Transformative Justice for Child Victims of Sexual Abuse: Legal Protection and Applications in Restorative Approaches

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Abstract. Sexual violence, causing direct and indirect physical, psychological, and cultural harm, is considered a violation of human rights, especially when committed against children. This requires comprehensive intervention from families, the government, and society. The study theoretically examines transformative justice for child victims of sexual abuse. The research adopts a restorative justice approach, analyzing legal protection for the rights of child victims of sexual violence under various Indonesian regulations and assessing the application of restorative justice models. This study utilizes a normative juridical approach and employs a descriptive-analytical legal research specification. The results indicate that existing legislation, such as Law No. 35/2014 on Child Protection and Law No. 12/2022 on Sexual Violence Crimes, can protect and fulfill the rights of child victims without discrimination. Furthermore, the application of restorative justice in the context of legal protection for the rights of child victims of violence can be seen as a representation of transformative justice through various criminal justice mechanisms. Restorative justice models, such as Family Group Conferencing, Circles of Support and Accountability, Victim-Offender Mediation, Community Conferencing, and Therapeutic Jurisprudence, play a crucial role in shaping effective responses and interventions for child victims of sexual abuse. This involves deepening shared responsibilities, including mediating, appointing community services for offenders, developing empathy groups and victim panels, facilitating dialogue, and fostering the offender’s apology to the victim and society, while increasing awareness among victims.

Keywords: Sexual violence, Human rights violation, Restorative justice, Child protection, Legal analysis

Abstrak. Kekerasan seksual, yang menyebabkan kerugian fisik, psikologis, dan budaya secara langsung maupun tidak langsung, dianggap sebagai pelanggaran hak asasi manusia, terutama saat terjadi terhadap anak-anak. Hal ini memerlukan intervensi komprehensif dari keluarga, pemerintah, dan masyarakat. Studi ini secara teoritis mengkaji keadilan transformatif bagi korban kekerasan seksual anak. Penelitian ini mengadopsi pendekatan keadilan restoratif, menganalisis perlindungan hukum untuk anak-anak korban kekerasan seksual anak di bawah berbagai peraturan Indonesia, dan menilai penerapan model keadilan restoratif. Penelitian ini menggunakan pendekatan yuridis normatif dan menyarankan spesifikasi penelitian buku deskriptif-analitis. Hasilnya menunjukkan bahwa undang-undang yang ada, seperti Undang-Undang Nomor 35/2014 tentang Perlindungan...

Kata kunci: Kekerasan seksual, Pelanggaran hak asasi manusia, Keadilan restoratif, Perlindungan anak, Analisis hukum
1. Introduction

Ensuring the welfare and rights of children is a shared responsibility among parents, the government, society, and court-authorized institutions, as stipulated by the provisions of Law No. 35 of 2014. Positioned as the harbingers of the nation’s aspirations and struggle, children play a pivotal role, necessitating special attention and protection against any form of inhumane treatment that may result in infringements upon their rights. Among the paramount rights demanding safeguarding is protection from violence, a pervasive threat faced by children, carrying potential risks and instilling fears that extend beyond material harm. The consequences encompass not only tangible repercussions but also intangible ones, including emotional and psychological trauma, exerting lasting influences on a child’s future trajectory. The prevalence of various forms of violent crimes against children, spanning physical, psychological, and sexual dimensions. This discourse underscores the significance of the legal framework established by Law No. 35 of 2014 in shaping child protection measures and underscores the indispensable roles played by diverse stakeholders. Furthermore, it accentuates the intricate and multifaceted impact of violence on children, encompassing both tangible and intangible dimensions, thereby contributing to a comprehensive comprehension of this critical issue.

To address instances of sexual violence, a novel approach focused on the recovery of victims is imperative. Sexual violence crimes, often perpetrated against children and encompassing acts such as prostitution, adultery, rape, molestation, and sexual abuse by pedophiles and individuals involved in child prostitution businesses, are prevalent. Global efforts to protect children from crimes are

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3 This innovative strategy has been adopted in various nations, including New Zealand and several Scandinavian countries, under the framework of restorative justice. Countries employing this approach report a success rate of 45%, and notably, satisfaction with conflict resolution through restorative justice is consistently high among both victims and offenders across diverse nations. For example, research conducted in Oregon, USA, indicated that 76% of offenders were content with the outcomes, while 89% of victims accepted the results of the restorative justice process. Chepi Ali Firman Zakaria, Ade Mahmud, and Aji Mulyana, “Legal Protection for Child Victims of Sexual Assault in a Restorative Justice Perspective,” *Jurnal Penelitian Hukum de Juris* 23, no. 1 (2023): 61. For an in-depth discussion of criminal justice for juveniles in Indonesia, see, Marlina, *Peradilan Pidana Anak Di Indonesia Pengembangan Konsep Diversi* (Bandung: Refika Aditama, 2009), 23.
evident in the various regulations established within each country, as observed in the case of Indonesia, which has enacted legislation and ratified international instruments to safeguard children’s rights. Despite these measures, the legal realm lacks concrete steps to actualize the rights of child victims of criminal acts, particularly those subjected to sexual violence, primarily due to the prescriptive and procedural nature of prosecution methods.

However, the implementation of legal protection for child victims of sexual violence through a restorative justice approach in Indonesia has not achieved the same success as in other countries. Numerous victims of sexual crimes continue to experience unfulfilled rights. Despite the alignment of the restorative justice concept with Indonesian culture, its execution encounters diverse challenges. Within the judicial system, child victims are considered supplementary solely for acquiring information for case disclosure. Despite the regulation of their fundamental rights in various national and international laws, these rights persistently go unmet. Recognizing challenges, advocacy for a new paradigm emerges to address sexual crimes against children, emphasizing legal protection for child victims of sexual violence. One pertinent paradigm within the Indonesian system is the restorative justice approach, involving multiple stakeholders in addressing the repercussions of crimes impacting the future. This approach is characterized as a community-driven and achieved justice process. Ensuring the safety of victims takes precedence in the restorative justice process, which is rooted in consensus justice. The primary objectives of restorative justice include compensating victims, securing acknowledgment from offenders, mediating or reconciling victims, offenders, and the community, and reintegrating offenders through peaceful dispute resolution.

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The dispute resolution mechanism based on restorative justice relies on consensus and public norms where the involved parties are urged to compromise to reach an agreement. Each individual is called upon to yield and prioritize community interests over personal interests to maintain collective harmony. The concept of consensus has proven to be more effective in resolving disputes in society amid the failure of the state and the judiciary in dispensing justice. Sexual violence is one form of aggression causing direct and indirect physical and psychological damage, impacting cultural and structural aspects with specific stereotypes attached to the victims. Therefore, sexual violence against children is considered one of the most systematic human rights violations requiring effective intervention from families, the government, and society, through a restorative justice approach. Restorative justice is a process involving various parties to address the consequences of crimes impacting the future. This research aims to achieve two objectives: first, to analyze legal protection for the rights of child victims of sexual violence under various regulations, and second, to analyze the application of the restorative justice approach for child victims of sexual violence.

Drawing from the aforementioned background, the research poses several problem formulations. Firstly, it explores the legal protection afforded to the rights of child victims of sexual violence across diverse regulations. This entails an examination of how existing legal frameworks address the specific needs and rights of children who have fallen victim to sexual crimes. Secondly, the research delves into the application of the restorative justice approach concerning child victims of sexual violence.

14 Joana Carvalho and Pedro Nobre, “Dynamic factors of sexual aggression: The role of affect and impulsiveness,” *Criminal Justice and Behavior* 40, no. 4 (2013): 376. WHO define sexual violence as ‘any sexual act, attempt to obtain a sexual act, or other act directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.’ Previous studies have provided a definition of sexual violence, such as ‘any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic women’s sexuality, using coercion, threats of harm or physical force, by any person regardless of relationship to the victim, in any setting, including but not limited to home and work.’ For more discussion, see Catherine White, “Sexual assault and rape,” *Obstetrics, Gynecology & Reproductive Medicine* 28, no. 9 (2018): 276.
15 In recent times, there has been growing recognition of child sexual exploitation, a subset of child sexual abuse. It involves exploitative situations where individuals under 18 receive something in exchange for performing sexual acts or having others perform on their behalf. This may include various forms of compensation such as food, accommodation, drugs, alcohol, cigarettes, affection, gifts, or money. For in depth discussion see, White, “Sexual assault and rape,” 283.
sexual violence. This involves an analysis of how restorative justice principles and processes are implemented to address the consequences of sexual crimes against children. The study aims to achieve two primary objectives. Firstly, it seeks to comprehend and analyze the legal safeguards in place for the rights of child victims of sexual violence within the context of various regulations. This involves an in-depth exploration of legal mechanisms aimed at ensuring the protection and well-being of children affected by such crimes. Secondly, the research aims to understand and analyze the restorative justice approach concerning child victims of sexual violence. This involves investigating how restorative justice, as a process involving multiple stakeholders, is employed to address the aftermath of sexual crimes and their potential impact on the future well-being of the child victims. This aligns with transformative justice principles by critically examining the legal protection and restorative justice measures for child victims of sexual violence. The focus on diverse regulations and their effectiveness in addressing the specific needs and rights of these children reflects a transformative approach to legal frameworks.

2. Research Method

The research employed is empirical legal research, specifically a juridical-empirical study, aiming to examine and analyze legal protection for children who are victims of sexual violence. This type of research considers law as a reality, encompassing social and cultural realities and others. It is grounded in the analysis of legal norms within legislation and the opinions of legal experts found in various literature and legal books related to child protection. This study is also based on the examination of legal norms within legislation and the opinions of legal experts found in various literature and legal books related to child protection. The approach utilized in this research is also known as a literature review approach, involving the study of books, legislation, and other documents related to the research topic. This research is descriptive, meaning it explains, outlines, and depicts the issues and their problem-solving approaches.

The study seeks to go beyond punitive measures, exploring how existing systems can be transformed to better safeguard the rights and well-being of child victims. Additionally, the investigation into the application of restorative justice for child victims underscores the transformative goal of involving multiple stakeholders in addressing the consequences of sexual crimes. By aiming to understand and analyze both legal safeguards and restorative justice practices, the

research contributes to a more comprehensive and transformative perspective on addressing the impact of sexual violence on child victims.

3. Results

3.1. Legal Protection for Children in International Laws and National Perspectives

Legal protection for children encompasses a broad understanding. Legal protection for children in international laws is a multifaceted framework designed to uphold the rights and well-being of children across the globe. Central to this framework is the United Nations Convention on the Rights of the Child (CRC), a seminal treaty that comprehensively outlines the rights of children in diverse domains. Emphasizing fundamental principles such as the right to life, identity, and nationality, the CRC places a significant focus on shielding children from violence, abuse, and exploitation. The Convention underscores the need for children to be afforded special care and protection, recognizing their vulnerability and dependence.

In addition to the CRC, optional protocols provide supplementary safeguards. The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography addresses exploitative practices, while the Optional Protocol on the Involvement of Children in Armed Conflict seeks to shield children from the ravages of warfare. Furthermore, various International Labour Organization (ILO) conventions contribute to child protection by addressing the worst forms of child labor. For instance, ILO Convention No. 182 underscores the necessity of eradicating child labor and protecting children from exploitation. The Hague Convention on the Civil Aspects of International Child Abduction addresses

transnational challenges, focusing on protecting children from international abduction by a parent and facilitating their prompt return to their country of habitual residence.\textsuperscript{22} This convention exemplifies the international community’s commitment to preventing harm to children in cross-border family disputes. Countries that ratify these international instruments commit to integrating their provisions into national legislation. By doing so, they pledge to ensure that legal systems provide effective protection for children, acknowledging their rights to survival, development, and protection from various forms of exploitation, abuse, and violence.\textsuperscript{23}

The legal protection afforded to children under international laws establishes a global standard aimed at fostering their holistic well-being and safeguarding their rights in diverse contexts. From a national perspective, the state safeguards its citizens, including children, as reflected in the preamble of the 1945 Constitution of the Republic of Indonesia. This commitment is elucidated in Chapter XA on Human Rights, specifically addressing child protection in Article 28B, paragraph (2), which asserts that every child has the right to survival, growth, and development, along with the entitlement to protection from violence and discrimination.

Legal protection is any conscious effort made by individuals or government institutions,\textsuperscript{24} including private entities, with the aim of ensuring security, control, and the fulfillment of well-being in accordance with fundamental rights (Law No. 39 of 1999 concerning Human Rights). Article 1, No. 2 of Law 35/2014 explains that child protection encompasses all activities to guarantee and safeguard children and their rights, enabling them to live, grow, develop, and participate optimally in accordance with human dignity, as well as receiving protection from violence and discrimination. Furthermore, children have the right to protection from involvement in political activities, engagement in armed conflicts, participation in social riots, involvement in events involving violence, participation in warfare, and sexual crimes. These provisions, outlined in Law 35/2014, signify the commitment to ensuring the holistic well-being of children, shielding them from multifaceted risks that may impede their optimal development and participation in societal activities.

Article 59, paragraphs (1) and (2), letter j of Law 35/2014 stipulates that the Government, Regional Government, and other state institutions are obligated and


responsible for providing special protection to children, including those who are victims of sexual crimes. This special protection encompasses efforts like prompt intervention, including physical, psychological, and social treatment and/or rehabilitation, as well as the prevention of diseases and other health disorders; psychosocial support from treatment to recovery; social assistance for children from economically disadvantaged families; and protection and support throughout the legal process.

In addressing the specific protection needs of child victims of sexual crimes, various measures are employed. These include educational initiatives covering reproductive health, religious values, and ethical principles. Social rehabilitation efforts aim to reintegrate victims into society successfully. Additionally, psychosocial support is provided throughout the treatment and recovery phases. Moreover, comprehensive protection and support are extended at every level of examination, from initial investigations and legal proceedings to court hearings. These measures align with the provisions outlined in the Sexual Violence Eradication Law, emphasizing the importance of addressing the unique challenges faced by child victims.

Law No. 12 of 2022 concerning the Eradication of Sexual Violence outlines the rights afforded to victims during the treatment process. These rights encompass access to information about the entire treatment, protection, and recovery procedures. Victims have the right to receive documentation related to the outcomes of their treatment and access legal services. Furthermore, provisions include psychological reinforcement, healthcare services such as medical examinations, procedures, and care, and tailored services and facilities to meet the specific needs of each victim. The law also emphasizes the removal of sexually explicit content in cases of sexual violence involving electronic media, recognizing the potential harm such content may inflict on victims.

In terms of protection, the law establishes a comprehensive framework. This encompasses the provision of information regarding rights and protection.

facilities, ensuring access to details about protection implementation.\textsuperscript{29} Victims are shielded from threats or violence by perpetrators and others, and their identity confidentiality is safeguarded. Further protection extends to shielding victims from degrading attitudes and behaviors exhibited by law enforcement officials.\textsuperscript{30} Additionally, safeguards are in place to prevent job loss, transfers, educational disruptions, or political access limitations for victims. The law also explicitly protects victims and/or reporters from criminal charges or civil lawsuits arising from reported sexual violence crimes, reinforcing the commitment to ensuring the safety and well-being of those affected.

Meanwhile, the rights of victims to recovery encompass medical, mental, and social rehabilitation, social empowerment, restitution and/or compensation, as well as social reintegration.\textsuperscript{31} Victims also have the right to recovery before, during, and after the legal process, including legal assistance, psychological support, and other related provisions. This comprehensive framework is outlined in Article 68, Article 69, and Article 70 of Law No. 12 of 2022 concerning the Eradication of Sexual Violence. To implement integrated services in the handling, protection, and recovery of victims, the central government, coordinated by the minister, and regional governments through the Technical Implementation Unit for the Protection of Women and Children, work together. The unit collaborates with various institutions such as the police, public prosecutor’s office, courts, witness protection agency (Lembaga Perlindungan Saksi dan Korban/LPSK), and others in carrying out its tasks. In the legal context, positive laws related to the protection of child victims of sexual crimes include Law No. 13 of 2006 concerning Witness and Victim Protection. Human rights are considered fundamental rights, bestowed by God, inherent in humans throughout their lives and beyond, and cannot be arbitrarily revoked without clear and lawful provisions.

Furthermore, the justification for the state to provide protection for individual victims and protection for society must be based on social contract arguments and social solidarity arguments.\textsuperscript{32} The rationale for this principle relies on the principles of social contract and social solidarity. Social contract arguments underscore the mutual agreement between citizens and the state, emphasizing the state’s duty to


\textsuperscript{32} Marlina, \textit{Peradilan Pidana Anak}, 20.
safeguard its members. Simultaneously, social solidarity arguments highlight the interconnectedness of society, emphasizing collective responsibility for the well-being of individuals. These principles guide the implementation of comprehensive protection measures, ensuring alignment with the Convention on the Rights of the Child and cultural considerations, fostering a society where both individual victims and the collective are safeguarded through a shared commitment to social welfare.

To achieve these goals, the implementation of protection should not be separated from the fundamental principles of child protection in the Convention on the Rights of the Child and cultural considerations. The implementation of protection should seamlessly integrate with the core principles of child protection delineated in the Convention on the Rights of the Child and cultural considerations. This approach ensures a harmonious balance between universally recognized rights and cultural nuances, fostering a comprehensive safeguarding framework. By honoring the Convention’s fundamental tenets and respecting cultural contexts, the protection measures become culturally sensitive and more effective, promoting the holistic well-being of children.

This integrated approach reflects a commitment to upholding internationally recognized rights while appreciating the unique cultural perspectives that contribute to the nuanced understanding of child protection. More specifically, the implementation of protection must intricately weave together the foundational principles of child protection with cultural considerations. Recognizing and respecting cultural nuances ensures that safeguarding measures are contextually relevant and inclusive. By integrating cultural perspectives into the protective framework, it becomes more responsive and effective, acknowledging the diverse contexts in which children grow and develop. This approach signifies a commitment to bridging international standards, such as those outlined in the

36 The Convention on the Rights of the Child, nearly universally ratified, relies on cultural acceptance for effective implementation. A study in Africa showed that despite children being valued, harmful practices like female genital mutilation persist. The Convention’s principles may conflict with cultural norms, but cultural evolution can overcome detrimental practices through understanding, community engagement, and social support. For more discussion, Kaime, “The Convention on the Rights…,” 238.
Convention on the Rights of the Child, with the rich tapestry of cultural diversity. In doing so, it creates a comprehensive and culturally sensitive foundation for ensuring the well-being of children.

Addressing the matter of children is no small concern; instead, children embody the forthcoming generation of the nation and the state. Supporting services for children who are victims of crimes involves a commitment to fostering equitable treatment and enhancing their overall well-being. This commitment is facilitated by welfare laws that aid in implementing services for child victims of crimes, along with the available resources for delivering such services. Thus, it becomes the duty of preceding generations to ensure, nurture, and safeguard the interests of children, a responsibility ideally shouldered by those responsible for their upbringing—the family. Examined through the lens of legal protection perspective, safeguarding children involves creating circumstances and conditions that enable the humane realization of their rights and responsibilities. The conceptual framework of legal protection generally refers to a perspective within legal studies that emphasizes the establishment of legal mechanisms and structures to safeguard the rights and interests of individuals or groups. Legal protection for children would involve the development and implementation of laws and regulations specifically aimed at ensuring the protection, well-being, and rights of children. This may include legal provisions for child victims of crimes, welfare laws, and other legal instruments designed to create a supportive and humane environment for the realization of children’s rights and responsibilities. In essence, this legal protection underscores the importance of using legal frameworks to establish conditions that enable the fair and just treatment of individuals, particularly vulnerable groups like children. It recognizes the role of legal mechanisms in shaping societal attitudes, behaviors, and institutions to ensure the proper care and protection of those who may be more susceptible to harm or exploitation. Consequently, the imperative is not merely to address the issues concerning children, but to actively cultivate an environment where their rights are

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respected, their well-being is prioritized, and their development is safeguarded for the benefit of the nation and society.

The implementation of legal protection for child victims has shown some shortcomings, as acknowledged by the law. While it has not reached its optimal state, certain aspects of legal safeguarding have been provided for child victims under Law No. 35 of 2014, as specified in Article 64 paragraph (3). These provisions encompass rehabilitation both within and outside institutions, measures to shield and manage identity through mass media to prevent labeling, the assurance of safety for victim and expert witnesses across physical, mental, and social dimensions, and accessibility to information regarding case progress. However, despite these legal protections, there is room for improvement, and the effectiveness of their implementation requires ongoing scrutiny. Addressing the existing gaps and continually refining legal mechanisms will contribute to a more robust framework for protecting the rights and well-being of child victims in line with the evolving landscape of societal and legal considerations.

3.2. Restorative Justice Approach for Child Victims of Sexual Violence

Marshall defines restorative Justice as a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future. Kirkwood argue that restorative justice centers on a process involving individuals directly impacted by an offense, including the offender, direct victims, and others indirectly affected. This extends to family, community members, or those closely connected, emphasizing a comprehensive approach to address the consequences of the offense and involve all relevant stakeholders. The restorative justice approach is believed to be a representation of various mechanisms within the criminal justice system that address actual criminal cases, or it can be considered a paradigm that serves as a framework for a criminal

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44 Rena Yulia, Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan (Bandung: Graha Ilmu, 2020) 17.
46 Restorative justice is a unique approach to addressing moral harm, guided by core values such as voluntariness, safety, inclusion, dignity, respect, responsibility, accountability, truth-telling, and honesty. It provides a platform for individuals affected by crime to openly discuss its nature, consequences, and potential resolutions. The framework differentiates between dialogue and deliberation, emphasizes the role of restorative justice in facilitating reparation, rehabilitation, desistance, and recovery, and underscores the significance of context in its application and broader practice frameworks. For more discussion, see, Steve Kirkwood, “A practice framework for restorative justice,” Agression and Violent Behavior 63, (2022): 101688.
case handling strategy aimed at addressing dissatisfaction with the current criminal justice system.  

The United Nations considers the restorative justice approach as a reasonable option for use in the criminal justice system. This aligns with the perspective of Hoefnagels, who states that criminal policy should be a rational response to crime. The restorative justice approach is a paradigm that can be utilized to develop criminal case handling strategies to address dissatisfaction with the functioning of the existing criminal justice system. The idea is to respond to the evolution of the criminal justice system by focusing on the needs of the community and victims marginalized by the mechanisms of the criminal justice system.

The definition of restorative justice encompasses key elements. Firstly, it views crime primarily as interpersonal conflict causing harm to the victim, society, and

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48 The primary conclusions of the United Nations basic principles on the utilization of restorative justice were derived from a resolution put forth by Canada and Italy during the Ninth Session of the Commission on Crime Prevention and Criminal Justice in April 2000. This resolution addressed a prior appeal to contemplate standards or guidelines concerning restorative justice and mediation, alluding to discussions held during the Tenth UN Crime Congress. The enclosed basic principles were termed “preliminary draft elements of a declaration of basic principles” to stimulate substantive input. The resolution encouraged the Secretary-General to disseminate the annex to Member States, resulting in comments from over 30 countries. Following this, the resolution called for the organization of an expert meeting to assess Member States’ comments and discuss potential UN measures on restorative justice, including the potential adoption of a declaration of basic principles. The resolution received sponsorship from 38 countries, achieving unanimous approval by the Commission and subsequent adoption by ECOSOC in July 2000. Member States were invited to express their opinions on the creation of an international instrument on restorative justice, and over 30 countries responded with comments by early April. Consequently, Canada offered to host an expert meeting in October 2001, intending to identify experts in law and criminal justice to review country comments and formulate recommendations for further UN action on restorative justice. The outcomes of the expert meeting were anticipated to be presented at the Eleventh Session of the Commission in early 2002. As the implementation, restorative justice processes should be subject to ongoing and tangible changes. Member States are urged to promote consistent and thorough evaluation and adjustment of such programs based on the provided definitions. The definitions encompass broad interpretations of restorative processes and outcomes, with specific programs cited as examples, implying the anticipation of emerging variations. This principle recognizes the continuous evolution of restorative justice programs and establishes the requirement for new programs claiming restorative attributes to undergo evaluation and modification as necessary. This ensures a higher likelihood of achieving the objectives of restorative processes and outcomes. The necessity for evaluation becomes particularly crucial as criminal justice officials engage in restorative justice programs and integrate them into criminal justice systems. Failing to conduct regular and rigorous evaluations may result in the loss of the distinctive nature of these programs, transforming them into mere trends in the history of criminal justice reform.

the perpetrator. Secondly, the criminal justice process should aim to reconcile society by harmonizing involved parties and healing the wounds resulting from the conflict. Thirdly, it should encourage the active involvement of the victim, perpetrator, and their community in seeking dispute resolution. While acknowledging the importance of addressing the perpetrator, restorative justice uniquely places a ‘core value’ on focusing on the victim, distinguishing it from previous theories. Alongside involving the victim, community, and perpetrator, it is vital to highlight the participation of trained professionals with specific expertise in adolescent behavior in the restorative justice process. Their responsibilities include mediating, referring the perpetrator to community services, creating empathy groups and victim panels, organizing panels for communication with the perpetrator, and facilitating the apology process from the perpetrator to the victim and the community, including raising awareness among victims.

This is conceptually included in transformative justice perspective. Gready & Robins defined transformative justice as ‘transformative change that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion at both the local and the global level.’ Transformative justice involves redirecting attention from legal aspects to social and political dimensions, shifting the focus from state and institutions to communities and daily issues. It arises not from top-down imposition of external legal frameworks but from a grassroots comprehension of populations’ lives and needs. The tools for transformation extend beyond the confines of courts and truth commissions of transitional justice, encompassing various policies and approaches. These tools aim to influence the social, political, and economic status of a diverse range of stakeholders. In essence, transformative justice emphasizes community-centric, bottom-up approaches to address societal challenges, promoting inclusivity and equality.

Furthermore, the concept of restorative justice in transformative justice is an approach to keep children away from unnecessary criminal justice systems. This approach prioritizes resolving crimes outside the criminal justice system and is applicable to both adults and children involved in minor offenses. In some developed countries, even corporate offenses can be settled through restorative


justice approaches. Restorative justice is a way of responding to criminal behavior by balancing the needs of society with those of the victim and perpetrator. It is a continually evolving concept interpreted differently across countries. Victims are still not treated well in court. Throughout the criminal process, law enforcement officials (police, prosecutors, judges) still treat victims of sexual violence as objects rather than individuals whose legal rights should be heard and respected. Often, they cause revictimization, blaming victims and failing to provide the necessary protection. Handling incidents of violence against children needs to be holistic and integrated. All aspects must be improved and addressed: medical aspects, internal personal evaluation, legal aspects, social support, economic support, political measures, and advocacy. The presence of restorative justice in the criminal justice system aims to bring offenders or their parents closer to the victim and hold the perpetrator accountable for their actions.

The successful implementation of diversion in New Zealand serves as a noteworthy example of how law enforcement functions can address juvenile issues. In New Zealand, the history of diversion begins with the success of the family group conferencing model, involving negotiations between the victim and the offender for resolution. These meetings aim to reach agreements to conclude the case. However, their implementation often falls short due to various underlying factors. One approach to achieving restorative justice is by applying effective diversions that can be further developed through various models.

In general, the findings emphasize that the restorative justice approach is a paradigm that can be used to develop strategies for handling criminal cases, addressing dissatisfaction with the functioning of the existing criminal justice system. The idea is to respond to the evolution of the criminal justice system by focusing on the needs of the community and victims marginalized by the mechanisms of the criminal justice system through a restorative justice approach.

This approach involves responding to criminal behavior by balancing the needs of the community with those of victims and offenders. Legal protection for child victims of sexual crimes, according to positive law, must be based on Pancasila and the 1945 Constitution, providing legal protection to its citizens. Therefore, this legal protection will give rise to the recognition and protection of human rights in their form as individual and social beings, within the framework of a unified state that upholds the spirit of kinship for the achievement of societal well-being.

Restorative justice, centered on consensus-based justice, prioritizes victim safety. It aims to compensate victims, elicit perpetrator confessions, mediate conflicts among victims, offenders, and communities, and reintegrate offenders through peaceful dispute resolution. This approach relies on consensus deliberation, requiring parties to compromise for agreement, prioritizing community interests over personal ones. Deliberation, proving more effective amid the state and courts’ justice system shortcomings, emphasizes mutual harmony. Involving victims, communities, and offenders, restorative justice also emphasizes trained professionals with expertise in juvenile behavior. Their roles include mediating, coordinating services, forming empathy groups, organizing victim panels, facilitating offender apologies, and raising victim awareness. Child victims frequently face inadequate treatment in court. Throughout criminal proceedings, law enforcement officials often regard victims of sexual violence merely as objects, neglecting their legal rights. Victims become second-time victims through revictimization, often blamed and lacking necessary protection.

Addressing child violence demands a comprehensive and integrated approach, encompassing improvements in medical, personal, legal, social, economic, and political aspects, along with advocacy measures. The rights of child victims of sexual crimes, as outlined in international instruments and the Indonesian legal system, demand protection and prioritization. Principles ensure protection from discrimination and emphasize the child’s best interests in decisions. Children possess the right to participate in decisions about themselves, applicable in law enforcement and service delivery. The restorative justice approach focuses on recovery and reconciliation rather than mere punishment. It attends to victims’ needs for value and involvement, enabling sincere apologies from perpetrators. While beneficial, the approach requires cautious use, respecting victims’ rights, and

ensuring access to adequate services and a fair system without imposing undue pressure.62

Overall, restorative justice in child victims of sexual crimes involves an approach that seeks to address the harm caused by such offenses by focusing on healing, reconciliation, and the well-being of the victim, offender, and the community.63 The conventional criminal justice system often falls short in adequately addressing the complex needs of child victims of sexual crimes. Restorative justice, however, aims to provide a more holistic and victim-centered response.64 In this context, restorative justice processes may include family group conferencing, victim-offender dialogues, or other facilitated discussions involving the victim, offender, and relevant community members.65 The emphasis is on creating a supportive environment where the victim can express their feelings, ask questions, and actively participate in decisions related to the resolution of the case. The goal is not only to hold the offender accountable but also to facilitate the victim's healing process and address the broader impact on the community. Furthermore, the restorative justice approach acknowledges the importance of trained professionals with expertise in adolescent behavior in facilitating these processes.66 Their responsibilities may include mediating discussions, coordinating community services for the offender, developing empathy groups and victim panels, arranging opportunities for the offender to apologize to the victim and the community, and raising awareness among victims. By adopting restorative justice principles, the legal system seeks to bring the offender closer to the victim, encouraging accountability and understanding.67 This approach recognizes that child victims of sexual crimes require comprehensive and integrated interventions, covering medical, psychological, legal, social support, economic assistance, and advocacy measures. The presence of restorative justice in the criminal justice system underscores a commitment to balancing the needs of both individual

67 Pete Wallis, Understanding restorative justice: How empathy can close the gap created by crime (Bristol: Policy Press, 2014), 40.
victims and the collective well-being of society through a collaborative and empathetic approach.\textsuperscript{68}

In this regard, restorative justice models in the context of child sexual abuse aim to address the profound challenges inherent in such sensitive cases. One notable model is Family Group Conferencing (FGC), which brings together the victim, offender, their families, and support networks.\textsuperscript{69} In cases of child sexual abuse, FGC provides a structured platform for open communication, emotional expression, and collaborative decision-making.\textsuperscript{70} A skilled facilitator guides the dialogue, emphasizing the child’s well-being and ensuring a careful balance between accountability and rehabilitation. This model allows stakeholders to collectively determine the best course of action to address the harm caused while promoting healing and understanding. Another model is Circles of Support and Accountability (COSA), offering an alternative approach that involves the formation of a supportive community circle around the offender.\textsuperscript{71} In the context of juvenile offenders in sexual abuse cases, COSA can be adapted to provide a framework for supervision, rehabilitation, and community reintegration. This model acknowledges the importance of preventing reoffending while emphasizing the need for ongoing support and accountability for the offender.\textsuperscript{72} It seeks to strike a balance between community safety and the rehabilitation of the individual involved in the restorative justice process.

Furthermore, Victim-Offender Mediation (VOM) is another model that facilitates a mediated dialogue between the victim and offender, aiming to empower victims, promote offender accountability, and explore avenues for restitution.\textsuperscript{73} While challenging in cases of child sexual abuse due to inherent power dynamics, VOM can be cautiously adapted to prioritize the victim’s well-being, comfort, and safety. The model may involve trained professionals to ensure sensitivity and appropriateness, placing paramount importance on the child’s needs throughout the process. These restorative justice models underscore the internal references:


\textsuperscript{70} Darrell Fox, Family group conferencing with children and young people: Advocacy approaches, variations and impacts (Cham: Palgrave Macmillan, 2018), 112.


\textsuperscript{73} Umbreit, Victim meets offender, 23.
complexity of addressing child sexual abuse within a framework that balances justice, rehabilitation, and the protection of victims.

Another model, Community Conferencing, is a restorative justice approach that broadens the restorative process to involve a wider community group. In the context of child sexual abuse, this approach aims to address the harm caused to the victim, hold the offender accountable, and facilitate the offender’s reintegration into the community. Adaptations for child sexual abuse cases are crucial, requiring the careful selection and training of community members to ensure sensitivity and prioritize the unique needs of the child. The community conferencing model aims to foster a comprehensive understanding within the community while working towards healing and accountability in cases of child sexual abuse.

Lastly, Therapeutic Jurisprudence integrates therapeutic elements into legal processes, emphasizing the psychological well-being of both victims and offenders. In the context of child sexual abuse cases, this model involves incorporating mental health professionals into legal proceedings. This ensures that legal processes prioritize the emotional and psychological needs of the child, recognizing the profound impact of such abuse. By combining legal and therapeutic perspectives, therapeutic jurisprudence aims to create a more holistic approach to addressing child sexual abuse within the legal system, promoting the well-being of victims while holding offenders accountable.

4. Conclusion

This examination delves into the realm of legal protection for child victims of sexual crimes, emphasizing the critical need for safeguarding their rights and well-being. Drawing upon international instruments and the Indonesian legal system, the study identifies fundamental principles dictating the protection and prioritization of child victims, manifesting in the imperative recognition of their rights and active involvement in decision-making processes. The main findings

76 Michael S. King, “Restorative justice…,” 1099.
underscore the multifaceted nature of legal protection, encompassing not only punitive measures but also restorative justice approaches. It is evident that child victims encounter challenges within the legal system, facing potential revictimization. The study advocates for a holistic and integrated response, addressing medical, psychological, legal, and social aspects to ensure comprehensive protection. This aligns with transformative justice by emphasizing the necessity of legal protection for child victims of sexual crimes within a broader framework that transcends punitive measures. The focus on safeguarding the rights and well-being of child victims, guided by international instruments and legal principles, reflects a transformative shift from a solely punitive approach to one that incorporates restorative justice elements. The study recognizes the multifaceted nature of legal protection, advocating for a holistic response that addresses not only punitive measures but also medical, psychological, and social aspects. This approach aligns with transformative justice’s goal of redefining legal processes to prioritize the rights, well-being, and active involvement of victims, ensuring a more comprehensive and transformative response within the legal system.

The study contributes theoretically by emphasizing the centrality of child victims’ rights within legal frameworks. The application of restorative justice, with its focus on recovery and reconciliation, adds a nuanced dimension to traditional legal paradigms. The theoretical underpinning reinforces the need for a child-centric approach, acknowledging their active role in legal processes. Practically, the study underscores the importance of aligning legal practices with international principles, prioritizing the best interests of the child. The implementation of restorative justice, while beneficial, demands careful consideration, expert guidance, and respect for victims’ choices. There is a call for a comprehensive, integrated approach involving various stakeholders to create a safer, child-friendly environment.

Several restorative justice models tailored to child sexual abuse aim to address the complexities of these cases. Notable examples include Family Group Conferencing (FGC), where victims, offenders, and their support networks collaborate guided by a facilitator to address harm, especially beneficial for open communication and decision-making focused on the child’s well-being. Another model is Circles of Support and Accountability (COSA), involving community volunteers supporting an offender’s reintegration, adaptable for juvenile sexual offenders with an emphasis on rehabilitation and preventing reoffending. Victim-Offender Mediation (VOM) facilitates a dialogue between victims and offenders, challenging in child sexual abuse cases but adaptable with extreme care to prioritize victims’ well-being and safety. Both Community Conferencing and Therapeutic Jurisprudence extend the restorative process to a wider community group, with adaptations ensuring sensitivity and prioritizing the child’s needs in child sexual
abuse cases. It is crucial to approach these models cautiously, involving trained professionals and considering the unique dynamics of each case to ensure the safety, well-being, and consent of the child victim at every stage.
References


