simanjuntak, S.I.K., M.H. - Rajagrafindo Persada," diakses 21 November 2025, <https://www.rajagrafindo.co.id/produk/restorative-justice-metamorfosa-kearifan-lokal-indonesia-dr-jean-calvijn-simanjuntak-s-i-k-m-h/>.

³¹ Ribut Baidi dan Aji Mulyana, "Peran Hakim Memperkokoh Integritas Peradilan sebagai Benteng Penegakan Hukum dan Keadilan Publik," *Jurnal Hukum Mimbar Justitia* 10, no. 1 (2024): 101, <https://doi.org/10.35194/jhmj.v10i1.4171>.

³² Roseleni Fitri Primarini Dewi, "Pertimbangan Hakim dalam Tindak Pidana Pencabulan Terhadap Anak (Studi Putusan Nomor: 3/Pid.Sus/2025/Pn End)," *MORALITY: Jurnal Ilmu Hukum* 11, no. 1 (2025): 22–30, <https://doi.org/10.52947/morality.v11i1.977>.

not simply comply with decisions made by third parties, such as the victim's parents, without considering the child's psychological state. Law enforcement officials must be able to provide a sense of security for victims,³³ recognition of their suffering and restoration of dignity. If restorative justice only becomes a "peaceful path" that masks the pain or trauma of victims, then from an ethical point of view it becomes inadequate.³⁴

From a legal perspective, it is also in the public interest that acts of sexual abuse, even when committed by children, should have a deterrent effect so that society feels that violations of norms have consequences. Social justice ethics require that victims and the public feel that legal norms are being upheld. Law enforcement in cases such as this must be designed in such a way that it not only provides redress, but also sends a signal that sexual abuse of minors will not be tolerated.³⁵

Banten is a region where cases of sexual abuse by children against children are still being resolved through restorative justice. To date, research has found that there have been five cases of sexual abuse by children against children in the Banten province jurisdiction that have been resolved through a restorative justice approach from 2020 to 2025.³⁶ One example of a child molestation case that was resolved through a restorative justice approach is case number LP/B/14/1/2022/SPKT/Polres Pandeglang/Polda Banten. In this case, it was found that the sexual abuse was committed by two boys (aged 16 and 13) against a boy (aged 9) using violence to force the victim to perform sexual acts. The act was sodomy, which the perpetrators committed by beating the victim, causing him to be afraid and comply with their wishes. Additionally, the perpetrators also photographed the sexual assault using the victim's cell phone, causing the victim to suffer prolonged trauma. However, sadly, the sexual assault case was resolved through a restorative justice approach in the form of a peace agreement approved by the victim's mother.³⁷

Based on case number LP/B/14/1/2022/SPKT/Polres Pandeglang/Polda Banten, it can be seen that the case of violent sodomy involving a 16-year-old perpetrator against a 9-year-old victim is a serious sexual crime that has a serious impact on the victim's physical and psychological well-being and future. Resolving the case solely through an amicable agreement between the parents is clearly not in line with the spirit of child protection in the Indonesian legal system. The Child Protection Law and the revised Criminal Code emphasize that criminal acts of sexual abuse, especially those accompanied by violence, are classified as serious crimes that cannot be resolved outside of the judicial process.

Unlike law enforcement officials in Banten Province, law enforcement officials in West

³³ Riadi Asra Rahmad dkk., *Criminal Law Perspective on Domestic Violence Cases*, 7, no. 11 (t.t.), <https://doi.org/DOI%252010.56338/jks.v7i11.6362>.

³⁴ Dewi Ervina Suryani dkk., "Tinjauan Yuridis Putusan Nomor 123/Pid.Sus/2020/PN Olm Tentang Tindak Pidana Pencabulan Anak," *Jurnal Interpretasi Hukum* 5, no. 1 (2024): 876–80, <https://doi.org/10.22225/juinhum.5.1.8614.876-880>.

³⁵ Dewi, "Pertimbangan Hakim dalam Tindak Pidana Pencabulan Terhadap Anak (Studi Putusan Nomor."

³⁶ Balasan Surat Izin Penelitian Nomor 12548/UN6.A.1/HM.01.01/2024, Pada 07 Januari 2025.

³⁷ Balasan Surat Izin Penelitian Nomor 12548/UN6.A.1/HM.01.01/2024, Pada 07 Januari 2025.

Java Province and the Metro Jaya Regional Police chose not to apply restorative justice in cases of child sexual abuse. The head of the West Java Regional Police's Women and Children Protection Unit said that resolving child sexual abuse cases through restorative justice mechanisms was considered inappropriate because it could have counterproductive effects on both the child victims and the child perpetrators. The main concern is that the application of restorative justice in sexual abuse cases could backfire and disregard the principle of the best interests of the child for both parties.

Based on interviews with officers from the Metro Jaya Police's PPA unit, there are three fundamental reasons why restorative justice is not applied in cases of child sexual abuse. First, sexual abuse is categorized as a serious crime that has a long-term traumatic impact on victims, making it inappropriate to resolve through restorative mechanisms that prioritize reconciliation. Second, the criminal penalty for child molestation as stipulated in Article 82 of the Child Protection Law (minimum 5 years, maximum 15 years) exceeds the 7-year limit which is the criterion for diversion in Article 7 paragraph (2) of the SPPA Law. Third, the application of restorative justice to sexual crimes has the potential to set a bad precedent that erodes the deterrent effect and sends a signal of impunity to perpetrators.

In the juvenile criminal justice system, there is indeed room for a restorative justice approach. However, Article 20 paragraph (3) letter a of Supreme Court Regulation (Perma) No. 4 of 2014 explicitly states that restorative justice cannot be applied to sexual crimes.³⁸ This shows that the law consciously limits the scope of peace agreements for crimes that have a widespread and profound impact on victims, especially when they involve violence and underage victims. Peace agreements between parents in cases of sexual abuse often only reflect a desire to avoid lengthy legal proceedings, social stigma, or environmental pressure. However, this type of settlement ignores the main interest, which is the victim's right to protection, justice, and recovery. The victim is a minor, vulnerable, and in a position of powerlessness. Granting peace to the perpetrator means ignoring the victim's suffering and weakening the message that sexual violence against children is a serious crime that must be dealt with firmly.

It is important to understand that the legal process in child sexual abuse cases is not solely aimed at punishing the perpetrator, but also at ensuring that the state is present to protect children from sexual violence. Through the judicial process, perpetrators can still receive fair treatment as children, such as rehabilitation and guidance, without sacrificing the victim's right to justice. A formal legal process that prioritizes punishment can serve as a means of educating perpetrators to seriously understand their mistakes and the consequences of their actions. In addition, a formal juvenile justice system provides a structured mechanism for assessing the degree of wrongdoing, imposing proportionate penalties, and providing controlled and professional rehabilitation programs.

³⁸ Yulestari, R., Fitriah Faisal, Dewi Ratna Sari Rustam, Handrawan Handrawan, & Sitti Aisah Abdullah. Restitution Rights for Child Victims of Sexual Violence: Justice or Legal Certainty. *JUSTISI*, 11(3), (2025) 968–983. <https://doi.org/10.33506/js.v11i3.4498>

In many cases, child perpetrators of sexual abuse also require in-depth psychological and social intervention, which is more effectively carried out through formal judicial proceedings and special rehabilitation programs. Prematurely applying restorative justice in cases of sexual abuse by children against children risks neglecting the need for in-depth and ongoing professional intervention for perpetrators, thereby increasing the potential for recidivism or repeat offenses. The formal process in juvenile courts also involves the role of supervisors, psychologists, and other professionals who can ensure that the treatment of perpetrators remains in line with rehabilitation needs while protecting the rights and interests of victims.

Restorative justice is not a universal solution; it can only be used in very specific and limited circumstances.³⁹ In cases of child sexual abuse by children, there must be clear boundaries so that this approach does not become a loophole to avoid criminal responsibility. The court must prioritize legal certainty as a means of protecting child victims and society at large. Furthermore, restorative justice cannot replace the functions of prevention and law enforcement, which play a strategic role in protecting children from sexual crimes. Restorative justice in child molestation cases can actually cause additional stigma and pressure on victims because they have to face the perpetrator directly, which can result in the victim's inability to recover psychologically. Therefore, to ensure optimal protection and recovery for child molestation victims, as well as to ensure that perpetrators receive appropriate punishment and rehabilitation, restorative justice should not be applied in cases of child molestation by child perpetrators. The juvenile justice system must remain the primary avenue for handling these cases with a holistic and professional approach.

4. CONCLUSION

Referring to the research findings and analysis presented, it can be concluded that the application of restorative justice in cases of sexual abuse committed by children against children has legal and ethical implications that need to be handled carefully. From a legal perspective, this approach should not be used to resolve cases of sexual abuse by children against children in accordance with the provisions of Article 20 paragraph (3) letter a of Supreme Court Regulation (Perma) No. 4 of 2014, which explicitly states that restorative justice cannot be applied to sexual crimes. This shows that the law consciously limits the scope of peace for crimes that have a broad and profound impact on victims, especially when they involve violence and underage victims. Meanwhile, ethically, settlement through peaceful agreement has the potential to cause injustice if the position of the victim is not given equal consideration or if the decision is reached solely due to social or family pressure. Therefore, the restorative justice approach should not be used to resolve cases of child sexual abuse because it is classified as a serious offense and has a negative impact on the psychological state of the child. The application of restorative justice has the potential to prevent both the perpetrator and the victim from receiving professional treatment and assistance, which will

³⁹ María Lourdes Fernández-Manzano, *Restorative Justice, Forgiveness and Reparation for the Victims*, 4, no. 3 (2023).

affect the child's psychological state, future, and society's view of sexual abuse crimes. Therefore, it is necessary to update the guidelines for the application of restorative justice to ensure that child victims receive the necessary psychological support and firm legal protection.

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