



Received: 16-10-2024

Accepted: 26-11-2024

International Journal of Advanced Multidisciplinary Research and Studies

ISSN: 2583-049X

Restorative Justice System for Traffic Violations by Children in Surakarta Reviewed from Law Number 11 of 2012 Concerning the Child Justice System

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DOI: <https://doi.org/10.62225/2583049X.2024.4.6.3503>

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Abstract

Traffic violations in Surakarta have significantly increased during 2022–2023, including cases involving underage children. This indicates a lack of awareness regarding traffic safety, particularly in monitoring children who are not yet eligible to drive. The juvenile criminal justice system in Indonesia, as specified in Law No. 11 of 2012, emphasizes the importance of the diversion and restorative justice approaches. Diversion aims to redirect the resolution of juvenile cases from formal judicial processes to avoid stigma and restore children's rights. This approach focuses on resolving cases persuasively by involving the offender,

victim, and community, while avoiding punitive measures. However, the implementation of restorative justice in Surakarta faces challenges, such as imbalanced compensation between offenders and victims and different perceptions of justice. Optimal implementation is expected to prioritize the best interests of the child, prevent juveniles from formal judicial processes, and support their normal reintegration into society. This system is designed as a progressive step to protect children's rights and promote welfare based on social justice.

Keywords: Child, Restorative Justice, Traffic

1. Introduction

We need to agree that the role of children is very crucial as the successors of the nation and state. They have the responsibility to continue the development that has not been completed by the previous generation.¹ Therefore, it is necessary for all of us to provide attention and excellent education to children so that they can develop as a strong generation and be able to create progress for this nation. Love, protection, guidance and direction are components that cannot be separated and are fundamental needs for the growth and development of children in order to realize a great, peaceful and prosperous country.

Children grow and develop in their families and social environments. The influence of these environments can have both positive and negative impacts on their development.² Children naturally have a high curiosity. A bad environment can affect children's behavior, triggering the possibility of being involved in legal problems. Therefore, it is important for us to provide protection and direction to children so that they can grow and develop well without getting caught up in matters related to legal problems. Various modes and motives are increasingly varied, not a few children as perpetrators of a crime act beyond reason. From the various modes and motives that exist, it can be concluded that children as perpetrators grow and develop not according to their age.

Juvenile delinquency is a term for children who commit crimes. Romli Atmasasmita explained that Juvenile delinquency is any behavior or action of a child under the age of 18 and not yet married which is a violation of applicable legal norms and can cause harm to the child's personal growth and development.³ As perpetrators of criminal acts, children have the right to receive protection and attention to their rights. It is important to ensure that the child's mental development is not disturbed by the

¹ Sunarjati Hartono, Politik Hukum Menuju Satu Sistem Hukum Nasional (Bandung: Alumni, 1991). hlm. 154

² Herman Balla(2022). Diversi: Anak yang Berhadapan Dengan Hukum. Amsir Law Journal, Volume 10 Nomor 3 Mei 2022

³ Romli Atmasasmita, Problema Kenakalan Anak-Anak Remaja (Bandung: Armico, 1983). Hlm. 40.

problems they face. Therefore, it is necessary to realize a special justice system for children to ensure that they are treated according to the rights they have.

Children in conflict with the law are facing a difficult situation because they have to face legal consequences at a young age. Not only the legal consequences that they have to go through, children as perpetrators of criminal acts must bear the social consequences of what they have done. The social consequences that are often experienced by children as perpetrators of criminal acts or Juvenile delinquency include being ostracized from the social environment, ongoing shame, and other forms of discrimination.⁴

Restorative Justice is a fairly popular alternative and is widely applied in various countries in the world, one of its applications is used to handle children who have problems with the law, because Restorative Justice offers an effective solution and has a significant impact and is interesting to apply. Restorative Justice itself aims to empower victims, perpetrators, families and the surrounding community to improve an unlawful act based on awareness, realization and a clear foundation used to improve community life, The theory or concept of Restorative Justice itself is basically quite simple, This concept is a concept of justice that is aimed at and emphasizes the restoration of losses that have been caused by a criminal act.

The restorative justice method views crime as an opportunity to repair the impact that has occurred, not just as a violation of the law. In this perspective, the important role of the police as initiators and facilitators in resolving conflicts by involving all relevant parties, including perpetrators, victims, parents, communities, and schools. With meetings involving all parties, it is hoped that a fair agreement can be reached for everyone involved. Thus, the restorative justice approach is expected to have a positive impact in resolving conflicts and reducing crime in society. Surakarta is one of the cities in Central Java. According to data from the Surakarta Police Traffic Unit above, there were 10,746 drivers, both minors and adults, who had committed traffic violations in 2023. The data shows that adults and minors both commit many traffic accidents and do not supervise the use of motorbikes or other vehicles by minors. The increase in the number of accidents was seen in 2022, with an increase of more than 30%, and in 2023, early to mid. Among these data, there are many traffic violations that result in victims and accidents where the perpetrators of these violations are not only adults who are legally allowed to drive but also many minors who are involved in the increasing number of accidents.

In the traffic accident data above, of course there are several parties who are harmed both physically and materially, so the Regulation of the Republic of Indonesia National Police (Perpol) Number 08 of 2021 regulates the handling of criminal acts with the principle of restorative justice. This regulation is a reference in resolving cases in the investigation and investigation process of criminal acts, with the aim of providing legal certainty. With the existence of

PERPOL Number 08 of 2021, it encourages protection for children as stated in Law No. 11 of 2012 concerning the Juvenile Justice System.

Law No. 11 of 2012 concerning the Juvenile Justice System has been adjusted based on the convention and the rights of children as ratified by the Indonesian government in Presidential Decree Number 36 of 1990, in which criminal justice with the Restorative Justice concept aims to achieve several points, namely:

1. Striving for Peace between the victim and the perpetrator (Child).
2. Prioritize mediation and settlement of disputes through courts.
3. Preventing children from trauma and negative influences in the judicial process.
4. Realizing a responsible attitude in children (Actors).
5. Realizing the welfare of both victims and perpetrators (children).
6. Preventing children from being deprived of their rights and freedoms.

The concept of Restorative Justice is actually also contained in Article 5 paragraph (1) and (2) of Law No. 11 of 2012 which contains the Child Criminal Justice System which must prioritize a restorative justice approach which must include several things, namely:

- a. Investigation and Prosecution of Children's Crimes shall be carried out in accordance with the provisions of statutory regulations, unless otherwise specified in this law.
- b. Child trials conducted by courts in the general judicial environment. Guidance, mentoring and supervision of children.

The process of legal diversion or commonly referred to as (Diversion) is the diversion of the settlement of child criminal cases from the judicial process to the mediation or deliberation process involving the victim, perpetrator and family of each victim and perpetrator, This Diversion is a settlement through a Restorative Justice approach, Diversion itself will not work if the Restorative Justice concept is not applied as a solution. This Diversion is found in all stages from investigation, prosecution to the trial stage. The diversion process based on the Restorative Justice approach is not used in all existing crimes, but this process is only used for cases where the threat of punishment is under 7 years and is not a repeat crime. In the process of enforcing the law against Child Criminals, all law enforcement officers from investigators to judges need to pay attention to 2 things, namely the category of the crime and the age of the child.

2. Research Methods

The problem approach used in this study is a normative and empirical legal approach. The normative legal approach is an approach through literature study, namely by analyzing legal theories and regulations related to the problems raised in this study. The empirical approach is an effort to obtain clarity and understanding of the research problems that are being studied based on existing reality. This research requires two types of data from different sources, namely those are primary and secondary data sources which obtained from books, scientific journals, expert opinions, research results of legal experts, papers, etc. The data collected in this

⁴ Abby Mokodompit(2024). Analisis Yuridis Konsep Restorative Justice Dalam Perkara Anak Yang Berkonflik Dengan Hukum Ditinjau Dari Sistem Peradilan Pidana Anak. Jurnal Insan Pendidikan dan Sosial Humaniora Vol.2, No.2 Mei 2024 e-ISSN: 2986-5506; p-ISSN: 2986-3864, Hal 228-257 DOI: <https://doi.org/10.59581/jipsoshum-widyakarya.v2i2.3144>

proposal are primary and secondary data, then analyzed with qualitative analysis. This analysis is an explanation of theoretical matters related to data that has been obtained through studies and literature reviews, so that it can be used as a conclusion in the discussion in this research.

3. Hasil and Discussion

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According to data obtained by researchers at the Surakarta Police, which was collected in the period from 2022 to 2023, more than 30 thousand cases of traffic violations, both causing accidents and not, this shows that awareness and security for orderly traffic are still lacking. The data we obtained is as follows:

Table II: Data on the Number of Traffic Violations in SURAKARTA

- The number of traffic accidents in Solo increased by 38.31 percent throughout 2022. Meanwhile, 25,809 motorists were given electronic tickets or electronic traffic law enforcement (ETLE) in the same period.
- The Surakarta Police Traffic Unit recorded 10,746 vehicles, both minors and adults, committing traffic violations in 2023, with the following details:
 - 1,223 violations in January.
 - 3,232 violations in February
 - 3,144 violations in March
 - 1,607 violations and 1,540 in April to May

Source: Solopos.com, SOLO

Based on these data, it shows that there are many cases of traffic violations, both committed by adults and minors, with a lack of supervision of the use of motorbikes or other vehicles used by minors is one of the causes of the increasing number of accidents. This can be seen in 2022 where the number of accidents increased by more than 30% and in early to mid-2023 the number of traffic violations was also quite large where there were more than 30 thousand traffic violations recorded by the Surakarta Police, even the attached data and this number has not been counted until 2024 now, which if the data on these violations is added up will certainly increase and become even more.

Traffic Violation Number Data SURAKARTA

- The Surakarta Police Traffic Unit recorded 10,746 vehicles, both minors and adults, committing traffic violations in 2023, with the following details:

Month	Year	Amount
January	2023	1.223
February	2023	3.232
March	2023	3.144
April-May	2023	1,607

- The number of traffic accidents in Solo increased by 38.31 percent throughout 2022. While 25,809 in the same period.

According to data from the Surakarta Police Traffic Unit above, it was recorded that 10,746 drivers, both minors and adults, had committed traffic violations in 2023. The data shows that adults and minors both commit many traffic

accidents and do not supervise the use of motorbikes or other vehicles by minors. The increase in the number of accidents was seen in 2022, with an increase of more than 30%, and in early to mid-2023.

Currently, there have been many traffic violations that have resulted in victims and accidents where the perpetrators of these violations are not only adults who are legally allowed to drive but also many minors who are involved in the increasing number of accidents, some of these accidents are usually caused by several basic things including violations related to SIM ownership, and vehicles that do not comply with existing standards according to regulations, then drivers do not obey existing traffic signs and incomplete attributes when driving such as jackets, helmets and so on, from these violations is the origin of the increase in accidents to fatalities that occur especially in the city of Surakarta.

The involvement of children in many cases of traffic violations makes children have to face and conflict with the law, children who experience this legal problem have been clearly regulated in Law No. 11 of 2012 concerning the Juvenile Justice System, which explains that the so-called children who become criminals are those who are 12 years old and not yet 18 years old. This juvenile justice regulates all activities, systems and decisions related to cases concerning the interests of the child not only by judges but also all existing law enforcement officers, starting from the Police, Prosecutors, Judges and all existing authorized officials, all based on one principle for the sake of creating the welfare and interests of children's rights, thus the criminal justice system concerning children must include everything from examination activities to decisions made by the courts, and all these activities must be based on the interests and welfare of children.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System authorizes Public Prosecutors, Police, and Judges to handle juvenile criminal cases. It doesn't stop there, Prosecutor's Regulation (PERJA) No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice authorizes the Attorney General's Office of the Republic of Indonesia to implement these provisions. Likewise, PERPOL No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice which authorizes the Police to follow up on the resolution of criminal cases with a restorative justice approach. Judging from the 3 territorial jurisdictions of the applicable legal regulations, it can be concluded that each criminal case can be resolved with restorative justice as long as it meets the applicable regulations. Since this legislation came into effect, the entire judicial system and law enforcement against children have increasingly prioritized moral and social values, starting from justice, welfare and upholding human rights, in addition, this regulation provides better space and opportunities for perpetrators and victims because it can be resolved by agreement with peace between the two. In an effort to resolve criminal acts based on Restorative Justice, there are conditions that must be met. The conditions of Restorative Justice are divided into 2 parts, namely material and formal. The following are the material conditions that must be met:⁵

⁵ Abby Mokodompit(2024). Analisis Yuridis Konsep Restorative Justice Dalam Perkara Anak Yang Berkonflik Dengan Hukum Ditinjau Dari Sistem Peradilan Pidana

- a. Does not cause unrest and/or rejection from the community;
- b. Does not cause social conflict;
- c. Does not have the potential to divide the nation;
- d. Not characterized by separatism and radicalism;
- e. Not an act of repeating a criminal case based on a court decision;
- f. Not terrorism or crimes against state security, corruption and crimes against life.

After the fulfillment of the material requirements, there are formal requirements that must be met in an effort to resolve criminal cases including achieving peace between the two parties, except in cases of drug crimes that require evidence in the form of a peace agreement signed by the parties. In addition, the fulfillment of the rights of victims and the responsibilities of the perpetrators are also formal requirements that must be met, such as the return of goods, payment of losses, reimbursement of costs incurred due to the crime, and the provision of compensation for damage caused by the crime.

In its application, restorative justice in traffic accident cases in the jurisdiction of the Surakarta Police has special requirements so that the crime can be resolved through a restorative justice approach, namely:

1. Traffic accidents occur when a person drives a motor vehicle in a manner and under conditions that can cause harm and result in material losses and/or minor injuries.
2. Traffic accidents on the road occur due to someone's negligence, which results in the loss of human and/or property victims.

The implementation of Restorative Justice with traffic accident cases in the jurisdiction of the Surakarta Police does not always run smoothly, there are obstacles in the implementation of Restorative Justice with traffic accident cases in the jurisdiction of the Surakarta Police, namely:

1. Even though they have made peace, the majority of compensation given by the perpetrators is not commensurate with the suffering experienced by the victim.
2. Different understandings of justice.

Article 1 number 7 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System explains that "Diversion is the transfer of the settlement of juvenile cases from the criminal justice process to a process outside the criminal justice system". The main principle in implementing the diversion concept is to use a persuasive or non-penal approach, and to provide individuals with the opportunity to correct their mistakes.⁶ Children in conflict with the law, even though they are perpetrators, have the right to have their rights restored in the eyes of society. Article 1 number 6 of Law No. 11 of 2012 explains that "Restorative justice is

the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state, and not retaliation". Restorative justice can be defined as an idea that emerged in response to the development of the criminal justice system, with a focus on the importance of involving the community and victims who often feel neglected by the mechanisms in place in the current criminal justice system.

From what has been described by the Restorative Justice system regarding traffic violations by children in Surakarta reviewed from Law No. 11 of 2012 concerning the Juvenile Justice System, the author can draw the conclusion that diversion and Restorative Justice and Diversion have a causal relationship as a goal. Restorative Justice as a solution to restore the original state, while diversion is a concept of an effort to divert the process of resolving criminal cases outside the court, so that there is a restoration of the rights of children as perpetrators of criminal acts and not as an implementation of the theory of retaliation. The implementation of diversion aims to provide legal protection for children in conflict with the law in the juvenile criminal justice system in Indonesia, by implementing diversion at every stage of the examination. Diversion and this restorative justice approach are intended to prevent children from the judicial process, so that it can prevent stigmatization of children in conflict with the law and allow children to return to the social environment normally.

Ideally, the criminal justice process is the last option carried out by law enforcement officers if the child as the perpetrator of the crime is proven guilty of committing a serious crime. Apart from that, it is better to make peace between the victim and the child as a perpetrator of the crime, so that the child can be returned to the parents to be educated and fostered. According to the author, the Juvenile Justice System has been designed very well, but to realize a better system, everyone must work together to prioritize the protection of children's rights and ensure that every action or decision taken will have a positive impact on their future (the principle of the best interest of the children).

4. Conclusion

There is an increase in the number of traffic violations in Surakarta in 2023, including violations by minors involving accidents. The juvenile criminal justice system in Indonesia, regulated by Law No. 11 of 2012, emphasizes the importance of implementing a diversion and restorative justice approach to protect the rights of children in conflict with the law. Diversion aims to avoid the formal justice process, so that children can avoid stigma and return to society normally. This approach is expected to be the main solution, with criminal justice as the last option if a child is proven to have committed a serious crime. The implementation of Restorative Justice in Surakarta faces challenges, such as imbalances in compensation and differences in understanding of justice, but still focuses on the welfare of children and prioritizes their best interests. Restorative Justice system for traffic violations by children in Surakarta reviewed from Law No. 11 of 2012 concerning the Juvenile Justice System, the author can draw the conclusion that diversion and Restorative Justice and Diversion have a causal relationship as a goal. Restorative Justice as a solution to restore the original state, while diversion is a concept of an effort to divert the process of

Anak. Jurnal Insan Pendidikan dan Sosial Humaniora Vol.2, No.2 Mei 2024 e-ISSN: 2986-5506; p-ISSN: 2986-3864, Hal 228-257 DOI: <https://doi.org/10.59581/jipsosum-widyakarya.v2i2.3144>

⁶RANDY PRADITYO(2016). RESTORATIVE JUSTICE DALAM SISTEM PERADILAN PIDANA ANAK: RESTORATIVE JUSTICE IN JUVENILE JUSTICE SYSTEM. Jurnal Hukum dan Peradilan, Volume 5 Nomor 3, November 2016: 319 - 330

resolving criminal cases outside the court, so that there is a restoration of the rights of children as perpetrators of criminal acts and not as an implementation of the theory of retaliation. The implementation of diversion aims to provide legal protection for children in conflict with the law in the juvenile criminal justice system in Indonesia, by implementing diversion at every stage of the examination. Diversion and this restorative justice approach are intended to prevent children from the judicial process, so that it can prevent stigmatization of children in conflict with the law and allow children to return to the social environment normally.

5. Suggestion

The suggestions in this study are as follows:

1. The police as law enforcement officers need to continue to improve their professionalism, capacity and understanding as implementers of the peace or diversion process between the parties involved in traffic crime cases, by continuing to improve and hone the various potentials and opportunities that exist related to the development of peace techniques through Restorative Justice.
2. The police in the mediation process must have an orientation that the criminal justice process is the last option carried out by law enforcement officers if the child as the perpetrator of the crime is proven guilty of committing a serious crime. Apart from that, it is better to make peace between the victim and the child as a perpetrator of the crime, so that the child can be returned to the parents to be educated and fostered.

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