

Restorative Justice (Diversi): A Harmonization Effort of Legal Protection Against Child Criminal as Offender and Victim

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ABSTRACT--*State recognition of human resources is started from the recognition of children as one of the nation's valuable assets, in perspective of child is entrusted by God Almighty which is inherent in the recognition of dignity recognized in social life. To maintain their dignity as a child, it is necessary to seek a particular protection, especially protection in the field of law, child as an offender (who commits a crime) and child as a victim. In this context, they have their right to remain protected and to get particular services and welfare as stipulated in various positive laws regarding juvenile protection. The socialization of all forms of positive legal regulations to all parties who are close and in direct contact with services to children is very necessary in order to achieve the form of juvenile protection and juvenile-friendly services. Restorative Justice through Diversion approach has a very important role, this concept acts as a mediation for resolving criminal acts of juvenile, and juvenile who are dealing with the law, by the aim of "humanizing" the parties involved in the child problem both child as offender and as victim, the justice system through the act of restoring the condition with a deliberative approach by prioritizing the case settlement concept of child as offender and child protection as victims with child-friendly context. Where deliberation as a priority in decision making in the fourth precepts of Pancasila, is the main foothold for the role of Restorative Justice in implementing diversion to be implemented in the juvenile justice system and juvenile positive law in Indonesia.*

Keywords: *children as offenders and victims of crime, child protection, child protection efforts, restorative justice, juvenile who are dealing with the law, diversion, juvenile justice system, juvenile crime, juvenile court*

I. INTRODUCTION

The legal basis in the legal regulations of the 1945 Constitution (UUD 1945) as the basic legal guideline which is the legal basis of all positive legal regulations including the law that covers the law concerning Children, requires that Indonesian citizens can seek and improve and be responsible for achieving a society that is just and prosperous spiritually and materially as the aspirations and goals of the Indonesian Nation in accordance with the

ability of the Indonesian community. Thus, starting from the role of the state, the role of the community, and the role of individuals must have maximum efforts to develop the Child Protection Business (UPA) in the implementation in the fields of life and livelihood in a country, society and family.

Children are at increased risk of becoming a victim of crime. Too frequently, children become victims of theft, burglary, violence, sexual assault, abuse, bullying and domestic violence. Yet current criminal justice systems are not designed to assist them in their struggle to overcome their victimization. Restorative justice, an alternative approach to justice which brings victims and offenders together to find their own ways to restore the harm, has a lot to offer for young victims. But there are many risks in a face-to-face encounter between a child victim and an older offender. The human rights of child victims are those stated in the UN Convention on the Rights of the Child, the most consensual treaty ever accepted by the UN. The needs of child victims are those based on many empirical studies and theories developed in the psycho-social literature. Together, they create a detailed template that uncovers the shortcomings of the criminal justice system in addressing the needs-rights of child victims, and provide guidance as to how to practice restorative justice in cases of childhood victimization in a child-inclusive manner.[23]

Every child has dignity and worthy of high regard and every borned child must have his/her rights as a child, without having to ask. This is in accordance with the provisions of the Convention on the Rights of the Child ratified by the Indonesian government through Presidential Decree No. 36 of 1990 which states the general principles of child protection, namely non-discrimination, the best interests of children, survival and growth and development, and respect for children's participation, and The 1945 Constitution (UUD 1945), as the basic law which forms the basis of all national legal regulations as well as positive law concerning Children, instructs every Indonesian citizen to take part in efforts to improve and be responsible for achieving a just society that is spiritually and prosperously

material and prosperous as the aspirations of the Indonesian people in accordance with their respective abilities. Thus, the state, society and individuals must make every effort to develop Child Protection Efforts (CPE) in various fields of life and livelihood in a country, community and family. Legal protection for children is an obligation for all of us to remember children as the next generation of the nation who have a strategic role in realizing the ideals of the nation, therefore children must get development and protection so that they can grow and develop properly. Children are a group that is vulnerable to a crime either as a victim, witness, or as an offender of a crime.

Child as offenders and victims have the right to remain protected and obtain particular services and welfare according to the mandate of the law. Child victims as a result of a criminal act often become neglected given the difficulty of child victims to obtain rights for the protection that has been stipulated as regulated in the law on child protection.

II. PROBLEM STATEMENT

The application of the *Restorative Justice* system in the efforts to deal with children who are dealing with the law (children as offenders of crime) and children as Victim (victims of criminal acts) is expected to be a renewal of the problem of a crime committed by a child that previously became a problem. Basing on this research is expected can be found obstacles that become problems in the application of Restorative Justice through diversion to overcome the problem of children who are dealing with the law both as offenders and as victims in an effort to provide maximum protection to children.

Soon after the implementation of Law Number 11 Year 2012 concerning the Juvenile Justice System with the concept of diversion, it is still found that child victims do not get maximum protection and rights according to the law, and the role of the state is less than optimal in the resolution context of diversion. This also occurs in the case of child offenders as offenders of crime which in this context can also be said as victims of the concept of restorative justice through diversion making it easy for child offenders to repeat their actions and the lack of a deterrent role for the children themselves and parents who should be the gates primarily in the aspect of protection and supervision of children who commit criminal acts.

III. METHODOLOGY

The method used is normative research namely research that examines the laws and regulations as well as other

sources of regulation relevant to Child Protection and Restorative Justice (Diversion).

The approach used in this study is an approach with the Socio Legal method which in his study looked at the problem with the social reality approach, the Socio Legal Approach is the "Umbrella Concept" by emphasizing the Empirical Juridical approach. With the concept of covering all approaches to law, legal processes, and the legal system. Where in dogmatic law science is essentially practical science whose products will be evaluated directly by the community and the community as an appraiser.

Means, in the application of legal science cannot directly ignore the views of the community every time to implement its products to the community. While empirical science about law such as legal sociology, legal anthropology, legal semiotics, and many more, has a role to assist this dogmatic legal science by expressing the community's response to the existence and function of law contextually in the community.

According to Shidarta, the collaboration between dogmatic legal science and empirical knowledge of law will occur within the scope of the internal dynamics of socio-legal studies.[21]

The identification carried out in socio-legal studies is not limited to text, but also through deepening the context, which includes all processes, such as '*law making*' (law formation) to '*implementation of law*' (working of law). What has been said by Brian Tamanaha (2017), disciplines that apply social science perspective to the study of law is now known by the label study of socio-legal, in which the social sciences include therein such as sociology of law, legal anthropology, legal history, psychology and law, studies political science judiciary, and various other fields of comparative science.[24]

The implementation of materials and research data will be supplemented by Primary Data and Secondary Data. Primary data is obtained by finding the main source of research, while Secondary Data is equipped from various complementary sources such as libraries, books, literacy, and Google search engines.

IV. LITERATURE REVIEW

A. Definition, Purpose of the Principles of Restorative Justice and the Principles of Diversity

In general, Diversion is a diversion from formal criminal processes as the best alternative for handling children who are dealing with the law. In other words, Diversion is the transfer of handling cases of children suspected of having committed a crime from the formal process with or without conditions, the intervention of children dealing with the law is very wide and varied, but most emphasize detention and punishment, with a view of

punishment is a retaliation regardless of how light the violation is or the negative impact that will occur on the child.

Ted Rubin gives Diversity restrictions are:

Diversion can mean "the channeling of cases to non-court institutions, in instances where these cases would have received an adjudicatory (or fact finding) hearing by court. Or it can refer to "any process employed by components of criminal justice systems (police, prosecution, courts, correction) to turn suspect and / or offenders away from the formal system or to a lower level of the system." (Ted Rubin, p.176).[20]

Diversion objectives are:^[19]

1. To avoid children from being detained.
2. To avoid children from labeling as criminals.
3. To improve life skills for offenders.
4. In order for the offender to be responsible for the action.
5. To prevent offenders from repeating a crime.
6. To promote interventions needed for victims and offenders without having to go through a formal process.
7. The diversion program will also avoid children from following the judicial system process.
8. Further this program will keep children away from the negative effects and implications of the judicial process.
9. Providing opportunities for reconciliation and healing in communities that are harmed by criminal acts.

Diversity Principles are:

1. The criminal process will not be continued for a child if there is another alternative solution to the case, except in the case of the public interest.
2. The child must not be forced to admit that he has taken certain actions.
3. The diversion program is only used against children who admit that he has committed a mistake, but there should be no coercion.
4. Imprisonment cannot be a part of diversion; the mechanism and structure of diversion does not allow revocation of freedom in all forms.
5. There is a possibility of surrender back to the court (the case must be returned to the formal justice system if it does not produce a solution in the case)
6. The right to obtain a trial or reconsideration, the child must still be able to defend his right to obtain a trial or review.
7. There is no discrimination

Restorative justice is an alternative to the formal criminal justice system which focuses on repairing the harm caused to the victim of the offence, effecting reconciliation between victim and offender, and the re-

integration of the offender. Its use is widespread in national youth justice systems. Critics of restorative justice in the legal literature have concentrated on the idea of a 'competing paradigm' (see for example Von Hirsch et al., 2003), namely the tension between the formal justice-based criminal justice system, and the manifestations guided by the practice of restorative justice. While concerns raised by authors such as Ashworth (2002) relating to legal process rights and the role of the state, will apply equally to children in conflict with the law, the use of restorative justice in juvenile justice raises broader questions. In particular, international standards for juvenile justice such as the Convention on the Rights of the Child mandate a separate juvenile justice system with a different focus than the adult criminal justice system, and additional considerations such as the best interests of children and lower levels of adult maturity.[16]

The first important characteristic is that under the restorative justice model, violations are seen not as actions against the state but as actions against the community in general and victims in particular (Braithwaite, 1989). The restorative justice movement grew in part because of dissatisfaction with how the formal criminal justice system treated victims from the outside (Van Ness, 1986). The second essential characteristic, related to how to solve problems. Restorative justice sees behavior that ends up as damaging to human relations; therefore, this violation must be overcome by active participation by families, victims and the community (Zehr, 1990). The focus is on creating positive obligations for those outside, rather than imposing negative consequences. Restorative justice aims to re-integrate and repair damage rather than punishment and retribution (Considine, 1995). Restorative justice is often distinguished by comparison with traditional retributive / punishment models (Moore & Mitchell, 2009). In the criminal justice system based on the court, it is said, the legal process involved in determining the guilt that sentences comparable to the severity of the crime. This system is hostile or inquisitorial, and arguably the focus is more on process than on actual results (Zehr, 1990). Restorative results are designed to repair the damage caused by stopping and filing between the victim and the stopper. The general results of the restorative justice process are apologies, reparations to victims, work for victims and community services (eg. Crime and Justice Research Center & Triggs, 2005; Daly & Hayes, 2001). Another distinctive characteristic of restorative justice is informality, and the decision-making model is based on group consensus, rather than linear or professional decision making (Maxwell et al., 2004).

B. Criminal Criteria that can be considered for Diversion

Factors that can be taken into consideration in deciding on diversions include:[5]

1. Offender

For the age limit criminal responsibility in Indonesia is 8 years (in the 12-year RKUHP) which then becomes 12-18 years according to the Juvenile Justice System Law. That is, that no child under 12 years of age can be said to be legally considered a crime, and cannot be processed. Characters in young children are not able to build "criminal goals". If anyone is dealing with the police, then the first handling is parents who have to deal with the problem. If there really is a child under 12 years of age who is constantly dealing with the police, then there will be a very serious problem that occurs and needs to be referred to social service or institutional counseling services that can handle the child's problems.

For children aged 12-18 years can be prosecuted for certain conditions but cannot be subjected to detention or imprisonment in accordance with the positive law of the child, for children under 12 years, Diversion must always be the first consideration and not through the criminal justice process. Plans to implement diversion must be well organized so that they are effective, and the police must always question the benefits of a criminal justice process for children.

2. Seriousity of crimes

The level of seriousness of crime is always the first consideration for diversion and the law has divided crime based on the level of seriousness, although when dealing with children who are dealing with the law, the level also sets common standards about the seriousness of actions, children are entitled to be treated differently from adult criminals, and by hence the shape and level of intervention remain different, in general guidelines, crime can be differentiated into 3 categories, namely minor crime, moderate crime, and serious crime.

For crimes at severe and light levels it is easier to differentiate between each other, and generally to light acts as much as possible to be diversified. In a serious crime rate the diversion attempt is not an option, but for a moderate crime rate that is sometimes difficult to distinguish there are several factors that can help.

3. The nature and number of violations that have been made before

If previously a child has committed a minor violation of law, diversion efforts must remain a consideration, but the difficulty of providing diversionary efforts will arise when there is a history that children who often commit illegal acts, this step

must be taken very carefully and after going through maximum thought and in the best interest of the child.

4. Does the child acknowledge the violation?

If the child acknowledges and regrets his actions, then this is a positive consideration for diversion efforts. Recognition of deeds should not be carried out with threats or inducements for rewards, for example by saying that "if you claim you will later be given relief". Diversion efforts cannot be considered if the child does not acknowledge their actions.

5. Victim's view

5.1. Impact of actions on victims

If you see the victims want different responses in almost the same situation, because every crime has a different impact and the situation is unique to the victim, if crime has a serious impact on the victim, even if the child does not intend to do so, then diversion may not can be an option.

5.2. Then the proposal given to make repairs or apologize to the victim.

The improvements made by the offenders to compensate the victims is to provide compensation for financial losses and / or property. For repair costs must be given if causing damage to the goods taken by the child must be returned. If this is not possible, then there must be a replacement for the item, including the substitution of the sentimental value of the item. In addition, the child's apology against the victim shows that the child wants to be responsible for the action where the apology can be done by mail or directly to the victim.

5.3 Victims' views on the treatment methods offered

In this case there must be input and / or approval from the victim in the process of diversion efforts so that the victim's recognition of the impact of the act is taken into consideration. Victims' concerns usually arise so that they find it difficult to accept diversion attempts, therefore the interventions that are carried out must remain in accordance with the procedure and be proportional to the child's actions and the impact experienced by the victim.

6. The attitude of the child's family

The support provided by parents and family is very important so that diversion efforts can succeed. If the family tries to cover up the child's actions, then the plan to implement effective diversion efforts will be difficult to implement. Families may feel ashamed of the actions taken by the child so they do not want to provide support to children, even though diversion efforts must still be done to provide support to children

and in the best interests of children. Violations that are often carried out by children will also shape negative perceptions of parents / family, but they can also welcome the possibility of diversionary efforts to help them and the child in their assessment.

V. DISCUSSION AND CONCLUSION

A. Rights of Children as Victims

Seeing the lives of children in Indonesia is inseparable from the life and environment of the local community, family and the State. When viewed from the social reality that occurs in Indonesian society not a few children in Indonesia still have problems. Ranging from family problems to children who have serious delinquency problems or are dealing with the law and children as victims in a criminal act. Children who experience these problems have the right to get physical, mental, spiritual protection in accordance with what is contained in the principles of the Convention on the Rights of the Child which have been ratified through Presidential Decree No.36 of 1990 concerning the Ratification of the Rights of the Child, which subsequently in its implementation and implementation in Indonesia the government has the initiative to issue several laws and regulations relating to child protection efforts in Indonesia, some of which are Act No.3 of 1997 concerning Juvenile Courts, which have been amended to become Act No.11 of 2012 concerning the Juvenile Justice System. Which has been effective since 2014, Act No.39 of 1999 concerning Human Rights, Act No.23 of 2002 concerning Child Protection, which was amended into Act No. 35 of 2014 and has been enacted, Act No.13 of 2006 concerning the Protection of Witnesses and Victims, Act No.21 of 2007 concerning Giving Guidelines for the Crime of Trafficking in Persons, and Act No.23 of 2004 concerning Elimination of Domestic Violence.

The high number of criminals in groups of children aged 12-18 years has shown that there are indications of an increase in the number of children who commit criminal acts. Besides that, the problem of the child as a victim of a criminal act cannot be ignored for the rights that must be obtained when he becomes a victim, which of course will also have an influence or impact on the child's growth and personality in the future because it cannot release in the child's psyche. Therefore, it will be very important for law enforcers, communities and families to make the best interests for children, including criminal prosecution as the last step, as stated in the Convention on the Rights of the Child (Article 37b), and The Beijing Rules (points 13.1 and 2).[3]

Based on the description above, it can provide an illustration of how the positive law protects children as

offenders of crime and protects children as victims of criminal acts, especially family. Where the role of the family can provide protection through the provision of education, supervision, and protection in preventive and repressive contexts to prevent children from entering into deviant relationships, poor understanding, and directing children to do positive things. This is also in line with the principles adopted in the *Convention on The Right of the Child (CRC)* and also as adopted in Act Number 23 of 2002 (amended by Act 35 of 2014) concerning Child Protection especially in matters concerning the *"The Best Interest of the Child" Principle and criminal as "The Last Resort"*. [4]

B. Rights of Children as Offenders

If we talk about child offender then we talk about the rights of children who are dealing with the law, at this time children who are dealing with the law regulated in the Juvenile Justice System Law (SPPA) is a substitute for Law Number 3 of 1997 concerning Juvenile Courts (Juvenile Courts) which aim to create a court that truly guarantees the protection of the best interests of children who are dealing with the law and committing a crime. The Juvenile Court Law is deemed to be no longer in accordance with the legal needs of the community and has not comprehensively provided special protection to children who are dealing with the law and amended by law juvenile justice system.

Some substantial matters are regulated in the SPPA Law such as the placement of children undergoing a judicial process that is placed in the Special Child Development Institution (LPKA).[11] In this case, the basic substance is an explicit arrangement of Restorative and Diversity Justice that is intended to avoid and keep children away from the judicial process so that children can avoid negative stigmatization from the community and it is hoped that children can return to the social environment in fair manner.

The Restorative Justice Approach is a Diversion process with the concept of involving all parties involved in a particular crime, to jointly address the crime problem and be obliged to make the whole situation improve by involving victims, children and the community as a means of finding solutions to improve, reconciliation, by alienating child offenders from the formal justice system and the theory of legal sanctions as retaliation.

C. Case Study: Child Protection Efforts as Offenders and Victims in Sexual Violence Case

In this study we also see several other linear studies as case examples, one of which is the Research Result of the Yogyakarta Social Welfare Research and Development Center (B2P3KS) in collaboration with End Child Prostitution, Child Pornography and Trafficking of

Children for Sexual Purpose Indonesia mentioned in his research shows sad facts about sexual violence in children, victims of sexual violence are children aged 5 to 17 years. The main factor that occurred was violence pornography. The determinants that influence children to commit sexual violence, namely:

- First, pornography (43%)
- Second, peer influence factors (33%)
- The three drug / drug influence factors (11%)
- Fourthly, historical influence, victimization or childhood trauma (10%)
- and family influence (10%)

Recognizing and dealing with child sexual assault offenders, the research design mentioned earlier is also used in studies of offenders of sexual violence against children. For example, in 2015, Gilbert from Australia & Focquaert from Belgium collaborated in a systematic review study to look at the latest literature in the field of neurobiology regarding pedophilia and examine its consequences in terms of the responsibility and rehabilitation of offenders.[F2]

This study establishes the difference between *developmental pedophilia* and *acquired pedophilia*. According to Gilbert & Foquaert, *acquired pedophilia* is a pedophilia obtained by a person due to an abnormality that arises in his brain, whereas *developmental pedophilia* can be classified as *paraphilia* or sexual disorders that include psychiatric disorders. This study concludes that the decision to provide leniency, either in full or in part, to individuals who meet the diagnosis of acquired pedophilia needs to consider all relevant information. Among neurobiological information and other evidence in the environment. [6] Decisions made must be processed with careful case-by-case analysis before **giving punishments** or **offering treatment**. Offenders of sexual violence against children are not only adults, but also children and adolescents. [7] Several studies have found that one third of adult offenders who commit sexual violence against children say that they started doing it before the age of 18 (eighteen) years. Sexual violence can be committed by older children against younger children or even the same age.[2]

Several research results have proven that sexual violence against children can have a serious impact on victims, both in the short term (when they are children) and in the long term (when they become adults).[15] Sexual violence against children does not only affect mental health, but also the physical health of children. Children who experience sexual violence tend to show symptoms such as anxiety disorders, depression, PTSD (Post-Traumatic Stress Disorder), and low self-esteem. They also have a great tendency to show symptoms of behavioral disorders such as hyperactive behavior, aggressive and

antisocial behavior, inappropriate sexual behavior, and problems in school. Eating disorders and health complaints are also often shown by children who are victims of sexual violence. The symptoms of these mental and health disorders may not be immediately apparent, but can appear when the child becomes an adult. Adults who are victims of sexual violence while still children can experience mental and health disorders such as PTSD, depression, anxiety disorders, bulimia, alcohol dependence, or drug dependence. Victims will experience more severe symptoms when the culprit is a family member, when sexual contact occurs more frequently or occurs over a long period of time. From the findings presented earlier, it can be seen that each child experiences a different background, which makes him vulnerable to becoming a victim of sexual violence.[8] Therefore, an assessment process is needed for each victim to identify the right steps in providing an intervention. In the United States, children suspected of having mistreated are examined as a whole, both physically and mentally. The environment around the child is also examined. By examining children thoroughly from various sources and their environmental backgrounds, it can be seen whether children experience changes in behavior or health problems that need to be addressed after experiencing violence. Examinations conducted for example by conducting observations on children, conducting interviews with families and teachers. [1] In accordance with the symptoms that arise, the child then receives therapy to modify thoughts, feelings, and behaviors so that they can develop into positive, productive, and pro-social adults. Therapy does not only involve children but also the closest adults, because they play an important role in the child's recovery process.[17]

D. Provision of Protection of Children as Victims and Offenders

Law enforcement officers have a very important role in the service and resolution of child problems dealing with the law through Restorative Justice with diversion in aspects of child protection as offenders and victims, in this study also seen the principle of restorative justice must also be implemented in its implementation.

The government as the front guard of the implementer must be able to implement. There are at least 6 (six) institutions (Government-State) as the front guard in the rights service program for children who are victims who provide services, namely:[22]

1. Indonesian Child Protection Commission
2. Witness and Victim Protection Agency (LPSK)
3. Integrated Service Center for Empowering Women and Children (P2TP2A) units provides in various provinces
4. Ministry of Health through the services of clinic and hospitals in each region

5. Ministry of Social Affairs and Social Service through service programs for child victims

6. Police

At present the provision of assistance, services for child victims available in various institutions are spread in various regulations, at least it can be interpreted that the regulations governing the victim's children depend on the type of violation. A common problem in providing services for child victims in accordance with the above regulation map is that there is no major policy for child victim services. Every institution that has a different role in accordance with the type of crime that is violated and the authority regulated by each regulation. This problem can have implications for the burden of synergy and coordination of service provider institutions in alignment with the uneven maintenance maximum against offenders and child victims throughout Indonesia, this is caused by the lack of facilities and resources of professional personnel in handling all agencies that are in direct contact. [12]

In other sectors, other problems also occur, namely the question of integrated child victim data collection. The data of the child victims of the region have not been integrated between institutions that have the authority to guard children as offenders and victims. This problem at the practical level will complicate the policies and services of child victims in Indonesia, especially to regulate the amount of service, budget and so forth. From the results of research and mapping, Restorative Justice through diversion has not been carried out optimally in an effort to protect the rights of children as offenders and victims this is seen in the implementation of its implementation through state institutions. [10]

But in this study we researchers conclude that the principle of *Restorative Justice* through the application of diversion has been able to accommodate the interests of protecting the rights of children as victims and the interests of protecting children's rights as offenders and researchers can draw the conclusion that when viewed on the side of the victim, Diversion / Restorative Justice can provide better satisfaction with fulfilling needs than through the formal justice process.

In addition, if viewed from the side of the offender, Diversion / *Restorative Justice* can provide an opportunity for the offender to improve himself on the actions taken and the offender is given the opportunity to accept responsibility and obligations to the victim and the community at large and can restore respect from the community. [9] When viewed in terms of social law, the offenders become less dangerous in the eyes of the public so that the costs used to carry out the criminal justice process can be used to make other preventive or

constructive actions. [13] As a whole, in conclusion the researcher saw that with a restorative justice/diversion system conditions the settlement of criminal cases of children to be better than before the benefits of renewal in the legal system were seen (before the law number 11/2012) concerning the Criminal Justice System of Children resolved the criminal cases negative stigma for children and does not protect aspects of victims, both children as offenders and children as victims. In addition to the enactment of the restorative justice / Diversion law simplifying the process of criminal cases, one of them is the existence of criteria for resolving child cases through diversion. [14] In this case, it is certainly possible to classify cases that are mild and cases that are severe so as to provide alternative punishment and maximum protection on the side of the victim and the offender, thus will have a positive impact on the settlement of criminal cases of children and victims of a crime. That with the restorative justice / diversion system at this time reduces the number of LPKA residents (Special Coaching Institutions Children). Previously, all correctional institutions in Indonesia exceeded the prescribed capacity, this can be seen in the number of assisted children in LPKA.[18]

Law enforcement officers have a structural and very important role in the service and resolution of child problems dealing with the law through the principle of Restorative Justice with diversion in aspects of child protection as offenders and victims, because they are the main gate of the early stages of handling children as offenders of child funds as victims. In this study also seen the principle of restorative justice must also be implemented in its implementation. [21] The government which is the executor must be able to implement, there are at least 6 (six) institutions (Government-State) as the foremost service in the rights service program for children who are victims who provide services, namely: Indonesian Child Protection Commission (KPAI), Police (through service units women and children at every level of the regional police force with service personnel who have gained expertise in child assistance), Integrated Service Center for Empowering Women and Children (P2TP2A) units spread across various provinces, Ministry of Health through the services of Clinic and Hospital in each area of the Ministry of Social Affairs and Social Services through service programs for victims' children and Institutions Witness and Victim Protection (LPSK). And there are 6 state institutions that are the front line of service in the legal rights service program in Indonesia, including the Supreme Court, Attorney General, National Police, Ministry of Law and Human Rights, Ministry of Social Affairs and Ministry of Child Protection.

VI. RECOMMENDATIONS

The existence of the process of resolving cases of children who are dealing with laws outside the judicial process is a step forward in resolving cases of children, retaliation is no longer an effective way of resolving children's issues, more important is the recovery of the situation by involving all parties to sit together in resolving cases that occur with the good wishes of the offenders, victims get justice which is already their right. [16]

In addition, in the recovery of child victims the family's role is very important because they are the closest people to the victim (children) have a big role in helping to provide recovery to the victim. All components of society by co-protecting and protecting victims are thus expected to achieve maximum recovery of victims. [19]

According to the author, there needs to be a cooperation mechanism and system that is owned in the implementation of Restorative Justice through a diversion mechanism. Keeping this implementation involved various institutions in its implementation, such cooperation must be carried out among all law enforcement agencies and with sufficient human resources in their services, across sectors related to local communities and community organizations or (NGOs), both in local collaboration with agencies related (which is done in the alignment of Police, Prosecutors, community centre (BAPAS), Lawyers, Parents and the community), national cooperation, at this level of cooperation carried out at the central government level, namely the Ministry of State which coordinates with its representatives in the regions implemented through interagency policies other departments and agencies, regulatory renewal policies that prioritize victims and child offenders, through regulation of Regional Regulations to the government's long-term program through State Long Term Development Plan (RPJMN) and Region Long Term Development Plan (RPJMD).

Besides that what is not less important is in the financing of funds related to the fulfillment of facilities and infrastructure that are directly related to the handling of victims and child offenders, the cost problems that need to be allocated and prioritized in order to achieve integrated and maximum child protection, and by doing it structurally and can be measured and can be jointly controlled, then regional cooperation between cross-sectoral cross-departmental and international, in terms of assistance from other countries and international organizations such as UNICEF is wrong one important factor that can be directly implemented through departmental and non-departmental institutions in making the best efforts to handle child victims and child offenders. [23]

Strategies for mapping access for child and child victims as offenders, to compile a blueprint for the handling

of child victims who are integrated in the current Indonesian legal system in order to reform and improve the Indonesian legal order. [25]

REFERENCES

- [1] C. Winn dan A.J. Urquiza. A.J. (2004). Treatment for Abused and Neglected Children: Infancy To Age 18 – User Manual Series.. Downloaded from <https://www.childwelfare.gov/pubPDFs/treatmen.pdf>
- [2] F. Gilbert dan F. Focquaert. (2015). “Rethinking Responsibility in Offenders with Acquired Paedophilia: Punishment or Treatment?”. *International Journal of Law and Psychiatry*, 38. p. 51-60
- [3] <https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>
- [4] <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>
- [5] Indoensia. *Peraturan Mahkamah Agung tentang Pedoman Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak*. PERMA No.4 Tahun 2014.
- [6] Indoensia. *Peraturan Pemerintah tentang Perlindungan Anak*. PP No. 54 Tahun 2007
- [7] Indonesia. *Peraturan Pemerintah tentang Pemberian Kompensasi, Rehabilitasi dan Bantuan*. PP No. 44 Tahun 2008.
- [8] Indoensia. *Undang-Undang Republik Indonesia tentang Perlindungan Anak*. UU No. 23 Tahun 2002
- [9] Indoensia. *Undang-Undang tentang Kesejahteraan Anak*. UU No. 4 Tahun 1979
- [10] Indoensia. *Undang-Undang tentang Kitab Undang-Undang Hukum Acara Pidana*. UU No. 8 Tahun 1981
- [11] Indoensia. *Undang-Undang tentang Sistem Peradilan Pidana Anak*. UU No.11 Tahun 2012
- [12] Indoensia. *Undang-Undang tentang Perlindungan Saksi dan Korban*. UU No 13 Tahun 2006
- [13] Indoensia. *Undang-Undang tentang Perubahan atas UU No. 13 Tahun 2006 tentang Perlindungan Saksi dan Korban*. UU No. 31 Tahun 2014
- [14] Indoensia. *Undang-Undang tentang Hak Asasi Manusia*. UU No. 39 Tahun 1999
- [15] Tali Gal. (2011). “Child Victims and Restorative Justice : A Need-Rights Model”. Published to Oxford Scholarship Online: DOI:10.1093/acprof:oso/9780199744718.001.0001, Print ISBN-13: 9780199744718
- [16] J.S. Hyde. (2006). “Half the Human Experience: The Psychology of Women 7th Edition”. (Cengage). Learning,
- [17] Nessa Lynch. (2010). “Restorative Justice Through A Children’s Right Lenses”. *International Journal of Children’s Rights* 18 161-183, Paper Cite 7 VUWLRP 1/2017
- [18] NSPCC, <https://www.nspcc.org.uk/services-and-resources/services-for-children-and-families/letting-the-future-in/>
- [19] Panduan Jejaring Penanganan Anak Yang Berhadapan Dengan Hukum. 2009. Jakarta: Deputy Bidang Perlindungan Anak, Kementerian Negara Pemberdayaan Perempuan RI
- [20] Ruben Achmad, “Upaya Penyelesaian Masalah Anak yang Berkonflik dengan Hukum di Kota Palembang”, <http://www.economic-law.net/jurnal/RubenAchmad.Doc>.
- [21] Rubin, H. Ted. *Juvenile Justice Policy, Practise, and Law*. (New York: Ramdom House). p.176

- [22] Sidharta.(2014). *Seminar : Pendekatan Sosio-Legal sebagai Kajian Interdisipliner Hukum*. Fakultas Hukum Universitas Brawijaya Malang.
- [23] Standar Operasional Prosedur Tentang Penanganan Anak Yang Berhadapan Dengan Hukum. 2009. Jakarta: Deputi Bidang Perlindungan Anak, Kementerian Negara Pemberdayaan Perempuan RI.
- [24] Tali Gal. (2011). "Child Victims and Restorative Justice : A Need-Rights Model". Published to Oxford Scholarship Online:
DOI:10.1093/acprof:oso/9780199744718.001.0001, Print ISBN-13: 9780199744718
- [25] Tamanaha, Brian Z. (2017). *Realistic Socio-Legal Theory: Pragmatism and A Social Theory of Law*. Oxford: ClarendonPress.