

## Reformulation of Regulations Regarding Restorative Justice in Cases of Criminal Acts of Bullying Against Children at Investigation Level



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**ABSTRACT:** Children as the most vulnerable and weak social creatures are often placed in the weakest position, do not have the right to speak, and often experience violations of their rights. One of them is the limitation of diversion obligations for law enforcers which is only limited to criminal acts with a threat of under 7 (seven) years, which is contrary to the intention of the legislators in providing age limits for children and is contrary to the psychological nature of children. If investigators have applied diversion consistently in cases where only children who are bullied are under 7 (seven) years of age, it is not certain that the investigator's objectivity according to law is directly proportional to the objectivity according to community justice. This research is aimed at finding out the regulations related to restorative justice in cases of criminal acts of bullying against children at the investigation level as well as formulating a reformulation of regulations related to restorative justice in cases of criminal acts of bullying against children at the investigation level in the future. The type of research in this research is normative juridical. This research aims to understand and interpret legal norms and analyze their consequences or implications. It is still found that there is still a lot of restorative justice that is not applied to children who are bullied at the investigation stage, so that children have to face the next stage of justice, even up to the trial stage. Concrete steps are needed by Indonesian National Police investigators to ensure that restorative justice is applied consistently at the investigation stage of criminal acts of child bullying. The government together with the Police of the Republic of Indonesia through the legislative body should reformulate regulations related to restorative justice in cases of criminal acts of bullying against children at the investigation level in the future which can be carried out through reformulation regarding material requirements as intended in Article 5 of the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice, namely points a and f as well as the rules regarding the requirements for implementing Diversion in Article 7 of Law (UU) Number 11 of 2012 concerning the Juvenile Criminal Justice System by taking into account the main interests of the child.

**KEYWORDS:** Reformulation, Restorative Justice, Bullying, Investigation

### I. INTRODUCTION

Children are part of the young generation, one of the human resources which is the potential and successor to the ideals of the nation's struggle, which requires guidance and protection in the context of complete, harmonious and balanced physical, mental and social growth and development.<sup>1</sup> The strategic role of children as national assets is as successors to the future of a nation, for this reason every child in Indonesia has the right to receive education, care and protection for their lives without exception and regardless of the child's status. This is in accordance with article 28 B paragraph 2 of the 1945 Constitution which reads: "Every child has the right to live growth and development as well as the right to protection from violence and discrimination".<sup>2</sup> Not only is it guaranteed in the constitution, as a rule of law, Indonesia also strengthens protection for children by issuing laws and regulations including Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 39 concerning Human Rights, and Laws Law Number 17 of 2016 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law.

The state has regulated that every child has the right to live, grow and develop and participate optimally in accordance with human dignity. Apart from that, this law aims to protect every child to receive protection from acts of violence and discrimination,

<sup>1</sup>Gatot Supramono. 2007. *Hukum Acara Pengadilan Anak*. Jakarta : Djambatan Herlina. Apong.et al. *Perlindungan Anak Yang Berhadapan Dengan Hukum*.

<sup>2</sup>Nahdiya Sabrina. Thohir Luth. Masruchin Rubai dan Nurini Apriandi. 2020. *Discrimination against Children Born Outside of Marriage in Indonesia*. International Journal of Multicultural and Multireligious Understanding. Volume 7.

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in order to create a nation's successor who has noble character, is healthy, has quality, is prosperous, has integrity and is intelligent. On the other hand, it is sad to see children who should be the nation's hope committing various crimes, ranging from minor crimes to serious crimes. Handling criminal acts or crimes where the perpetrator is a child is of course different from crimes committed by adults. Children in the juvenile criminal justice system are children who are in conflict with the law.<sup>3</sup> Children as perpetrators are referred to as children who are in conflict with the law, so they must be held accountable for their actions or actions, but placing children in the judicial process, one of which is criminalization, will have a negative impact on their future.

One of the criminal acts or crime that is widespread among school children is bullying. Indonesia itself is experiencing an emergency of violence against children. This is because of the widespread bullying that has occurred in recent times. The act of bullying that is currently in the public spotlight recently is the case of bullying of a 14 year old FF victim in Cilacap, Central Java which went viral on social media with a video recording of a child wearing a hat hitting and kicking the victim. The victim and perpetrator came from the same school. Another case of bullying that is in the spotlight occurred with 13 year old R, an elementary school student who died after jumping from the fourth floor of her school in South Jakarta. According to information, he was involved in pushing and shoving with his friend with the initials H.<sup>4</sup> Apart from that, what is currently in the spotlight is the bullying case at Binus School Serpong, which is currently being handled by the South Tangerang Metro Police. One of the alleged perpetrators involved the son of artist Vincent Rompies, Legolas. Vincent Rompies, who accompanied his son to undergo an examination on Thursday (22/2/2024), hopes that the case can be resolved amicably. However, it seems that the victim's family wants something else. They hope this case can go to court.<sup>5</sup> This desire can be an obstacle in implementing restorative justice for child perpetrators of criminal acts of bullying.

It is feared that various bullying behaviors, in the cases above, even cause serious injury or death, can give rise to the seeds of mental disorders in children, both child victims and children of perpetrators. According to a survey conducted by Latitude News in 40 countries, facts about bullying were found. One fact is that the perpetrators of bullying are usually male students. Meanwhile, female students gossip more than committing physical acts of violence.<sup>6</sup> However, the law and government in Indonesia are less responsive in handling bullying cases where the perpetrators are minors, so the number of perpetrators and victims continues to increase from time to time. Bullying is an act of intimidating or oppressing someone against another person through attitudes, actions and words which are not only limited to physical violence but also psychological and even sexual violence.

In handling cases of bullying carried out by children, an approach to resolving criminal cases outside of court is carried out. Children have the right to receive protection and a sense of security so that the principles of restorative justice can be an alternative so that children do not need to follow the formal justice system to resolve their legal problems. This restorative justice principle approach is an alternative law enforcement process to respond to dissatisfaction with the criminal justice system which focuses on the legal process. The practice of law by law enforcers that occurs in Indonesia tends to always be based on legalist thinking as the main characteristic of legal positivism.<sup>7</sup> The injustice that occurs in law enforcement by law enforcers is an irony because in fact the form of law itself aspires to justice (*gerechtigheit*).<sup>8</sup>

The Restorative Justice Principles approach stated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System focuses on improving the relationship between the victim and the perpetrator of the crime, in this case the perpetrator is a child. This restorative justice principle approach can provide justice for both victims and perpetrators. Even though punishment is a powerful tool that the state has to combat crime, punishment is not the only tool to improve the situation so there must be a combination of repressive and preventive efforts.<sup>9</sup>

The principle of restorative justice aims to empower victims, perpetrators, families and the community to correct an act against the law by using awareness and conviction as a basis for improving social life. Explaining that the concept of the principle of restorative justice is basically simple.<sup>10</sup> Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System is made in accordance with the Convention on the Rights of the Child which has been ratified by the government of the Republic of Indonesia with Presidential Decree Number 36 of 1990.

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<sup>3</sup> Setya Wahyudi. 2011. *Implementasi Ide Diversi Dalam Pembaruan Sistem Peradilan Pidana Anak Di Indonesia*. Yogyakarta : Genta Pub. hlm 35.

<sup>4</sup> <https://databoks.katadata.co.id/datapublish/2023/10/06/bps-siswa-laki-laki-lebih-banyak-jadi-korban-bullying> diakses pada tanggal 19 September 2023, pukul 18.18.

<sup>5</sup> <https://www.suara.com/entertainment/2024/02/27/155358/pelaku-terancam-hukuman-sampai-5-tahun-penjara-korban-bully-anak-vincent-rompies-cs-ogah-damai> diakses pada tanggal 28 Februari 2024, Pukul 09.00

<sup>6</sup> Barbara Coloroso. 2006. *Penindas. Tertindas. dan Penonton; Resep Memutus Rantai Kekerasan Anak dari Prasekolah hingga SMU*. Jakarta : Serambi Ilmu Pustaka. hlm. 51

<sup>7</sup> Sukris Sarmadi. 2012. *Membebaskan Positivisme Hukum Ke Ranah Hukum Progresif (Studi Pembacaan Teks Hukum Bagi Penegak Hukum)*. Jurnal Dinamika Hukum. Volume 12. hlm. 332.

<sup>8</sup> Agus Raharjo dan Angkasa. 2011. *Profesionalisme Polisi Dalam Penegakan Hukum*. Jurnal Dinamika Hukum. Volume 11. No. 3. hlm. 385.

<sup>9</sup> Supeno Hadi. 2010. *Kriminalisasi Anak*. Jakarta: PT. Gramedia Pustaka Utama. Jakarta. hlm 3.

<sup>10</sup> Nikmah Rosidah. 2014. *Budaya Hukum Hakim Anak Di Indonesia*. Pustaka Magister.

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Restorative justice is a model for resolving criminal cases that prioritizes restoration of victims, perpetrators and the community.<sup>11</sup> The main principle of restorative justice is the participation of victims and perpetrators, participation of citizens as facilitators in resolving cases so that there is a guarantee that children or perpetrators will no longer disturb the harmony that has been created in society.<sup>12</sup> Keeping children away from the criminal justice process is important because this is part of efforts to protect children's human rights as stated in the Convention on the Rights of the Child which provides an opportunity for a case diversion process carried out by the police and public prosecutor as well as other officials who have the authority to keep children away from criminal justice. judicial process.<sup>13</sup> The concept of the principles of restorative justice is contained in Article 5 paragraphs (1) and (2) of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that the Juvenile Criminal Justice System must prioritize an approach to the principles of restorative justice.

Restorative Justice is also an implementation of the commitment to protecting children who commit criminal acts. The high level of criminal acts of bullying committed by children and resolved through the criminal justice system where the punishment of children is not in accordance with the commitment to protect children's rights. Bullying acts that can be carried out against children include abuse, beatings and bullying which are regulated in the old Criminal Code to the new Criminal Code, with the threat of prison sentences according to the level of violence committed by the perpetrator, making it possible to resolve them through the principles of restorative justice.

Even though the law has provided such regulations regarding the resolution of bullying, there are still several reasons why at the investigative level this approach is not applied to child bullies.<sup>14</sup> This can happen because the limits on the extent to which bullying can and cannot be applied through a restorative justice approach are not concretely regulated in Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System. Diversion is also required, but in handling criminal cases of bullying you must consider the criminal threat category under 7 (seven) years in addition to the criminal offense category. The requirement for diversion in the form of a criminal threat for the crime committed must be under 7 (seven) years of age. This is a problem in implementing diversion, considering that regardless of the criminal act committed by the child and whatever the criminal threat, the child's psychological status remains as a child. whose way of thinking and acting cannot be compared to adults.

Some legal provisions provide age limits for children. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System itself has set a limit for children under 18 years of age as regulated in Article 1 point (1) of Law (UU) Number 17 of 2016 concerning Determination of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law. According to R.A. Children are young people at a young age in their soul and life journey because they are easily influenced by their surroundings<sup>15</sup>, Children as the most vulnerable and weak social creatures are often placed in the weakest position, do not have the right to speak, and often experience violations of their rights.<sup>16</sup> One of them is the limitation of diversion obligations for law enforcers which is only limited to criminal acts with a threat of under 7 (seven) years, which is contrary to the intention of the legislators in providing age limits for children and is contrary to the psychological nature of children.

The further impact of implementing diversion for children who are bullied, results in a sense of injustice for the perpetrators who have the status of children according to the law, and sometimes it even becomes a question whether the decision to apply restorative justice at the investigative level has really been carried out objectively, considering that no There are a few cases of criminal acts of bullying which carry a threat of more than 7 (seven) years which are committed by children and should also be worthy of being given diversion. If investigators have applied diversion consistently in cases where only children who are bullied are under 7 (seven) years of age, it is not certain that the investigator's objectivity according to law is directly proportional to the objectivity according to community justice. Based on the description above, there are basic things that need to be studied further regarding the implementation of restorative justice, so it is very relevant that the author in this journal took the title "Reformulation of Regulations related to Restorative Justice in Criminal Cases of Bullying Against Children at the Investigation Level".

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<sup>11</sup> Berdasarkan Lampiran Surat Keputusan Direktur Jenderal Badan Peradilan Umum Nomor : 1691/DJU /SK/PS.00/12/2020 tanggal 22 Desember 2020 tentang Pedoman Penerapan *Restorative Justice* Di Lingkungan Peradilan Umum. Keadilan Restoratif adalah penyelesaian perkara tindak pidana dengan melibatkan pelaku, korban, keluarga pelaku/korban dan pihak lain yang terkait untuk bersama-sama mencari penyelesaian yang adil dengan menekankan pemulihan kembali pada keadaan semula, dan bukan pembalasan.

<sup>12</sup> Gatot Supramono. 2007. *Hukum Acara Pengadilan Anak*. Jakarta : Djambatan Herlina. 2004. Apong, et al. *Perlindungan Anak Yang Berhadapan Dengan Hukum*.

<sup>13</sup> Maidin Gultom. 2008. *Perlindungan Hukum Terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia*. Bandung : Refika Aditama

<sup>14</sup> Agus Hairudin, Febrian, dan Nashriana. 2023. *Peran Penyidik Dalam Penerapan Restorative Justice Terhadap Perkara Pidana Anak Di Kepolisian Daerah Sumatera Selatan*. Palembang: Universitas Sriwijaya.

<sup>15</sup> R.A. Koesnan, 2005, *Susunan Pidana dalam Negara Sosialis Indonesia*, Bandung : Sumur, hlm. 113

<sup>16</sup> Arif Gosita, *Masalah perlindungan Anak*, Jakarta : Sinar Grafika, 1992, hlm. 28

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## II. RESEARCH METHODS

The type of research in this research is normative juridical. Normative juridical legal research is a type of research that focuses on the analysis of existing legal norms or regulations. This method involves studying legal documents, such as laws, court decisions, government regulations, and other legal documents. This research aims to understand and interpret legal norms and analyze their consequences or implications.

In normative juridical legal research, researchers will evaluate the accuracy and consistency of legal norms, and try to understand how these norms are interpreted and applied in legal practice. Researchers can also identify legal problems that arise from existing legal norms and look for solutions or recommendations for improvement.

This research method is very relevant in the context of legal development and reform, because it provides an in-depth understanding of the legal norms that form the basis for legal policies and actions. In addition, normative juridical legal research can be used to explain theoretical aspects of law such as legal concepts, principles and doctrines that exist in a country's legal system.

## III. RESULTS AND DISCUSSION

### A. Arrangements Related to Restorative Justice in Cases of Criminal Bullying Against Children at the Investigation Level.

*Bullying is a term that is familiar to Indonesian people. Bullying is the act of using power to hurt a person or group of people verbally, physically or psychologically so that the victim feels depressed, traumatized and helpless.*<sup>17</sup> Perpetrators of bullying are often referred to as bullies. A bully knows no gender or age. In fact, bullying often occurs in schools and is carried out by teenagers.

According to Barbara Coloroso, a writer and speaker who is an expert in the fields of education and child psychology, bullying is aggressive behavior aimed at hurting, mocking, or dominating other people who are weaker or more helpless.<sup>18</sup> Meanwhile, Riauskina, et al group bullying behavior into 5 categories, namely:<sup>19</sup>

1. Direct physical contact (hitting, pushing, biting, grabbing, kicking, locking someone in the room, pinching, scratching, also including squeezing and damaging other people's belongings);
2. Direct verbal contact (threatening, embarrassing, putting down, annoying, name-calling, sarcasm, criticizing/mockering, cursing, spreading gossip);
3. Direct non-verbal behavior (looking sarcastically, sticking out your tongue, showing demeaning, mocking or threatening facial expressions, usually accompanied by physical or verbal bullying);
4. Indirect non-verbal behavior (silencing someone, manipulating a friendship so that it breaks, deliberately excluding or ignoring, sending anonymous letters);
5. Sexual harassment (sometimes categorized as physical or verbal aggressive behavior).

In general, bullying is carried out verbally and non-verbally (physically), which is also regulated implicitly in Indonesian laws and regulations. Even though it is not explicitly regulated regarding the nomenclature of criminal acts of bullying, when certain actions or actions fulfill the elements of a criminal act in the applicable laws and regulations, articles containing elements of violence can be applied against the perpetrator. Some acts of physical bullying can be considered criminal acts of abuse because they involve the use of violence or physical force to harm or cause injury to the victim. Legally, persecution is regulated in various laws and regulations in various countries, including criminal law. The following are several reasons why physical bullying can be classified as a criminal act of abuse:

1. Use of violence or physical force: Physical bullying often involves the use of violence or physical force directly against the victim. This may include hitting, kicking, choking, or elbowing the victim with the intent of causing physical pain or injury.
2. Causes injury or harm to the victim: Acts of physical bullying can cause physical injury to the victim, ranging from abrasions to serious injuries such as broken bones or brain injuries. Even in extreme cases, physical bullying can lead to the death of the victim.
3. Violations of human rights: Every individual has the right to life and freedom from torture or inhuman or degrading treatment. Acts of physical bullying that cause injury to the victim can be considered a violation of this human right.
4. Psychological and emotional effects on victims: The impacts caused by this action are very wide in scope. Teenagers who are victims of bullying are more at risk of experiencing various health problems, both physically and mentally. The problems that are more likely to be suffered by children who are victims of bullying include the emergence of various mental problems such as depression, anxiety and sleep problems which may be carried over into adulthood, physical health complaints, such as headaches, stomach aches and muscle tension, feeling unwell, safe when in the school environment, and decreased

<sup>17</sup> Tim Sejiwa. 2008. *Bullying: Panduan bagi Orang Tua dan Guru Mengatasi Kekerasan di Sekolah dan Lingkungan*. Jakarta: Grasindo.

<sup>18</sup> Barbara Coloroso. 2007. *Stop Bullying: Memutus Rantai Kekerasan Anak dari Prasekolah hingga SMU (Diterjemahkan oleh: Santi Indra Astuti)*. Jakarta: PT. Serambi Ilmu Semesta

<sup>19</sup> Mangadar Simbolon. 2012. *Perilaku bullying pada mahasiswa berasrama*. Jurnal Psikologi. Vol. 39 No. 2. Hlm. 233-243.

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enthusiasm for learning and academic achievement.<sup>20</sup>

For example, physical bullying with certain elements is regulated in Article 351-358 of Law Number 1 of 1946 concerning Regulations on Criminal Law (hereinafter referred to as the Criminal Code/KUHP). Article 351 of the Criminal Code relates to criminal provisions for perpetrators of abuse. According to Article 351 of the Criminal Code, perpetrators of abuse can be subject to imprisonment for a maximum period of two years and eight months or a fine of a maximum amount of four thousand five hundred rupiah. This shows that the punishment given to perpetrators of abuse can be in the form of imprisonment or a fine, depending on the court's decision.

Article 351 of the Criminal Code also states that if the act of abuse results in serious injuries to the victim, the perpetrator can be subject to imprisonment for a maximum period of five years. This confirms that the consequence of abuse that causes serious injuries is a heavier punishment. Apart from that, Article 351 of the Criminal Code also regulates penalties for perpetrators of abuse that results in the death of the victim. In this case, the perpetrator responsible for the victim's death can be subject to imprisonment for a maximum term of seven years. This shows that criminal acts of abuse that have fatal consequences will be given heavier sentences according to the severity of the act committed.

In verse or paragraph 4, Article 351 of the Criminal Code states that abuse will be equated with intentionally damaging health. This confirms that acts of abuse that are detrimental to the victim's health will be given legal treatment similar to abuse in general. Article 351 of the Criminal Code is an important legal umbrella for handling cases of abuse, by providing sanctions appropriate to the level of crime committed by adult and child perpetrators.

Regarding abuse in Article 351 of the Criminal Code, R. Soesilo in his book entitled *The Criminal Code (KUHP) and its Complete Comments Article by Article* explains that the law does not provide provisions on what is meant by "persecution". According to jurisprudence, what is defined by "mistreatment" is intentionally causing unpleasant feelings (suffering), pain, or injury. According to paragraph 4 of Article 351 of the Criminal Code, also included in the definition of abuse is "deliberately damaging someone's health".<sup>21</sup> R. Soesilo then gave an example of what is meant by feelings of discomfort, pain, injury and damage to health as follows:

1. Unpleasant feelings, for example pushing people to jump into rivers so they get wet, making people stand in the hot sun, and so on.
2. Pain, for example pinching, punching, hitting, hitting the head, and so on.
3. Wounds, for example slicing, cutting, stabbing with a knife, etc.
4. Damaging health, for example if someone is sleeping and sweating, the window in their room is opened, so that person catches a cold.

In line with Law Number 1 of 2023 concerning the Criminal Code (Latest Criminal Code) which will be implemented in the next few years, abuse is also regulated in Articles 467-471 of the newest Criminal Code. Article 467 of the latest Criminal Code regulates criminal sanctions for perpetrators of abuse with prior planning. According to Article 467 of the Criminal Code, anyone who commits abuse with prior planning can be subject to imprisonment for a maximum of 4 years. If the act results in serious injury, the perpetrator can be subject to imprisonment for a maximum of 7 years. In addition, if the abuse caused someone's death, the perpetrator can be subject to imprisonment for a maximum of 9 years. Article 467 of the Criminal Code aims to provide strict sanctions for acts of abuse carried out with prior planning, with the hope of preventing more serious acts of violence and providing justice for victims and society in general.

Not only is abuse regulated generally in the latest Criminal Code, but there is also violence regulated *lex specialis* in the child protection law. What is meant by violence is any act against a child that results in physical, psychological, sexual, and/or neglect, misery or suffering, including threats to commit acts, coercion, or unlawful deprivation of liberty.<sup>22</sup> Moreover, children in and around educational units are required to receive protection from acts of physical, psychological violence, sexual crimes, and other crimes committed by educators, educational staff, fellow students, and/or other parties such as security officers, cleaners, sellers, food, canteen staff, school pick-up staff, and school guards.

Regarding the bullying article in schools, both the physical bullying article and the verbal bullying article, Article 76C of Law Number 17 of 2016 concerning Stipulation of Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection The law stipulates that every person is prohibited from placing, allowing, committing, ordering to commit, or participating in committing violence against children. If the prohibition on committing violence against children is violated, the perpetrator can be charged under Article 80 of the Child Protection Law.

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<sup>20</sup> Ela Zain Zakiyah, Sahadi Humaedi, dan Meilanny Budiarti Santoso. 2017. *Faktor yang mempengaruhi remaja dalam melakukan bullying*. Prosiding Penelitian Dan Pengabdian Kepada Masyarakat Vol. 4 No. 2.

<sup>21</sup> R. Soesilo. 1991. *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*. Bogor: Politeia.

<sup>22</sup> Pasal 1 angka 15a Undang-undang (UU) Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak

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Violation of Article 76C of the Child Protection Law regarding child protection will result in serious legal consequences. Any individual proven to have violated these provisions can be punished with imprisonment for 3 years and 6 months, as well as a maximum fine of IDR 72 million. However, if the violation results in the child suffering serious injury, the sanctions will be more severe. The perpetrator can be punished with a maximum prison sentence of 5 years and/or a fine of IDR 100 million. In fact, in a more tragic case where the child dies as a result of this treatment, the perpetrator can be sentenced to a maximum prison sentence of 15 years and/or a fine of a maximum of IDR 3 billion. Furthermore, if the violation is committed by the child's parents, the punishment imposed will be increased by an additional third of the sanctions previously determined in each paragraph, confirming that the protection of children is the main priority in the criminal justice system.<sup>23</sup>

Not only as victims of criminal acts of abuse or violence, but it is very possible and starting to be commonplace for children to do it as an act of bullying. Even though they are not aware that the act or action is actually included in the form of a criminal act, they still have to be responsible for what they have done in line with the theory of criminal responsibility which is a form of determining whether a suspect or defendant is responsible for a criminal act that has been committed. happen. In other words, criminal responsibility is a form that determines whether a person is acquitted or convicted.<sup>24</sup>

In criminal liability, the burden of responsibility is borne by the perpetrator of the criminal offense relating to the basis for imposing criminal sanctions. A person will have the nature of criminal responsibility if something or an action he or she commits is against the law, but a person can lose the nature of responsibility if an element is found within him/herself which causes the loss of a person's ability to be responsible.<sup>25</sup>

On the other hand, Van Hamel, said that criminal responsibility is a normal state of psychological maturity which brings three kinds of abilities to:<sup>26</sup>

- a) Understand the meaning and consequences of one's own actions;
- b) Realizing that his actions are not justified or prohibited by society and
- c) Determining the ability to act.

Van Hamel's theory emphasizes that criminal responsibility requires psychological maturity which includes three key abilities.<sup>27</sup> First, individuals must be able to understand the meaning and consequences of their own actions. This means that individuals must be able to understand the implications of the actions they take, including the impact on themselves and others. Second, they must realize that the actions they commit are not condoned or prohibited by society. This shows their understanding of the social norms and laws that apply in society. Lastly, individuals must be able to determine their ability to control their behavior. This includes the ability to control impulses and emotions and make the right decisions.

Children are not considered criminally responsible according to this theory because they have not yet fully developed this ability. In general, children are still in their physical, mental and emotional development stages. Their ability to understand the consequences of their actions and to judge whether an action conforms to social norms is still developing. In addition, children often do not have mature self-control to control their impulses and emotions.

Thus, according to Van Hamel's theory, children are considered unable to be criminally responsible because they have not yet reached the level of psychological maturity required to fulfill the three abilities mentioned previously. Therefore, they do not have the capacity to fully understand the meaning and consequences of their actions, realize that their actions may violate societal norms, or properly assess their ability to control behavior.

On the other hand, according to Simons. as the basis for criminal responsibility is the fault that exists in the soul of the perpetrator in relation (that fault) to the behavior that can be punished and based on that psychology the perpetrator can be blamed for his behavior. For there to be guilt in the perpetrator, several things concerning the perpetrator must first be achieved and determined. that is:<sup>28</sup>

- a) Ability to be responsible;
- b) The psychological relationship between the perpetrator and the consequences (including behavior that does not conflict with the law in everyday life);

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<sup>23</sup> Putu Yurika Marta Prasetya, Made Sugi Hartono, dan Ni Ketut Sari Adnyani. 2023. *ANALISIS YURIDIS FRASA MEMBIARKAN DALAM PASAL 76C UNDANG-UNDANG NOMOR 35 TAHUN 2014 TENTANG PERLINDUNGAN ANAK*. Jurnal Ilmu Hukum Sui Generis Vol. 3 No. 3. Hlm. 15-24.

<sup>24</sup> Roeslan Saleh. 1986. *Pikiran-Pikiran Tentang Pertanggung Jawaban Pidana, Cetakan Pertama*. Jakarta : Ghalia Indonesia. Hlm. 33

<sup>25</sup> Hanafi Mahrus. 2015. *Sistem Pertanggung Jawaban Pidana, Cetakan pertama*. Jakarta : Rajawali Pers. Hlm. 16

<sup>26</sup> Admaja Priyatno. 2004. *Kebijakan Legislasi tentang Sistem Pertanggungjawaban Pidana Koorporasi di Indonesia*. Bandung : CV. Utomo. Hlm. 15.

<sup>27</sup> Ina Helianny dan Edison Hatogoan Manurung. 2020. *Pertanggungjawaban Anak Yang Melakukan Tindak Pidana Kecelakaan Lalu Lintas Dan Mengakibatkan Hilangnya Nyawa Orang Lain Dalam Putusan Perkara Nomor 123/Pid. Sus/2014/PN. Jkt. Tim*. Prosiding Seminar Nasional Pakar. Hlm. 2-22.

<sup>28</sup> Admaja Priyatno. *loc. cit.*

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- c) Dolus and Culpa, error is a subjective element of a criminal act. This is a consequence of his opinion which connects (unites) *strafbaarfeit* with error.

Simons' theory emphasizes that the basis of criminal responsibility is the fault that exists in the perpetrator's soul in relation to the behavior that can be punished, and that the perpetrator can be blamed because his behavior is based on that psychology.<sup>29</sup> According to this theory, to determine whether the perpetrator is guilty, several things related to the perpetrator must be considered first. First, the perpetrator's ability to take responsibility must be assessed. This includes the perpetrator's ability to understand and control their behavior as well as their ability to understand the consequences of their actions. Second, the psychological relationship between the perpetrator and the consequences must be evaluated. This means looking at the extent to which the perpetrator's mental state influences their behavior and the extent of the relationship between the perpetrator's mental state and the results of their actions. Third, it is important to consider the elements of *dolus* and *culpa* in assessing the subjective culpability of criminal acts. *Dolus* refers to the perpetrator's intentionality or intention to commit an unlawful act, while *culpa* refers to a mistake or negligence committed without intention.<sup>30</sup>

By considering all these aspects, based on Simons' theory, children are considered not to be criminally responsible because they may not yet have mature responsibility abilities, their psychological relationship with the consequences may not have been fully formed, and they may not fully understand the concept of *dolus* and *culpa* in their actions. Therefore, according to this theory, criminal responsibility must be adjusted to the individual's psychological maturity and legal understanding. However, there are still many cases of children who are bullied who are brought to trial and sentenced to criminal or prison sentences because restorative justice is not implemented at the investigative level.<sup>31</sup>

Investigations are carried out by investigators appointed based on the decision of the Chief of Police or other officials appointed by the Chief of the Republic of Indonesia Police, while prosecutions are carried out by the Public Prosecutor determined based on the Decision of the Attorney General or other officials appointed by the Attorney General.<sup>32</sup> When conducting an investigation into a child's case, the investigator is obliged to ask for considerations or suggestions from the community counselor after the criminal act is reported or complained about, then the Community Research Center is obliged to submit the results of the community research no later than 3 days after the investigator's request.<sup>33</sup>

When carrying out examinations of child victims, investigators are obliged to request a social report from a social worker or social welfare worker after the criminal act has been reported, then efforts must be made for children who are presented as children in conflict with the law (ABH) at the level of investigation, prosecution and examination of children's cases in court. diversion.<sup>34</sup> Diversion is the diversion of the resolution of children's cases from the criminal justice process outside the criminal justice process<sup>35</sup> and to this process with the following conditions:<sup>36</sup>

1. Threatened with imprisonment for less than 7 (seven) years;
2. And not a repetition of a criminal act;

Furthermore, apart from these provisions, this also applies to children who are charged with committing a criminal offense which is punishable by imprisonment for less than 7 (seven) years and are also charged with a criminal offense which is punishable by imprisonment (seven) years or more in the form of subsidiarity, alternative, cumulative or combined charges. (combined).<sup>37</sup> Diversion aims:<sup>38</sup>

1. Achieve peace between victims and children;
2. Resolving children's cases outside the judicial process;
3. Prevent children from being deprived of their freedom;
4. Encourage the community to participate;
5. And instill a sense of responsibility in children;

<sup>29</sup> HUSNA REVIO ALWA DETIA. 2024. *ANALISIS YURIDIS PERTANGGUNGJAWABAN PIDANA TERHADAP ORANG GANGGUAN KEJIWAAN YANG MELAKUKAN TINDAK PIDANA PEMBUNUHAN (Putusan Nomor 288/Pid. B/2020/PN. Pms)*.

<sup>30</sup> Hamidah Wahyu Putri Nagari dan Ghoniyah Zulindah Maulidya. 2023. *Tinjauan Hukum Pidana di Negara Indonesia, Islam, dan Arab Saudi Mengenai Kejahatan Terhadap Nyawa*. ULIL ALBAB: Jurnal Ilmiah Multidisiplin Vol. 2 No. 7. Hlm. 2031-2041.

<sup>31</sup> Dewi Ervina Suryani, Petricia Simbolon, Gio Swandy Siagian, dan Muhammad Yusuf Siregar. 2023. *Penerapan Restorative Justice Pada Kasus Bullying yang Dilakukan Anak (Studi Kasus di Kepolisian Resor Kota Besar Medan Sumatera Utara)*. Jurnal Interpretasi Hukum Vol. 4, No. 3. Hlm. 308-315.

<sup>32</sup> Febryan Arda Ayu Lukitosarie dan Andri Winjaya Laksana. *Tinjauan Hukum Pelaksanaan Penyidikan Tindak Pidana Pembunuhan Berencana Yang Dilakukan Oleh Anak*. Prosiding Konstelasi Ilmiah Mahasiswa Unissula (KIMU) Klaster Hukum.

<sup>33</sup> Muhammad Ridho Sinaga dan Novalinda Nadya Putri. 2023. *Tindak Pidana oleh Anak: Suatu Kajian dan Analisis Fungsi Sertifikasi Penyidik Anak di Kepolisian*. UNES Law Review Vol. 6 No. 1. Hlm. 484-492.

<sup>34</sup> Akira Assa. 2019. *Kajian Hukum Tindak Pidana Penganiayaan Berat Oleh Anak Di Bawah Umur*. Lex Crimen Vol. 8 No. 4.

<sup>35</sup> Pasal 1 angka 7 Undang-undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak

<sup>36</sup> Pasal 7 ayat (2) Undang-undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak

<sup>37</sup> Pasal 7 PERMA Nomor 4 Tahun 2014 tentang Pedoman Pelaksanaan Diversi dalam Sistem Peradilan Pidana Anak

<sup>38</sup> Pasal 6 Undang-undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak

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In the Diversion process itself, of course there are parties involved, namely children, parents, victims, and/or parents/guardians, community counselors and professional social workers based on a restorative justice approach which means that the resolution of criminal cases involving perpetrators, victims and other parties. -other related parties to jointly seek a fair solution by emphasizing restoration to the original situation. From the results of the diversion agreement, peace should be achieved in the form of:<sup>39</sup>

1. With or compensation for damages;
2. Handing back to parents/guardians;
3. Participation in education/training at educational institutions or LPKS, community services.

If an agreement is reached, every official responsible for implementing diversion will issue a termination of investigation, termination of prosecution, termination of case examination and if this is achieved then the examination process will continue. Furthermore, in the event that an agreement is not reached within the specified time, the community advisor will immediately report it to the official to follow up on the inspection process.<sup>40</sup>

It can be concluded that the aim of restorative justice is not focused on retribution for perpetrators of criminal acts, but rather seeks a just solution by emphasizing restoration to the original state. Then, the conditions that must be met to implement restorative justice when carrying out criminal investigation, investigation or investigative functions, namely that there is an agreement between the parties to carry out peace, not repeat criminal acts, the rights of victims have been fulfilled, and the application of restorative justice This has not been rejected by the public, with the following legal basis:

- (1). Law No. 11 of 2012 concerning the Juvenile Criminal Justice System;
- (2). Law Number 17 of 2016 concerning Stipulation of Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law
- (3). Law Number 1 of 2023 concerning the Criminal Code (KUHP)
- (4). Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System
- (5). Decree of the Director General of the General Justice Agency of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning Implementation of Guidelines for the Implementation of Restorative Justice
- (6). Republic of Indonesia Government Regulation Number 65 of 2015 concerning Guidelines for Implementing Diversion and Handling Children Who Are Not Yet 12 (twelve) Years Old
- (7). Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice

Based on these legal bases, restorative justice should be prioritized in handling cases of criminal acts committed by children, especially criminal acts of bullying, but not all handling cases of bullying committed by children apply restorative justice. For various reasons, one of which is not fulfilling the diversion requirements. The following are examples of cases of bullying by children where restorative justice was not applied:<sup>41</sup>

There are still many cases where restorative justice is not implemented for child perpetrators at the investigation stage, so that children have to face the next stage of justice, even up to the trial stage. If restorative justice is not implemented for children, there are several impacts that may arise, namely:

1. Missing opportunities to learn and improve behavior. Restorative justice provides an opportunity for juvenile offenders to understand the consequences of their actions, realize their mistakes, and commit to improving their behavior in the future. Without this approach, perpetrators may not have the opportunity to learn from their mistakes and could potentially repeat the same behavior.
2. Increased risk of involvement in repeat crimes. Without appropriate intervention, child perpetrators may not gain an understanding of the negative impacts of their actions. This may increase their risk of engaging in similar criminal behavior in the future, as they do not have the opportunity to repair relationships with victims and correct their mistakes.
3. Losses for victims and society. Restorative justice allows victims to recover, both emotionally and practically, and obtain an explanation or apology from the perpetrator. Without this approach, victims may be dissatisfied with the criminal justice system and denied the opportunity to obtain adequate resolution. This can also create distrust of the justice system.
4. Separation between the perpetrator and the victim. Traditional approaches in the criminal justice system may only focus on punishing the perpetrator, without considering the process of reconciliation and restoration of the relationship between the

<sup>39</sup> Pasal 11 Undang-undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak

<sup>40</sup> Mahir Sikki Z.A., S.H. *Sekilas tentang Sistem Peradilan Pidana Anak*. <https://pn-palopo.go.id/30-berita/artikel/363-sekilas-tentang-sistem-peradilan-pidana-anak> diakses pada 5 Maret 2024 pukul 08.18

<sup>41</sup> Data Perkara Kekerasan Terhadap Anak Tahun 2024 didapat dari hasil penelitian pada Kepolisian Negara Republik Indonesia Daerah Metropolitan Jakarta Raya Resor Metropolitan Jakarta Barat



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perpetrator and the victim. This can result in greater separation between the perpetrator and the victim, which may be unhealthy for both parties.

Thus, not implementing restorative justice for children in accordance with general legal regulations or normative reality (what should or should be done) can have a negative impact on the justice and recovery process for all parties involved. It can also lead to the recurrence of criminal behavior and dissatisfaction with the criminal justice system as a whole.

### **B. Reformulation of Regulations related to Restorative Justice in Cases of Criminal Bullying Against Children at the Investigation Level in the Future.**

It is explained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), that children who are suspected of committing criminal acts, such as stealing, fighting, sexual abuse, murder or narcotics, in the context of the SPPA law are called Children in conflict with the law. . Children in conflict with the law are children aged 12 to under 18 who are suspected of committing a crime. The legal process for these children is regulated by the SPPA Law, which covers all stages from investigation to guidance after serving a sentence.

At the stage of resolving children's cases, involving children as perpetrators, victims and witnesses. Child victims are those who experience physical, mental or economic suffering as a result of criminal acts, while child witnesses provide information in the legal process. In the SPPA Law, they are referred to as Children in Conflict with the Law. The importance of prioritizing restorative justice in resolving children's cases emphasizes restoration to the original state, not retaliation.<sup>42</sup>

The police investigation process for children suspected of being involved in legal problems involves arrest, with special placement for the child for 24 hours. Detention of children can only be carried out if they are 14 years or older and are suspected of committing a criminal offense that carries a penalty of more than 7 years in prison. During detention, the child's needs must be met, and detention for investigation purposes is carried out for a maximum of 7 days, which can be extended to 8 days at the request of the investigator. In handling children's cases, it is important to ensure that the child's physical, spiritual and social needs are met during detention, with a maximum time limit of 7 days, which can be extended to 8 days at the request of the investigator.<sup>43</sup>

Article 1 in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) contains basic provisions related to investigators and investigations in the criminal legal process in Indonesia. Second, Article 1 Paragraph 2 of the Criminal Procedure Code explains that an investigation is a series of actions carried out by investigators in accordance with the provisions regulated in this law. This indicates that the investigation process must follow established legal provisions, making this process a structured part of law enforcement.<sup>44</sup> The aim of this investigation is to search for and collect the evidence needed to explain the criminal act that occurred. In other words, an investigation aims to uncover the truth about a criminal case by obtaining sufficient facts and evidence. Apart from that, another aim of the investigation is to find the suspect involved in the case, so that the subsequent legal process can be carried out fairly and in accordance with applicable procedures.<sup>45</sup> Thus, Article 1 paragraph (2) of the Criminal Procedure Code provides direction regarding the basic principles of investigations carried out in the criminal justice system.

Regulations related to investigators and investigations in other laws are contained in Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia which provides a definition and explanation of the role and authority of investigators in the law enforcement system. Article 1 number 10 Law no. 2 of 2002 concerning the National Police explains that an investigator is an official of the Indonesian National Police who has the authority granted by law to carry out investigations.

Meanwhile, Article 1 number 13 of Law no. 2 of 2002 concerning the National Police explains that an investigation is a series of actions carried out by investigators in accordance with the provisions of the law to search for and collect evidence that will help explain the criminal act that occurred and to find the suspect involved in the case. Thus, the articles relating to the definition of investigator provide a legal basis and clear definition of the role and authority of investigators in the criminal investigation process.<sup>46</sup>

In handling cases of bullying by children at the investigative level, the application of restorative justice offers an approach that has the potential to provide many benefits. Investigation, as a series of actions carried out by investigators to search for and collect

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<sup>42</sup> Dheny Wahyudi. 2015. *Perlindungan terhadap anak yang berhadapan dengan hukum melalui pendekatan restorative justice*. Jurnal Ilmu Hukum Jambi Vol. 6 No. 1. Hlm. 43318.

<sup>43</sup> Rosmi Darmi. 2017. *Implementasi Konvensi Hak Anak Terkait Dengan Perlindungan Anak Yang Berhadapan Dengan Proses Hukum (Implementation of Children Rights Convention Related to Children Protection Against the Law)*. Jurnal Penelitian Hukum De Jure Vol.16 No. 4. Hlm. 439-450.

<sup>44</sup> Mahsun Ismail, Nur Hidayat, Gatot Subroto, Sri Sulastri, Harnilik Hardiansyah, dan Salman Al Farisi. 2023. *Problematisa Penegakan Hukum Terhadap Pencurian Sepeda Motor di Kabupaten Pamekasan*. Jurnal Hukum Ekonomi Syariah. Hlm. 89-100.

<sup>45</sup> Fadil Rahmat Zakariah. 2021. *Perlindungan Hak Tersangka Dalam Proses Penyidikan Ditinjau Dari Aspek Psikologi Hukum*. UNIVERSITAS BOSOWA.

<sup>46</sup> Ali Imron. 2016. *Peran Dan Kedudukan Empat Pilar Dalam Penegakan Hukum Hakim Jaksa Polisi Serta Advokat Dihubungkan Dengan Penegakan Hukum Pada Kasus Korupsi*. Jurnal Surya Kencana Dua: Dinamika Masalah Hukum Dan Keadilan Vol. 6 No. 1. Hlm. 96.

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evidence to explain criminal acts that have occurred, can be a basis for implementing the principles of restorative justice.<sup>47</sup> Through an investigation process that considers the principles of restorative justice, the opportunity to achieve reconciliation between the perpetrator and the victim becomes greater, thereby enabling the creation of a safer and more supportive environment for all parties involved in bullying cases.<sup>48</sup> Implementing restorative justice at the investigation stage can be an important first step in handling bullying cases holistically and have a positive impact on all involved.<sup>49</sup>

Restorative justice is an approach that places the focus on recovery and reconciliation between perpetrators, victims and society after a crime occurs. Some of the benefits that can be obtained from restorative justice are that children as perpetrators, victims and witnesses will be protected by a child justice system that is child-friendly and gender sensitive.<sup>50</sup> In the context of cases of bullying perpetrated by children for children, the application of restorative justice has several strong reasons. First, a restorative justice approach allows the opportunity for perpetrators to admit their mistakes directly to victims.<sup>51</sup> This can provide perpetrators with awareness of the negative impacts of their behavior and encourage repentance and behavior change in the future.

Restorative justice also provides an opportunity for victims to talk about their experiences and express the emotional and psychological impact of bullying.<sup>52</sup> By involving victims in the reconciliation process, they can feel heard and understood, which is an important step in their recovery process. Traditional sanctions such as criminal penalties can increase stigma and trauma for perpetrators, especially because they are still children. By choosing a restorative approach, the focus is on responsibility, learning from mistakes, and repairing relationships, which can help reduce the risk of additional trauma for all parties involved.<sup>53</sup>

Furthermore, the restorative justice approach involves the entire community in the recovery process, including schools, families and surrounding communities.<sup>54</sup> This creates a supportive environment for victims, reinforces the values of empathy and tolerance, and builds strong social bonds to prevent the recurrence of bullying behavior in the future. A restorative justice approach not only addresses the direct consequences of bullying, but also seeks a deeper understanding of the factors that drive the behavior. By engaging perpetrators in reflection about the motivations and causes of their behavior, we can identify and address the underlying root problems. Thus, the application of restorative justice in handling cases of bullying of children can provide a holistic approach, care for the welfare of all parties involved, and have the potential to prevent the recurrence of bullying in the future.<sup>55</sup>

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System contains complete details regarding how to implement the criminal justice system for children and comprehensively regulates restorative justice. Article 1 point (6) of the SPPA Law defines Restorative Justice as an approach in resolving criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties. The aim of this approach is to achieve a fair settlement by emphasizing the restoration of relationships and their original state, rather than attempts at retaliation. By involving all relevant parties, Restorative Justice creates space for dialogue, empathy, and reconciliation, which can help repair the damage caused by criminal acts and rebuild trust between parties. This approach views that the justice process is not only about enforcing punishment, but also about restoring the well-being of victims, guiding perpetrators to take responsibility for their actions, and rebuilding social bonds in society. Thus, Restorative Justice becomes an important alternative in running the juvenile criminal justice system, which prioritizes reconciliation and restoration rather than mere punishment.<sup>56</sup>

A juvenile criminal justice system that prioritizes a humanist, progressive approach and is based on the principles of restorative justice has a significant impact in providing legal protection for juvenile offenders.<sup>57</sup> Law Number 17 of 2016 concerning Stipulation of Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002

<sup>47</sup> Budi Sastra Panjaitan. 2022. Viktimologi Pandangan Advokat terhadap Perbuatan Pidana Dan Korban.

<sup>48</sup> Dewi Setyowati. 2020. *Memahami Konsep Restorative Justice sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan*. Pandecta research law journal Vol. 15 No. 1. Hlm. 121-141.

<sup>49</sup> Rita Wulandari Wibowo. 2023. *Rekonstruksi Regulasi Diversi Dalam Sistem Peradilan Pidana Anak Yang Berbasis Nilai Keadilan Pancasila*. PhD diss., UNIVERSITAS ISLAM SULTAN AGUNG.

<sup>50</sup> Sat Kusumaningrum. *Keadilan bagi Anak dan Reformasi Hukum : Dalam Kerangka Protective Environment*, [http://www.unicef.org/indonesia/uni-jjsl\\_2final.pdf](http://www.unicef.org/indonesia/uni-jjsl_2final.pdf) diakses pada 16 Maret 2024

<sup>51</sup> Henny Saida Flora. 2023. *Perbandingan Pendekatan Restorative Justice Dan Sistem Peradilan Konvensional Dalam Penanganan Kasus Pidana*. AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam Vol 5 No. 2. Hlm. 1933-1948.

<sup>52</sup> Bernadet Buulolo. 2023. *Dampak Kekerasan Verbal di Lingkungan Sekolah*. CERDAS-Jurnal Pendidikan Vol. 2 No. 1. Hlm. 9-22.

<sup>53</sup> Putri Silvah Al Hikmah, Dinda Fajarohma, dan Hana Sabilillah. 2023. *Perlindungan Bagi Korban Pelecehan Seksual Dengan Pendekatan Keadilan Restoratif (Restorative Justice)*. Hakim Vol. 1 No. 3. Hlm. 204-224.

<sup>54</sup> Hanafi Arief dan Ningrum Ambarsari. 2018. *Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia*. Al-Adl: Jurnal Hukum Vol. 10 No. 2. Hlm. 173-190.

<sup>55</sup> Khaerul Umam Noer dan Titiek Kartika. 2022. *Membongkar kekerasan seksual di pendidikan tinggi: pemikiran awal*. Yayasan Pustaka Obor Indonesia.

<sup>56</sup> Azwad Rachmat Hambali. 2019. *Penerapan Diversi Terhadap Anak Yang Berhadapan dengan Hukum Dalam Sistem Peradilan Pidana (Diversion for Children in Conflict with The Laws in The Criminal Justice System)*. Jurnal Ilmu Hukum Vol. 13 No. 1. Hlm. 15-30.

<sup>57</sup> Wasidipa Maulana Firdaus, Dominikus Rato, dan Fendi Setyawan. 2023. *Kajian Kritis Pembentukan Peradilan Pidana Adat Khusus Anak Dalam Sistem Peradilan Pidana Anak (Pemikiran Filsafat Hugo Grotius)*. SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum Vol. 2 No. 3. Hlm. 318-325.

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concerning Child Protection into Law provides a strong foundation for the implementation of these principles in the criminal justice system child.

By focusing on the rehabilitation and development of child perpetrators, as well as through a restorative approach that pays attention to children's needs, this system not only aims to resolve criminal cases fairly, but also to protect the rights and welfare of children in the legal process. As a result, comprehensive legal protection can be provided to child perpetrators, while ensuring that they still have the opportunity to repent and improve their behavior without having to experience stigmatization or inhumane treatment. In this way, the link between the juvenile criminal justice system which is oriented towards restorative justice and legal protection for child offenders becomes increasingly clear and integrated.<sup>58</sup>

The spirit of restorative justice is also accommodated in Law Number 1 of 2023 concerning the Criminal Code (the latest Criminal Code). Deputy Minister of Law and Human Rights, Prof. Dr. Edward Omar Sharif Hiariej, revealed that the Criminal Code Law (UU KUHP) in Indonesia has shifted from the classical criminal law paradigm to the modern criminal law paradigm. According to him, criminal law must now be oriented towards efforts to restore victims and society, as well as preventing criminal acts in the future. This new paradigm includes collective, rehabilitative and restorative justice.<sup>59</sup>

Another regulation that guarantees the implementation of restorative justice is the Decree of the Director General of the General Court of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice, as well as regulating the procedures and requirements for diversion in detail in the Regulations Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System. It is regulated in line with article 7 of the Juvenile Criminal Justice System Law that a Juvenile Judge is obliged to seek Diversion in the event that a Child is accused of committing a criminal offense which is punishable by a prison sentence of less than 7 (seven) years and is also charged with a criminal offense which is punishable by a prison sentence of 7 (7) years. seven) years or more in the form of a subsidiarity, alternative, cumulative or combination (combined) indictment.<sup>60</sup> These requirements are the limitations in implementing diversion or restorative justice for child offenders.

Apart from that, Republic of Indonesia Government Regulation Number 65 of 2015 concerning Guidelines for Implementing Diversion and Handling Children Who Are Not Yet 12 (twelve) Years Old also clearly regulates important matters relating to restorative justice for child perpetrators. In implementing the Diversion process, there are several things that must be considered carefully.<sup>61</sup> First, the interests of the victim must be the main focus, where the protection and recovery of the victim from the impact of crime is a priority in resolving the case. Second, the welfare and responsibility of the child perpetrator must also be taken seriously, by ensuring that the actions taken are aimed at educating and correcting the child's behavior so that they do not repeat the mistake in the future.

This is further strengthened by the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice, which is the gateway to handling restorative justice for children who commit criminal acts of bullying. Article 2 paragraph (1)<sup>62</sup> states that handling criminal acts based on restorative justice refers to a series of activities involving the functions of criminal investigation, inquiry and investigation. First, in carrying out the criminal investigation function, restorative justice requires the involvement of related parties to understand the root of the problem and the impacts caused by criminal acts. This includes identification of victims, perpetrators, as well as factors that influence the occurrence of crimes.

Furthermore, at the investigation stage, restorative justice emphasizes the search for evidence and information that can help in understanding the context and motivation behind the criminal act. This allows investigators to identify solutions that suit the needs and interests of all parties involved. Finally, at the investigation stage, the restorative justice approach encourages investigators to develop resolution strategies that prioritize dialogue, reconciliation and restoration. The aim is to reach a fair and meaningful resolution for all parties and prevent the recurrence of criminal acts in the future. Thus, the application of restorative justice in handling criminal acts involves comprehensive steps starting from identification to implementing solutions that involve all parties involved.

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<sup>58</sup> R. Wiyono. 2022. *Sistem peradilan pidana anak di Indonesia*. Sinar Grafika.

<sup>59</sup> KUHP Terbaru: Mengadopsi Keadilan Restoratif dan Rehabilitatif sebagai Paradigma Hukum Pidana. 2023. <https://fkm.umj.ac.id/uu-kuhp-terbaru-mengadopsi-keadilan-restoratif-dan-rehabilitatif-sebagai-paradigma-hukum-pidana/> diakses pada tanggal 17 Maret 2024 pukul 12.10

<sup>60</sup> Pasal 3 Peraturan Mahkamah Agung Republik Indonesia Nomor 4 Tahun 2014 tentang Pedoman Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak

<sup>61</sup> Pasal 6 Peraturan Pemerintah Republik Indonesia Nomor 65 Tahun 2015 tentang Pedoman Pelaksanaan Diversi dan Penanganan Anak yang Belum Berumur 12 (dua belas) Tahun

<sup>62</sup> Pasal 2 ayat (1) Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif, berbunyi Penanganan Tindak Pidanaa berdasarkan Keadilan Restoratif dilaksanakan pada kegiatan: a. penyelenggaraan fungsi reserse kriminal; b. penyelidikan; atau c. penyidikan.

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Article 3<sup>63</sup> PERPOL No. 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice regulates the requirements that must be fulfilled in handling criminal acts based on restorative justice. First, in handling criminal acts, they must fulfill both general and specific requirements. General requirements that apply to all stages of handling criminal acts based on restorative justice, such as carrying out criminal investigation functions, investigations or investigations.<sup>64</sup> Meanwhile, special requirements only apply to the handling of criminal acts in the context of investigations or investigations. These special requirements refer to certain aspects that are the focus of the inquiry or investigation process, which require a more detailed and specific approach and consideration according to the needs of the case being handled. Thus, Article 3 emphasizes that the handling of criminal acts based on restorative justice must pay attention to general requirements and special requirements according to the stage and context of handling the case in question.

Article 4<sup>65</sup> in this context, it stipulates general requirements that must be fulfilled in handling criminal acts based on restorative justice, as explained in Article 3 paragraph (1) letter a. These general requirements cover two aspects, namely material and formal.

Material requirements as intended in Article 4 letter a, include:<sup>66</sup>

- a. does not cause unrest and/or rejection from the community;
- b. does not impact social conflict;
- c. does not have the potential to divide the nation;
- d. not radicalism and separatism;
- e. not a repeat perpetrator of a criminal act based on a court decision;
- f. not criminal acts of terrorism, criminal acts against state security, criminal acts of corruption and criminal acts against people's lives.

Formal requirements as intended in article 4 letter b include:<sup>67</sup>

- a. peace from both parties, except for drug crimes; And
- b. fulfillment of the rights of victims and the responsibilities of perpetrators, except for drug crimes

Article 5 PERPOL No. 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice in this regulation stipulates material requirements that must be fulfilled in handling criminal acts based on restorative justice, as explained in Article 4 letter a. PERPOL No. 8 of 2021 concerning Handling Crime Based on Restorative Justice. These material requirements include several important things. First, the criminal act must not cause unrest or rejection from the community, so that the handling can run smoothly and be accepted by the community at large. Second, criminal acts must not have an impact on social conflict which can harm the stability and harmony of society. Third, handling criminal acts must avoid the potential to divide the nation, so as to continue to strengthen unity and unity. Fourth, handling criminal acts must avoid elements of radicalism and separatism which can disrupt social order. Fifth, the handling of criminal acts is also not permitted if the perpetrator is a repeater of a criminal act based on a court decision, as an effort to prevent repeat crimes from occurring. And finally, certain types of criminal acts, such as criminal acts of terrorism, crimes against state security, corruption, and criminal acts that threaten people's lives, do not meet the material requirements for handling using a restorative justice approach.<sup>68</sup>

Article 6 PERPOL No. 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice regulates the formal requirements that must be fulfilled in handling criminal acts based on restorative justice, as explained in Article 4 letter b PERPOL No. 8 of 2021 concerning Handling of Crime Based on Restorative Justice. These formal requirements emphasize several important things in the process of handling criminal acts. First, peace from both parties must be achieved, except for drug crimes which have stricter legal consequences. Second, in the handling process, the victims' rights must be fulfilled and the perpetrators' responsibilities must be carried out, except for drug crimes which often have more standard legal consequences.<sup>69</sup> By fulfilling these formal requirements,

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<sup>63</sup> Pasal 3 Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif, berbunyi (1) Penanganan Tindak pidana berdasarkan Keadilan Restoratif sebagaimana, dimaksud dalam Pasal 2 harus memenuhi persyaratan: a. umum; dan/atau b. khusus. (2) Persyaratan umum sebagaimana dimaksud pada ayat (1) huruf a, berlaku untuk penanganan Tindak Pidana berdasarkan Keadilan Restoratif pada kegiatan Penyelenggaraan fungsi Reserse Kriminal, Penyelidikan atau penyidikan. (3) Persyaratan khusus sebagaimana dimaksud pada ayat (1) huruf b, hanya berlaku untuk penanganan Tindak Pidana berdasarkan keadilan Restoratif pada kegiatan Penyelidikan atau Penyidikan.

<sup>64</sup> Muhammad Ridho Sinaga dan Novalinda Nadya Putri. 2023. *Tindak Pidana oleh Anak: Suatu Kajian dan Analisis Fungsi Sertifikasi Penyidik Anak di Kepolisian*. UNES Law Review Vol. 6 No. 1. Hlm. 484-492.

<sup>65</sup> Pasal 4 Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif, berbunyi Persyaratan umum sebagaimana dimaksud dalam Pasal 3 ayat (1) huruf a, meliputi: a. Materiil; dan b. formil

<sup>66</sup> Pasal 5 Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif

<sup>67</sup> Pasal 6 Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif

<sup>68</sup> M. Ali Zaidan. 2022. *Menuju pembaruan hukum pidana*. Sinar Grafika.

<sup>69</sup> H. Siswanto Sunarso. 2022. *Viktimologi dalam sistem peradilan pidana*. Lampung : Sinar Grafika.

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it is hoped that the process of handling criminal acts can run effectively and fairly, paying equal attention to both parties in the context of restorative justice.

On the other hand, the material and formal requirements as intended in Articles 5 and 6 of PERPOL No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice is also a limitation for investigators to apply restorative justice to children who are perpetrators of criminal acts of bullying which are often considered serious criminal acts because the impact can be very serious, especially on victims. Bullying not only causes physical and emotional harm to victims, but can also disrupt their social and psychological development processes. This can have a long-term impact on the victim's well-being and quality of life. In addition, bullying often involves serious elements of violence, threats or intimidation, and can even lead to physical accidents or death.<sup>70</sup>

The criminal threat of bullying is high because of its detrimental nature and significantly harming the victim. The threat may include imprisonment or other serious sanctions, depending on what elements of the crime are met. In many cases, punishment for bullying can include imprisonment, substantial fines, or even probation with strict supervision. This shows that bullying is not taken lightly and is considered a serious act in the eyes of the law.<sup>71</sup> Therefore, even though in some cases it may appear to be a relatively "minor" act in the conventional sense, from a legal perspective and its impact on the victim, bullying is considered a criminal act that carries a high criminal threat.

Lawrence M. Friedman stated that the effectiveness and success of law enforcement depends on three elements of the legal system, namely the substance of the law, the structure of the law, and the legal culture.<sup>72</sup> When these three elements are not fulfilled or there are gaps, law enforcement is considered ineffective because these three aspects are interconnected and influence each other in determining the quality of law enforcement.

The explanation related to this theory is that good legal substance includes provisions that are clear, fair and relevant to the needs of society. If the legal substance is inadequate, for example there is a legal vacuum, legal uncertainty, or injustice in legal regulations, then law enforcement will be difficult to carry out effectively because there is no strong basis for taking action against violations. An effective legal structure involves law enforcement institutions that are competent, independent and have adequate resources. Without a strong and well-functioning legal structure, law enforcement will be hampered by various administrative obstacles, personnel shortages, or political interference that can disrupt the independence of law enforcement agencies. A good legal culture includes norms, values, and beliefs that support respect for law and justice. If the legal culture in society tends to be corrupt, does not comply with the law, or underestimates compliance with the law, then law enforcement will be difficult due to a lack of community support and participation in enforcing the rule of law.<sup>73</sup>

When these three aspects are not met, law enforcement will experience various challenges and obstacles, such as inconsistent law enforcement, abuse of authority, low levels of compliance with the law, and low levels of public trust in law enforcement agencies. Therefore, to achieve effective law enforcement, it is important for a legal system to ensure that legal substance, legal structure and legal culture are all fulfilled properly and in balance.<sup>74</sup>

Arrangements related to restorative justice for children who commit criminal acts of bullying that are not fully accommodated in the legal system can lead to failure and ineffectiveness of law enforcement. This can be explained by Lawrence M. Friedman's theory regarding factors that influence the effectiveness of law enforcement, which include the substance of the law, the structure of the law, and legal culture.<sup>75</sup>

First, legal substance refers to the content or material of the applicable law.<sup>76</sup> In the context of restorative justice for bullying cases, the legal substance must include provisions that regulate the restorative process for child perpetrators, victims and affected communities. If the legal substance is inadequate or does not accommodate restorative justice as a whole, then this will hamper the effectiveness of law enforcement. Second, legal structure refers to the organization and mechanisms that regulate law enforcement, including the responsible law enforcement agencies.<sup>77</sup> If there is no clear structure for implementing restorative justice, such as a

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<sup>70</sup> Fitri Salma Nurrohmah. 2017. *Penanggulangan Bullying Dalam Perspektif Pendidikan Islam (Telaah Buku Pendidikan Tanpa Kekerasan Tipologi Kondisi, Kasus Dan Konsep)* Karya: Abd. Rahman Assegaf. Yogyakarta: IAIN Surakarta.

<sup>71</sup> Lalu Guna Nugraha, Adhitya Nini Rizki Apriliana, dan Ayu Riska Amalia. 2023. *PENCEGAHAN DAN PENANGANAN PERUNDUNGAN DI LINGKUNGAN SMPN 2 MATARAM*. Prosiding PEPADU Vol. 5 No. 1. Hlm. 416-423.

<sup>72</sup> Muhammad Adam HR. 2021. *Lemahnya Penegakan Hukum Di Indonesia*. JISH: Jurnal Ilmu Syariah Dan Hukum Vol. 1 No. 1. Hlm. 57-68.

<sup>73</sup> Didi Hilman dan Latifah Ratnawaty. 2017. *Membangun Moral Berkeadilan Dalam Penegakan Hukum Di Indonesia*. YUSTISI Vol. 4 No. 1. Hlm. 59-59.

<sup>74</sup> Adrian Imam Ramadhan dan Hervina Puspitosari. 2022. *Analisis Kendala Penegakan Hukum Pidana terhadap Pelaku Pengaturan Skor (Match Fixing) Sepak Bola di Jawa Timur (Studi Kasus di Jawa Timur)*. Sultan Jurisprudence: Jurnal Riset Ilmu Hukum Vol. 2 No. 2. Hlm. 272-285.

<sup>75</sup> Rai Iqsandri. 2022. *Pengaruh politik terhadap proses penegakan hukum di Indonesia*. Journal of criminology and justice Vol. 2 No. 1. Hlm. 1-3.

<sup>76</sup> Zainal Arifin Hoesein. 2012. *Pembentukan Hukum dalam Perspektif Pembaruan Hukum*. Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional Vol. 1 No. 3. Hlm. 307-327.

<sup>77</sup> Afif Noor. 2022. *Membangun kultur penegak hukum yang berintegritas dalam penegakan hukum*. Ulil Albab: Jurnal Ilmiah Multidisiplin Vol. 1 No. 6. Hlm. 1660-1668.

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lack of standard instructions or procedures, then this will make it difficult to implement restorative justice in handling bullying cases. Third, legal culture refers to the values, beliefs and norms held by society related to law and justice.<sup>78</sup> If the legal culture does not support or even opposes the concept of restorative justice, then this will hinder the acceptance and implementation of restorative justice in law enforcement.

Of these three elements, the defect in the regulation of restorative justice for children who commit criminal acts of bullying is the lack of legal substance in Friedman's theory. If legal substance is ineffective, this can result in law enforcement being ineffective because legal substance is the basis or foundation of the law enforcement process.<sup>79</sup> If the substance of the law is inadequate or not in accordance with the needs and demands of society, then law enforcement will be difficult to carry out effectively. For example, if the law has weaknesses in regulating behavior or actions that are detrimental to society, then law enforcement will be hampered due to the lack of a strong legal basis for taking action against the perpetrator.

In addition, if the substance of the law cannot be implemented effectively due to its complexity or lack of clarity, this will also affect the effectiveness of law enforcement. Uncertainty in the substance of the law can cause law enforcement to be inconsistent or unfair, which in turn can damage public confidence in the legal system. Thus, when the substance of the law is inadequate or not in accordance with the needs of society, law enforcement tends to be considered ineffective due to difficulties in enforcing existing legal rules. Effective legal substance is an important basis for ensuring that law enforcement can be carried out effectively and fairly. If the arrangements related to restorative justice for children who commit criminal acts of bullying are not comprehensive enough or are not fully accommodated in terms of legal substance, legal structure and legal culture, then law enforcement will be considered ineffective according to Lawrence M. Friedman's theory.<sup>80</sup> This can result in delays in the restoration process, lack of victim satisfaction, and the potential for perpetrators to repeat the same actions due to the absence of effective learning.

The relationship between Lawrence M. Friedman's law enforcement effectiveness theory and child protection theory is very relevant in the context of arrangements related to restorative justice for children who are perpetrators of criminal acts of bullying. According to child protection theory,<sup>81</sup> children have special rights in accordance with Article 1 number 2 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection that children must be protected and have their rights fulfilled. One of these rights is the right to obtain protection from all forms of violence and discrimination,<sup>82</sup> including punishment or imprisonment. In this case, restorative justice is a very important approach in handling bullying cases, because the focus is on restoring relationships, repairing losses, and encouraging accountability for the perpetrator without having to sacrifice the future of the perpetrator's child.

As a result, the restoration process may be hampered, victims may not receive adequate satisfaction, and effective learning opportunities for perpetrators may be hampered, thereby increasing the risk of repeated acts of bullying in the future. Therefore, it is important for the legal system to accommodate a comprehensive restorative justice approach and ensure that children's special rights are fulfilled in the law enforcement process.

Restorative justice and avoidance of imprisonment have important relevance in handling children who are perpetrators of criminal acts of bullying against children. First of all, the restorative justice approach places the focus on restoring the disturbed relationship between the perpetrator and the victim, as well as repairing the impact caused by the perpetrator's actions. In the case of bullying, this approach allows the perpetrator to understand the negative impact of their behavior, correct their mistakes, and actively contribute to the process of repairing the relationship with the victim.<sup>83</sup> It can be more effective than traditional punishment, as it involves understanding, repentance, and reconciliation, which can ultimately prevent the perpetrator from committing similar acts in the future.

Then, avoiding prison sentences is important for children who commit criminal acts of bullying because prison tends to be ineffective in dealing with the root causes of their behavior.<sup>84</sup> Prison often does not provide an environment conducive to rehabilitation, and can actually increase the risk of offenders engaging in further criminal behavior after they leave prison. Instead, more preventive and rehabilitative approaches, such as counseling, mentoring, or coaching programs tailored to the child's needs, can be more effective in helping perpetrators change their behavior and prevent bullying from recurring in the future.

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<sup>78</sup> Wahju Prijo Djatmiko. 2022. *Budaya hukum dalam masyarakat pluralistik*. Thafa Media.

<sup>79</sup> Ellya Rosana. 2014. *Kepatuhan hukum sebagai wujud kesadaran hukum masyarakat*. Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam Vol. 10 No. 1. Hlm. 61-84.

<sup>80</sup> Reda Manthovani, Adnan Hamid, Hasbullah, Andi Wahyu Wibisana, Rocky Marbun et al. 2022. *Restorative justice terhadap praktik penanganan perkara pidana di Indonesia*. Publica Indonesia Utama.

<sup>81</sup> Tri Rizky Analiya dan Ridwan Arifin. 2022. *Perlindungan hukum bagi anak dalam kasus bullying menurut Undang-Undang nomor 35 tahun 2014 tentang perlindungan anak di Indonesia*. Journal of Gender and Social Inclusion in Muslim Societies Vol. 3 No. 1. Hlm. 36-54.

<sup>82</sup> Pasal 1 angka 2 Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak

<sup>83</sup> Nur Irmayanti dan Ardianti Agustin. 2023. *Bullying dalam prespektif psikologi (teori Perilaku)*.

<sup>84</sup> Mita Dwijayanti. 2017. *Diversi Terhadap Recidive Anak*. Rechild Vol. 12 No. 2. Hlm. 223-244.

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By implementing restorative justice and avoiding imprisonment for children who commit criminal acts of bullying,<sup>85</sup> we can create a more supportive environment for victims' recovery, provide opportunities for perpetrators to repent and correct their mistakes, and prevent similar criminal acts from occurring in the future. These are more progressive and humane steps in dealing with bullying cases, which can ultimately bring positive change for all parties involved.

Reformulation of regulations related to restorative justice in cases of criminal acts of bullying against children at the investigation level in the future can be carried out through material requirements as intended in Article 5 of the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, namely points a and f because Criminal acts of bullying committed by children are often considered to cause unrest and/or rejection from the community because of their detrimental impact on both the direct victim and the surrounding environment. Bullying can cause serious psychological trauma to the victim, disrupt the child's education and socialization process, and affect the climate of safety and comfort in the school or community environment.

In the context of material requirements in accordance with Article 5 of the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, points a and f are as follows:

- Point a: The criminal act meets the criteria as a criminal act that is disturbing and/or causes rejection from the community. Bullying is considered a disturbing criminal act because it can disrupt order and security in the school or community environment, as well as cause fear and anxiety in the victims and witnesses involved.
- Point f: This criminal act is a crime against people's lives. Although bullying does not always result in serious physical injury, this action can cause heavy psychological pressure on the victim, and in some cases can even lead to suicide attempts or more serious acts of physical violence. Therefore, in the context of restorative justice, criminal acts of bullying must also be handled seriously in accordance with the material requirements that regulate criminal acts against people's lives.

In fact, criminal acts of bullying committed by children do not always cause unrest and/or rejection from the community and cannot always be categorized as criminal acts against people's lives in accordance with the material requirements as intended in Article 5 of the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Crime Based on Restorative Justice, namely points a and f, can be seen from the following points of view:

1. Sometimes, acts of bullying carried out by children do not cause concern or rejection from society because they may be carried out in secret or are not realized by many people. Some cases of bullying may occur in certain schools or communities without widespread knowledge of the surrounding community. Therefore, not all acts of bullying directly cause negative reactions from society.
2. Not all acts of bullying by children qualify to be categorized as criminal acts against people's lives. Although bullying can have a serious psychological impact on the victim, not all acts threaten the victim's life directly. Some acts of bullying may involve verbal intimidation or degrading behavior, without involving physical violence or direct threats to the victim's life.
3. In the context of restorative justice, handling criminal acts of bullying can be more focused on restoring the relationship between the perpetrator and the victim, rather than just relying on punishment or traditional law enforcement. This approach aims to repair the damage caused by acts of bullying and promote learning from mistakes, without always depicting these acts as criminal acts that are disturbing or threaten people's lives.

Thus, it can be understood that not all criminal acts of bullying committed by children automatically cause unrest or rejection from society, and not all such acts can be categorized as criminal acts against people's lives in accordance with the material requirements in the regulations mentioned. This shows that handling criminal acts of bullying can also take a broader and more inclusive approach, such as a restorative approach, to ensure that justice is carried out by taking into account the needs of all parties involved.

Reformulation of regulations related to restorative justice in cases of criminal acts of bullying against children at the investigation level in the future can be carried out through reformulation of regulations related to the requirements for implementing diversion in Article 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, where criminal acts of bullying may fulfill the elements a criminal offense with a sentence of more than 7 years. However, this should not be an obstacle for law enforcers in implementing restorative justice against children who commit criminal acts of bullying for certain reasons, one of which is focusing on the main principle in child protection law which is the best interest of the child.<sup>86</sup> The restorative justice approach considers the best interests of the child by focusing on the recovery, rehabilitation, and reintegration of the child offender into society, rather than simply considering harsh criminal sanctions.

Children, including perpetrators of criminal acts of bullying, are still in the process of physical, emotional and psychological development. Law enforcement that is too harsh on children can have a negative impact on their development process. Restorative

<sup>85</sup> YUSUP HADIYANTO. 2013. *EFEKTIVITAS PIDANA PENJARA BAGI ANAK PELAKU TINDAK PIDANA DI LIHAT DARI ASPEK PERLINDUNGAN DAN KEPENTINGAN ANAK*. PhD diss., Universitas Islam Sultan Agung Semarang.

<sup>86</sup> Pasal 3 Konvensi Hak Anak.

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justice makes it possible to understand the root causes of children's behavior, help them learn from mistakes, and change their behavior in more positive ways. A restorative justice approach not only emphasizes law enforcement after an act has occurred, but also focuses on prevention. By paying attention to the causes of bullying and appropriate intervention, restorative justice can help prevent future criminal acts.

Through a restorative justice approach, children who commit criminal acts of bullying can be directed to improve their relationships with victims and society as a whole. This allows for better learning and the child's reintegration into their social environment in a more positive way. Even though the crime of bullying can fulfill the elements of a crime with a penalty of more than 7 years, law enforcers still have the authority and obligation to apply a restorative justice approach in handling it, taking into account the principles of child protection and more effective prevention efforts.

### IV. CONCLUSION

It is still found that there is still a lot of restorative justice that is not applied to children who are bullied at the investigation stage, so that children have to face the next stage of justice, even up to the trial stage. Concrete steps are needed by Indonesian National Police investigators to ensure that restorative justice is applied consistently at the investigation stage of criminal acts of child bullying. This involves training and education for law enforcement officers on the principles of restorative justice as well as increasing collaboration between law enforcement agencies, educational institutions and the community in identifying and effectively handling cases of child bullying from an early age.

Regulations related to the application of the principles of restorative justice in cases of criminal acts of bullying against children at the investigation level still have many weaknesses so that regulations related to the application of the principles of restorative justice in cases of criminal acts of bullying against children at the investigation level in the future should be reformulated with regulations that take into account the main interests of children, focus on recovery and reintegration into society. Implementing punishments that are too harsh can hinder a child's growth. The government together with the Police of the Republic of Indonesia through the legislative body should reformulate regulations related to restorative justice in cases of criminal acts of bullying against children at the investigative level in the future which can be carried out through reformulation regarding material requirements as intended in Article 5 of the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice, namely points a and f as well as the rules regarding the requirements for implementing Diversion in Article 7 of Law (UU) Number 11 of 2012 concerning the Juvenile Criminal Justice System by taking into account the main interests of children. The reformulation must be based on the principles of recovery and reintegration of children into society, emphasizing a humane approach and taking into account children's special conditions and needs.

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