

JURNAL CITA HUKUM

Indonesian Law Journal



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- **Legal Protection Against Indonesian Umrah Jemaah**
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Diversity in the Child Criminal Justice System *

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Abstract:

The Child Criminal Justice System in practice, the child as a victim of sexual violence does not always feel its justice being reversed because the diversion process involving the community, the police, the social department, and the parties concerned does not always have a victim's perspective. The absence of a victim's perspective in resolving the issue of sexual violence through diversities makes restorative justice incapable of restoring and fulfilling justice for child victims of sexual violence compared to the criminal justice system in general because diversity is unable to bridge the gap between the challenges faced by victims and the help available to victims. Legal protection of child victims of crime, especially crimes against morality, with child offenders under the Criminal Justice System which must prioritize the approach of Restorative Justice by guaranteeing the rights of child victims to the efforts of medical rehabilitation and social rehabilitation both inside and outside the institution; assurance of safety, whether physical, mental, or social; and ease in obtaining information about case development through diversion.

Keyword: Criminal Justice System, Child, Diversity

* Received: March 24, 2017, revised: April 28, 2017, accepted: Mei 20, 2017.

Diversi Dalam Sistem Peradilan Pidana Anak

Abstrak:

Sistem Peradilan Pidana Anak pada praktiknya, anak sebagai korban kekerasan seksual tidak selalu merasakan keadilannya dikembalikan karena proses diversi yang melibatkan masyarakat, polisi, departemen sosial, dan para pihak terkait tidak selalu memiliki perspektif korban. Ketiadaan perspektif korban dalam penyelesaian permasalahan kekerasan seksual melalui diversi membuat keadilan restoratif tidak mampu mengembalikan dan memenuhi keadilan bagi anak korban kekerasan seksual dibandingkan dengan sistem peradilan pidana secara umum karena diversi tidak mampu untuk menjembatani jurang antara tantangan yang dihadapi oleh para korban dan pertolongan yang tersedia untuk para korban. Perlindungan hukum terhadap anak korban kejahatan, khususnya kejahatan terhadap kesusilaan, dengan pelaku anak menurut Sistem Peradilan Pidana Anak yang wajib mengutamakan pendekatan Keadilan Restoratif dengan memberikan jaminan hak anak korban terhadap upaya rehabilitasi medis dan rehabilitasi sosial, baik di dalam lembaga maupun di luar lembaga; jaminan keselamatan, baik fisik, mental, maupun sosial; dan kemudahan dalam mendapatkan informasi mengenai perkembangan perkara melalui diversi.

Kata Kunci: *Sistem Peradilan Pidana, Anak, Diversi.*

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Introduction

The Criminal Justice System as a system is basically an open system; in the sense of criminal justice this system will always interface (interaction, interconnection, and interdependence) with its environment in rank, society: economy, politics, education and technology, as well as the subsystems of the criminal justice system itself.¹ In this system is contained systemic motion of its supporting subsystems, namely police, prosecutors, courts, prisons, and advocates that as a whole and is a totality trying to transform input into outcomes that are the goal of its system.²

The review of this system always has consequences and implications, is all subsystems will be interdependent, because the product of a subsystem is an input to other subsystems; the system approach encourages the existence of inter-agency consultation and cooperation, which in turn will enhance the strategy-making effort of the whole system; as well as policies decided and executed by one subsystem will affect other subsystems.³ The term judicial refers to the environment of the judiciary in which each judicial body has its respective powers and authorities in the task of completing the case.⁴ With the enactment of Law Number 11 Year 2012 on the Criminal Justice System of the Child, a new Criminal Justice System is established called the Criminal Justice System of Children, which is the whole process of settlement of the Children's case against the law, from the investigation stage to the guidance stage after the crime.⁵

This procedure is formed from the awareness that the child as a gift of God Almighty who has the dignity of a person, and to maintain the dignity and prestige of the child is entitled to special protection, especially the protection of the law in the judicial system; especially for the Republic of Indonesia as a State Party to the Convention on the Rights of the Child which regulates the principle of legal protection of children has an obligation to provide special protection against children in conflict with the law.⁶

¹ Muladi, *Kapita Selekta Sistem Peradilan Pidana*, (Semarang: BP Undip 1995) p. VII.

² Sidik Sunaryo, *Sistem Peradilan Pidana*, (Malang: UMM Press, 2004), p. 255.

³ Tim Universitas Indonesia Fakultas Hukum, 2001, *Sinkronisasi Ketentuan Perundang-Undangan Mengenai Sistem Peradilan Pidana Terpadu Melalui Penerapan Asas-Asas Umum*, p. 25.

⁴ Gatot Supramono, *Hukum Acara Pengadilan Anak*, (Jakarta: Djambatan, 2007), p. 16.

⁵ See the provisions of Article 1 paragraph (1) of Law Number 11 the Year 2012 on the Child Criminal Justice System.

⁶ See the weighing sections of letters (a), (b), and (c) of Law Number 11 the Year 2012 on the Criminal Justice System

The scope of Law Number 11 the Year 2012 on the Criminal Justice System of Children is a child who is in conflict with the law and the child who is a victim of a crime. ⁷In addition to its special judicial environment, the Criminal Justice System of the Child shall prioritize the approach of Restorative Justice, namely the settlement of criminal cases involving perpetrators, victims, families of perpetrators / victims, and others concerned to jointly seek a fair settlement by emphasizing restoration of the original state, and not retaliation.⁸

With the advent of the Criminal Justice System of the Child, it is certainly interesting to examine how legal protection efforts against child victims of crime, especially crimes of against morality, with child offenders under the Criminal Justice System of Children who must prioritize the approach of Restorative Justice.

Legal Protection against the Subject of Law

Legal protection is an act of protecting legal subjects through applicable legislation and can be enforced by a sanction.⁹ Legal protection is any guarantee of legal certainty provided by the government to protect the rights and interests of the parties which will arise the rights and obligations of each party. Legal protection is also an attempt or legal action to safeguard and protect the legal subject from an act of harm.

Legal protection arises as a consequence of the nature of law, namely regulating and mastering legal relationships between individuals and individuals and individuals with society. Philipus M. Hadjon states that the principle of legal protection for the people in Indonesia is the principle of recognition and protection of the dignity of human beings which originated from Pancasila and the principles of a state based on Pancasila law.¹⁰Legal

⁷ See Article 1 Paragraph (3) of Law Number 11 the Year 2012 on the Criminal Justice System of the Child stating "Children Conflicting with the Law hereinafter referred to as Children is a child who is 12 (twelve) years old, but not yet 18 (eighteen)) years of alleged commission of a crime"; and Article 1 Paragraph (4) of Law Number 11 Year 2012 concerning the Criminal Justice System of the Child stating "Children who become Victims of Crime, hereinafter referred to as Child Victims are children who are not yet 18 (eighteen) years old who suffer from physical, mental, and / or economic loss caused by a crime."

⁸ See Article 1 paragraph (5) of Law Number 11 the Year 2012 on Child Criminal Justice System and Article 5 paragraph (1) of Law Number 11 the Year 2012 on Child Criminal Justice System.

⁹ Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, (Yogyakarta: Liberty, 2005), p. 60.

¹⁰Sudarto, *Hukum dan Hukum Pidana*, (Bandung: Alumni, 1990), p. 12.

protection arises as a consequence of the nature of law, namely regulating and mastering legal relationships between individuals and individuals and individuals with society.¹¹ Philipus M. Hadjon stated that the principle of legal protection for the people in Indonesia is the principle of recognition and protection of the dignity of human beings which originated from Pancasila and the principles of a state based on Pancasila.¹²

The principle of legal protection based on Pancasila means the recognition and protection of human dignity on the basis of divine value, humanity, unity, deliberation, and social justice. These values give birth to the recognition and protection of human rights in its form as individual beings and social beings in a united state container that upholds the spirit of kinship and for the sake of prosperity together.¹³ In terms of its kind, legal protection is divided into passive legal protection and protection of the active law.¹⁴ The protection of passive law is in the form of acts that give recognition and guarantee in the form of arrangements and policies relating to the rights and obligations of the legal subject, while the protection of the active law is in the form of actions relating to the efforts of the fulfillment of the rights of legal subjects, or legal protection in the empirical level.¹⁵

The protection of the active law is divided into preventive law protection and repressive law protection.¹⁶ Protection of preventive law is a form of legal protection to the people by giving an opportunity to lodge an objection or opinion before a government decision gets a definitive form, whereas the protection of the repressive law is a form of legal protection aimed at resolving disputes in the form of demands to the government that cause losses.¹⁷ The crime against the morality is an offense which is set out in Chapter XIV of the Second Book of the Criminal Code (KUHP) established for the purpose of providing protection to people who are deemed necessary to obtain protection resist immoral acts and against behaviors both in the form of words

¹¹ Sudarto, *Hukum dan Hukum Pidana*, p. 41

¹² Philipus M. Hadjon, *Perlindungan Bagi Rakyat Indonesia*, (Surabaya: Bina Ilmu, 1987), p. 20.

¹³ Philipus M. Hadjon, *Perlindungan Bagi Rakyat Indonesia*, p. 20.

¹⁴ Sulasno, *Perlindungan Hukum bagi Pengarang Dalam Perjanjian Penerbitan Buku Antara Pengarang dengan CV. Sahabat, Klaten*, Thesis on Master of Business Law Faculty of Law University of Gadjah Mada, 2002, p. 20.

¹⁵ Sulasno, *Perlindungan Hukum bagi Pengarang Dalam Perjanjian Penerbitan Buku Antara Pengarang dengan CV. Sahabat, Klaten*, p. 25.

¹⁶ Philipus M. Hadjon, *Perlindungan Bagi Rakyat Indonesia*, p. 3-5.

¹⁷ Philipus M. Hadjon, *Perlindungan Bagi Rakyat Indonesia*, p. 3-5.

and in deeds that offend moral.¹⁸ This is because it contradicts people's views of propriety in the area of sexuality, whether in terms of local communities views where the words have been spoken or the deeds have been done, as well as in terms of local customs in running their sexual lives.¹⁹

Here are some criminal offenses against decency with child victims: *First*, Article 287 of the Criminal Code, which states "(1) Anyone who has intercourse with a woman outside of marriage, knowingly or duly should expect it is not fifteen years, if age is not clear, take time to be married, threatened with a maximum imprisonment of nine years; (2) Prosecution shall only be made on the complaint, unless the age of the woman is not yet up to twelve years or if there is any matter under Article 291 and Article 294"; *Second*, Article 292 of the Criminal Code, which states that "an adult who commits a lewd act with another sex, knowingly or duly to be presumed to be immature, shall be punished by a maximum imprisonment of five years". There is a difference of age limit on child victims in the Criminal Code and Law Number 11 the Year 2012 on Child Criminal Justice System. Article 45 of the Criminal Code, stated that:

"In the case of a criminal prosecution of an immature person for committing an act before the age of sixteen, a judge may determine: order that the offender be returned to his or her parents, guardian or guardian, without any penalty; or order the guilty to be handed over to the government without any penalty, (...)".

Whereas in Article 1 paragraph (3) of Law Number 11 the Year 2012 on Child Criminal Justice System, Children in Conflict with Law, hereinafter referred to as Child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years of allegedly committing a crime.

The problem of the relationship of criminals and victims is not a new problem, but over the centuries the victim is one of the most neglected subjects in the study of crime and in the conduct of criminal justice; in fact, the victims are not only the cause and the basis of the process of crime, but play an important role in the search for truth in an effort to understand the problem of crime, deliberation, and deviation.²⁰ Arif Gosita argues that victims are those who suffer bodily and spiritually as a result of the actions of others who seek

¹⁸ P.A.F. Lamintang dan Theo Lamintang, *Delik-Delik Khusus Kejahatan Melanggar Norma Kesusilaan & Norma Kepatutan*, second edition, (Jakarta: Sinar Grafika, 2009), p. 1.

¹⁹ P.A.F. Lamintang dan Theo Lamintang, *Delik-Delik Khusus Kejahatan Melanggar Norma Kesusilaan & Norma Kepatutan*, second edition, p. 1.

²⁰ Arif Gosita, *Masalah Korban Kejahatan Kumpulan Karangan*, (Jakarta: Akademika Presindo, 1993), p. 63.

the fulfillment of self-interest or others who are contrary to the interests and suffering suffer.²¹

Based on Article 1 paragraph (4) of Law Number 11 the Year 2012 on the Criminal Justice System of Children, "Children who become Victims of Crime, hereinafter referred to as Child Victims are children who are not yet 18 (eighteen) years old who suffer physical, mental, or economic loss caused by a criminal offense. "In this paper, the definition of the victim is restricted to children who are not yet 18 (eighteen) years of age suffering physical, mental, and/or economic losses caused by criminal acts of decency mentioned above.

The Juvenile Justice System shall prioritize the approach of Restorative Justice, Child Proclaimed Investigation and Prosecution conducted in accordance with the provisions of laws and regulations, unless otherwise provided in this Law; court proceedings of a Child conducted by a court within the public court; and coaching, guidance, supervision or counseling during the criminal proceedings or actions and after undergoing a crime or action.²² In the Criminal Justice System Child must have strived Diverse.²³ Diverse is the transfer of the settlement of a Child case from a criminal justice process to a process other than a criminal court aimed at achieving peace between the victim and the Child; resolve cases of Children outside the judicial process;²⁴ prevent the Child from deprivation of freedom; encourage people to participate; and instill a sense of responsibility to the Son.²⁵

At the level of investigation, prosecution and examination of the case of a Child in a district court, a Diversity should be attempted in the event that a criminal offense is punishable by imprisonment under 7 (seven) years; and not a repeat of a crime.²⁶ The Diversity process is conducted through deliberations involving the child and parents/survivors, victims and/or their parents/survivors, social counselors, and professional social workers based on restorative justice approach; in case of need, deliberation may involve Social

²¹ Arif Gosita, *Masalah Korban Kejahatan Kumpulan Karangan* p. 63.

²² Article 5 paragraph (1) and (2) of Law Number 11 the Year 2012 on the Criminal Justice System of the Child.

²³ Article 5 paragraph (3) of Law Number 11 the Year 2012 on Child Criminal Justice System.

²⁴ Article 1 paragraph (7) of Law Number 11 the Year 2012 on the Child Criminal Justice System.

²⁵ Article 6 of Law Number 11 Year 2012 on the Criminal Justice System of the Child.

²⁶ Article 7 paragraph (1) and (2) of Law Number 11 the Year 2012 on Child Criminal Justice System.

Welfare Workers or the community.²⁷ The diverse process must pay attention: the interests of the victim; welfare, and responsibility of the Child; avoidance of negative stigma; avoidance of retaliation; community harmony; and propriety, decency, and public order.²⁸

The result of a diversion deal may take the form of, among other things, peace with or without compensation; handover back to parent/Guardian; participation in education or training in an educational institution or Social Welfare Organization (LPKS)²⁹ for a maximum of 3 (three) months; or community service.³⁰ Child criminal justice proceeding in the process of Divers does not result in an agreement Diversity not implemented.³¹ Monitoring of the Diversity process and the implementation of the resulting agreement lies with the direct superior of the responsible official at each level of examination.³² During its process, until Diversity agreement is implemented, the Community Guidance Counselor is required to provide assistance, guidance, and supervision.³³ In the event that the Divers agreement is not executed within the stipulated time, the Counselor shall promptly report it to the responsible official and the Responsible Officer shall follow up the report within a maximum period of 7 (seven) days.³⁴

Child victims in the Criminal Justice System are entitled to medical rehabilitation and social rehabilitation, both within the institution and outside the institution; assurance of safety, whether physical, mental, or social; and ease in getting information about the progress of the case.³⁵ Based on the consideration or suggestion of a Community Guidance Counselor, a Professional Social Worker or Social Welfare Worker or Investigator may refer a Child Victim to an agency or institution dealing with the protection of a child or

²⁷ Article 8, paragraph (1) and (2) of Law Number 11 the Year 2012 on Child Criminal Justice System.

²⁸ Article 8 paragraph (3) of Law Number 11 the Year 2012 on Child Criminal Justice System.

²⁹ LPKS is an institution or where social services are carrying out social welfare for Children. See Article 1 (22) of Law Number 11 the Year 2012 on Child Criminal Justice System.

³⁰ Article 11 of Law No. 11 of 2012 on the Criminal Justice System Child.

³¹ Article 13 of Law No. 11 of 2012 on the Criminal Justice System Child.

³² Article 14 paragraph (1) of Law Number 11 the Year 2012 on Child Criminal Justice System.

³³ Article 14 paragraph (2) of Law Number 11 the Year 2012 on Child Criminal Justice System.

³⁴ Article 14 paragraph (3) and (4) of Law No. 11 of 2012 on the Criminal Justice System Child.

³⁵ Article 90 paragraph (1) of Law Number 11 the Year 2012 on Child Criminal Justice System.

child's social welfare Worker or Investigator may refer a Child Victim to an agency or institution dealing with the protection of a child or child's social welfare institution.³⁶ In the event that the Child Victims require immediate relief measures, the Investigator, without the social report of the Professional Social Worker, can directly refer the Victim's Child to a hospital or institution that deals with child protection in accordance with the conditions of the Child Victim.³⁷

Based on the results of Community Research of the Social Advisor and social report of the Social Worker Professional or Child Social Welfare Worker the victim is entitled to medical rehabilitation, social rehabilitation and social reintegration of the institution or agency that handles the protection of the child.³⁸ They in need of protection may obtain security from the institution that deals with the protection of witnesses and victims or social shelter houses in accordance with the provisions of legislation.³⁹ The public may participate in the protection of the Child from prevention to the social reintegration of the Child by, inter alia, contributing to the rehabilitation and social reintegration of the Child, Child Victim or Child Witness through a community organization.⁴⁰

The fundamental change in Law Number 11 Year 2012 on the Criminal Justice System of the Child from Law Number 3 of 1997 concerning the Juvenile Court is strictly regulating the Restorative and Divers Justice which is intended to avoid and keep the Children from the judicial process so as to avoid stigmatization of Children in conflict with the law and it is expected that the Child may return to the social environment fairly.⁴¹

At present, there have been several criminal cases involving child victims and perpetrators are resolved through the Child Criminal Justice System, including cases of rape and abuse cases. The first case was a rape case in Yogyakarta City with a victim named I and 16 years old and the perpetrator S who is a friend of the victim and 16 years old. Both are students of one high school (SMA). The rape case is not resolved through diversion due penalty of

³⁶ Article 91 paragraph (1) of Law Number 11 the Year 2012 on Child Criminal Justice System.

³⁷ Article 91 paragraph (2) of Law Number 11 the Year 2012 on Child Criminal Justice System.

³⁸ Article 91 paragraph (3) of Law Number 11 the Year 2012 on Child Criminal Justice System.

³⁹ Article 91 paragraph (4) of Law No. 11 of 2012 on the Criminal Justice System Child.

⁴⁰ Article 93 letter (e) of Law No. 11 of 2012 on the Criminal Justice System Child.

⁴¹ See General Explanation of Law Number 11 the Year 2012 on Child Criminal Justice System.

rape is twelve years,⁴² whereas Diversion can only be done in the case of a criminal offense committed is punishable by imprisonment under the 7 years; and not a repeat of a crime. Second and third cases should be resolved diversion because of the penalties in the Act No. 23 of 2002 on Protection of Children more than 7 years.⁴³ But in fact, diversion can be done by considering that the victim and the offender is a child.

In the second case, that is the case of fornication with the victim, a 4-year-old boy, and the perpetrator of an 11-year-old boy, who is also a neighbor next to the victim's home; this case is resolved through the version. The third case, the case of rape with the victim of a child-aged daughter and the perpetrator of a child-aged son who is a neighbor next to the victim's home; this case was resolved by diversion.

Although in general crime offenses against morality are regulated in the Criminal Code, specifically the crime against moral offenses against children is regulated in Law Number 23 the Year 2002 on Child Protection. Based on the legal principle of *lex specialist derogate legit general*, then the law applicable to child victims of crime against morality is regulated in Law Number 23 the Year 2002 on Child Protection. The second and third cases should not be resolved by diversion because of the threat of punishment in Law No. 23 of 2002 on Child Protection for more than 7 years.⁴⁴ In reality, however, diversion can be made by considering that the victim and the perpetrator are children.

Restorative Justice is a Diversity process, ie all parties involved in a particular crime jointly solve problems and create an obligation to make things better by engaging victims, children, and society in finding solutions to improve, reconcile and reassuring that is not based on retaliation.⁴⁵ It is true

⁴² See Article 285 of the Criminal Code which states whoever by force or threat of violence to force a woman to have sex with her outside of marriage, because rape is threatened with imprisonment for a period of twelve years.

⁴³ See Article 285 of the Criminal Code which states whoever by force or threat of violence to force a woman to have sex with her outside of marriage, because rape is threatened with imprisonment for a period of twelve years.

⁴⁴ See Article 81 paragraph (1) of the Constitution of the Republic of Indonesia Number 23 of 2002 on the Protection of the Child states that every person who intentionally commit violence or threats of violence to force children to do intercourse with her or with another person, shall be punished with imprisonment of 15 (five and a minimum fine of 3 (three) years and a maximum fine of Rp 300,000,000.00 (three hundred million rupiahs) and a minimum of Rp 60,000,000.00 (sixty million rupiah).

⁴⁵ See General Explanation of Law Number 11 the Year 2012 on Child Criminal Justice System.

that the purpose of Restorative Justice through Diversion is to avoid and keep the Son of judicial proceedings so as to avoid stigmatization against Children in conflict with the law and expected child can be returned to the social environment is natural, but if the process of diversion has been to restore justice to child victims?

In the second case, the background of the perpetrator is from a family with a lower middle-class economy, while the background of the victim is from an upward family so that the victim's families are rich. The Family of perpetrators often borrowed money to the victims' families. In the perpetrator's house, there are only two rooms, one used by the perpetrator's grandmother and the other is shared by the perpetrator, sister, father, and mother. What is the solution to reconciliation, and reassurance that is not based on retaliation for this obscenity case?

The victim's mother is fully aware that it is impossible to seek redress for the perpetrator's family to finance all kinds of physical and psychological recovery needs for the victim since the perpetrator's family often borrows money from the victim's family to meet their daily needs. It is true that there is a guarantee of the rights of the victim's child to the medical rehabilitation and social rehabilitation efforts, both within the institution and outside the institution and the safety guarantee, whether physical, mental, or social. However, who is responsible for fulfilling those rights?

In practice, the victim's mother financed the cost of daycare of her daughter as a social rehabilitation effort. When she reported to the police and then referred to the social service, the local district social office also briefly threw the victim's mother to the provincial social office because there was no procedure yet how to solve the problem. It was lucky victims live in the area of Yogyakarta so they can access assistance and counseling assistance from institutions that care about child issues.

In the third case, the victim and her family are immigrants in the perpetrator's village. The diversion agreement was conducted at the local police station and signed by, among other things, the sister of the victim's mother, the perpetrator's parents, and the village apparatus. Parents of victims who were not directly involved in the diversion agreement were suddenly visited by the village apparatus the night after the signing of the diversion. The village apparatus blames the victim's parents and asks the victim's parents to apologize to the perpetrator's parents. As an outsider, the victim's parents do not want to prolong the problem and then apologize to the perpetrator's parents. Feeling

above the wind, the perpetrator's parents cursed the victim's parents and incited the neighbors to hate the victim's parents.

Upon the incident, the victim and his parents stay away from the society. The act of apparatus that disclosed the victim was alleged because the perpetrator's parents gave a bribe to them. Does description on the third case has shown that diversion has been a solemn attempt to correct, reconcile, and reassure the heart that is not based on retaliation for this rape case?

Is there a guarantee of the rights of the victim to have the medical rehabilitation and social rehabilitation efforts, both within the institution and outside the institution; assurance of safety, whether physical, mental, or social; and ease in getting information about the progress of the case. Has the guarantee been reflected in a diversion in the third case?

As in most cases where the victim does not understand his or her rights and does not know where to report if his rights are violated, in the third case the victim was lucky she is accompanied by an institution concerned with the child's problem. After the victim's parents reported to the police, the social services and those who organized the diversion in order to take action against the village apparatus. Nevertheless, the victims themselves are already exhausted by all these processes and ultimately surrender justice to the Almighty. Is the diversion settlement in the third case reflective of the Restorative Justice for the victims?

It is true that it is difficult to restore justice to the children of victims of moral crimes, whether it is with an adult, especially with a child perpetrator. Breakthrough Diverse in order to achieve Restorative Justice is expected to make a legal breakthrough that can restore the sense of justice for the victim. Although in practice diversion does not fully restore or even restore a sense of justice for the victim, John Braithwaite hypothesizes that:⁴⁶

1. *Restorative justice restores and satisfies victims better than existing criminal justice practices;*
2. *Restorative justice restores and satisfies offenders better than existing criminal justice practices; and*
3. *Restorative justice restores and satisfies communities better than existing criminal justice practices.*

⁴⁶ John Braithwaite, *Restorative Justice, and Responsive Regulation*, (New York: Oxford University Press, 2002), p. 45.

Restorative Justice returns and satisfies victims better than criminal justice because the victims feel the process is not formal, can access information on the process of seeking justice, can participate in the process, treated with respect and fairness, there is a material loss and there is an emotional return in the form of apology.⁴⁷

Restorative Justice restores and satisfies the offender better than the practice of criminal justice, for example in a village in Java there is a boy caught stealing hand; the results of the meeting within the framework of Restorative village officials are giving offenders a bag of rice to villagers should feel embarrassed because there are people who are very poor, until he had to steal.⁴⁸

Restorative Justice returns and satisfies the community better than the practice of criminal courts, for example in the case of sexual abuse of girls committed by teenage boys who completed the masculine culture of cooperation to combat exploitative in Australia.⁴⁹ Given that the problems affecting the individuals in a society, of course, there are also problems in the community, the solution to the problems of individuals in society should also involve the role of the public to examine the values that live in that society. Thus, the ideal solution to the case of individuals in a society can satisfy not only individuals that are problematic but also for society in general.

Retributive Justice Howard Zehr's argued that his understanding begins with an understanding of a crime that is a violation of the state, which is interpreted as a violation of law and error; justice is determined by mistake and regulation of harm between the perpetrators and the state governed by systematic rules.⁵⁰ Restorative Justice sees things differently, that crime is a violation of people and relationships that then create rights; to achieve justice, the need for inclusion of victims, perpetrators, and communities in order to find solutions that provide improvement, reconciliation and peace of mind.⁵¹

Here are some differences between retributive justice and Restorative Justice: First, focus on the retributive justice and lawlessness,⁵² while the Restorative Justice focuses on violation of people and relationships; Second, Retributive justice seeks restoration of the law by determining errors and

⁴⁷ John Braithwaite, *Restorative Justice, and Responsive Regulation*, p. 46.

⁴⁸ John Braithwaite, *Restorative Justice, and Responsive Regulation*, p. 70.

⁴⁹ John Braithwaite, *Restorative Justice, and Responsive Regulation*, p. 68.

⁵⁰ Allison Morris and Gabrielle Maxwell (Ed.), *Restorative Justice for Juvenile*, (Oxford, Portland Oregon, 2001), p. 3.

⁵¹ Allison Morris and Gabrielle Maxwell (Ed.), *Restorative Justice for Juvenile*, p. 3.

⁵² Allison Morris and Gabrielle Maxwell (Ed.), *Restorative Justice for Juvenile*, p. 3.

regulates punishment, whereas Restorative Justice seeks victim recovery by knowing the injuries or losses of the victim and creating obligations for the offender to improve the situation; and Third, Retributive justice involves the state and perpetrators in the formal justice process, whereas Restorative Justice involves victims, perpetrators and communities to find solutions.

In the Criminal Justice System of the Child, Restorative Justice clearly restores and satisfies child offenders better than the practice of criminal justice because the rationale of juvenile justice establishment is that children as a part of the young generation are the assets of the nation, the successor of the nation's struggle and human resources for development national; so as to realize qualified human resources, survival, physical and mental development and protection from various dangers that can integrate their integrity and future, it needs sustainable and integrated coaching efforts.⁵³

Is the Child Criminal Justice System, Restorative Justice restoring and satisfying the victim's child better than the criminal practice? The Criminal Justice System of the Child through Restorative Justice can restore and satisfy the victim's child better than the criminal court practice because the victim is involved in the process of seeking justice. Unfortunately, in practice, victims do not always feel that their justice is restored because the process of diversion by involving the community, perpetrators, police, social agencies and other concerned parties does not always have a victim perspective.

In the absence of a victim-perspective party in the settlement of the case through the diversion, there can be no Restorative Justice that can restore and satisfy the victim's child better than the practice of a criminal court because diversion cannot bridge the gap between the problems faced by the crime victim and the assistance available to the victim. ⁵⁴It is ironic then, when diversified within the framework of Restorative Justice designed to restore justice for victims of crime fails because it is unable to recognize the position and loss suffered by the victim, so that the victims of crime cannot access

⁵³ Romli Atmasasmita, dkk (Ed.), *Peradilan Anak di Indonesia*, (Bandung: Mandar Maju, 1997), p. 5.

⁵⁴ See on William G. Doerner and Steven P. Lab, *Victimology*, (Burlington: Anderson Publishing, 2012), h. 103. *"There is a serious gap between . . . problems faced by crime victims and the help available to them. Unless this gap is bridged, victims may come to realize they stand a good chance of incurring even greater financial losses if they cooperate with the criminal justice system. The anticipated financial loss due to enter into the system may be sufficient to deter such citizen involvement. It is ironic that the system which is designed to protect the constitutional rights of the offender fails even to recognize the victim's position and then turns around and wonders why its citizenry is apathetic."*

justice, not because of the justice-seeking system, but because there is no perspective victim in solving this problem.

However, in solving legal protection efforts against child victims of crime, especially crimes against morality, with child abusers under the Criminal Justice System of the Child who must prioritize the approach of Restorative Justice is a dilemma because each victim and perpetrator is a child. Thus, each of them is entitled to survival, growth, and development; and are entitled to protection from violence and discrimination and should receive protection from the negative impact of the development of rapid development, the globalization in the field of communication and information, the advancement of science and technology, as well as changes in the style and way of life of the majority of parents who have brought social change fundamental in public life which influenced the values and behaviors of the Child.⁵⁵

Conclusion

Legal protection for child victims of crime, especially crime against morality, with child offender according to Child Criminal Justice System which must prioritize Restorative Justice approach is to give guarantee to child victim right to medical rehabilitation and social rehabilitation both inside and outside institution; assurance of safety, whether physical, mental, or social; and ease in obtaining information about case development through diversion. However, in practice, the diversion has not been able to fully provide legal protection to the Victim's Child and return the justice to the Child Victim because the diversion is not done by the parties with the victim perspective, so that the gap between the problems faced by the crime victim and the aid available to the victim cannot be bridged.

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⁵⁵ See General Explanation of Law Number 11 the Year 2012 on Child Criminal Justice System

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