

# Restorative Justice As A Protection Model For Juveniles Against The Law

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**Abstract-**The settlement of criminal cases involving juveniles'against the law (ABH) through the implementation of diversion is carried out using a restorative justice approach, requiring the consent of the victim and/or the victim's child and the child's willingness. Thus, it is understood that the settlement of the ABH case cannot always be diversified. The problem in this study, regarding the implementation of restorative justice in Act Number 11 of 2012 concerning the Juvenile Criminal Justice System, regarding the concept of restorative justice as an effort to provide protection for juveniles'against the law, also the obstacles and solutions in the implementation of restorative justice. This research is a normative juridical research supported by empirical research, by conducting research in law enforcement agencies/institutes in the Medan District Court's jurisdiction, then the implementation of restorative justice in Medan District Jurisdiction area. This research is a descriptive analysis, using primary and secondary sources. Analysis of the data used in this research is qualitative data analysis. The concept of restorative justice in the Juvenile Criminal Justice System (SPPA) Law, is implemented through the application of diversification at every level of the juvenile criminal justice process. Diversion is a distraction settlement of cases of children dealing with the law from the formal process (the judicial process) to the informal process, by means of deliberation and consensus which prioritizes restorative justice. Restorative justice will provide protection for ABH, because through the implementation of diversion, the children will be kept away from the formal justice process which is possible to neglect children's rights and cause trauma to the children. The obstacle in implementing restorative justice in the jurisdiction of the Medan District Court is the lack of human resources for law enforcement officials. Supporting facilities and infrastructures are still very minimum. And there is still a lack of socialization to the society.

**Keywords:** Restorative, Protection, Juveniles against the Law.

## Introduction

Comprehensive efforts in providing protection for juveniles'against the law, the government has also issued and legalized Act Number 23 of 2002 concerning Juvenile Protection in conjunction with Act Number 1 of 2016 concerning Second Amendment to Act Number 23 of 2002 concerning Juvenile Protection. Furthermore, in settlement of cases of juveniles against the law, Act Number 3 of 1997 Concerning the Juvenile Court was also issued, which was later replaced by the issuance of Act Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law).

The SPPA Law provides more legal protection to juveniles'against the law, because it formulates several law provisions that were not previously regulated in the Juvenile Court Act. This law is a legal instrument, in the implementation of juveniles'criminal justice.

Understanding to distance the children away from criminal justice processes is important, because this is part of efforts to protect children's rights in accordance with the Convention of Child's Rights which provides an opportunity for a case transfer process (diversion) by the Police and Public Prosecutors as well as other authorized officials.[1] In the SPPA law, the process of examining cases towards the juveniles is no longer based on *ordeel de onderscheid*, but is more concerned with education issues that need to be given to perpetrators of criminal acts, accompanied by the establishment of a number of criminal actions that are more appropriate for children as the perpetrators.[2]

The SPPA Law stipulates that in every level of the juvenile criminal justice process, which starts from the investigation, prosecution, and examination in advance of the juvenile justice trial must be carried out a diversion.[3] Diversion is the transfer of settlement of juvenile cases from criminal justice processes to processes outside of criminal justice.[4] Thus, Diversion also means an effort to divert children from the judicial process to the non-judicial process. Provisions regarding diversion regulated in the Acts were Criminal Justice System are the alteration in the juvenile justice system.

The formal legal process is the last way to handle juveniles' against the law.[5] In handling juveniles against the law, the implementation of the concept of *restorative justice* is a concept that is applied in the settlement of juveniles' cases, by involving all parties, including the perpetrators themselves.[6]

Law enforcement officials, especially the Police of Republic of Indonesia are not immediately bringing the cases committed by juveniles for investigation, but the settlement of these problems firstly prioritizing the principle of *partnership* and *problem solving*. In principle, the SPPA Law has prioritized the *restorative justice* approach through the application of diversion as an effort to resolve criminal acts committed by juveniles who are in the conflict with the law.

Diversion is carried out by holding a deliberation to reach an agreement between the victim and her parents / guardians and the perpetrators or parents/guardians, social counsellors, and social workers based on *restorative justice*. [7] Diversion in the process of handling cases involving juveniles is done through a *restorative justice* approach. Settlement of cases of juveniles against the law through the implementation of diversion is carried out using a restorative justice approach, requiring the consent of the victim and/or the victim's family and the child's willingness. [8] Thus, it is understood that the settlement of cases by juveniles' against the law cannot always be diversified.

The application of *restorative justice* and diversion process as an effort to resolve criminal acts committed by juveniles, although juridical formal the Juvenile Criminal Law has been regulated, but at the level of practice requires preparation of all law enforcement officials, public understanding, also facilities and infrastructures as supporting factors which cannot be excluded in supporting the enactment of the law. When these supporting factors are inadequate, new problems will arise which will then become obstacles in the implementation of *restorative justice* to settle the cases of juveniles against the law.

In accordance with the brief background above, in this study several problems are formulated as the object of study discussion, namely:

1. What is the regulation and implementation of *restorative justice* in Act Number 11 of 2012 Concerning the Criminal Justice System for Children?
2. Has the implementation of *restorative justice* provided protection towards Juveniles against the Law?
3. What are the obstacles in the implementation of *restorative justice* and its solutions in Jurisdiction of the Medan District Court?

## **Research Methodology**

Judging from its type, this research is an empirical research supported by normative legal research or better known as fieldwork research which is perfected by library law.

Normative or doctrinal legal research supplemented or supported by empirical (sociological) research. Normative legal research is research conducted by examining literature materials (secondary data) or literature legal research. Meanwhile, empirical research is research obtained directly from society or researching primary data. [9] This study uses the *statute approach* and the *case approach* so that the research was not limited to the study of law (normative) alone, but more than that: how the law is supposed to be implemented.

The types of data used in this study are primary data and secondary data. Primary data is the data which obtained directly from the results of fieldwork through interviews with several respondents. While secondary data is the data which obtained from legal materials, in the form of primary legal materials, secondary legal materials and tertiary legal materials. Analysis of the data used in research is qualitative data analysis, by describing the discussion of research through a series of effective and transparent sentences

## **Research Results**

The emergence of the idea of *restorative justice* as a criticism of the implementation of the criminal justice system with imprisonment is considered ineffective to resolve social conflicts. The reasons are all parties involved in the conflict were not involved in conflict resolution. Victims remain victims, imprisoned perpetrators also raise new problems for families and so on. [10]

The ineffectiveness of the implementation of criminal imprisonment in effort to prevent someone from committing a crime has been expressed by Beccaria, who stated: "*The purpose of punishment is to deter persons from the commission of crime and not providing social revenge*" which can be interpreted that the purpose of punishment is to prevent someone committed a crime, it does not mean to be social revenge. [11]

Furthermore, Beccaria stated that violent crimes did not bring benefits to public security and orderliness. Crime prevention efforts according to Beccaria is better done with *preventive* efforts rather than convicting. [11]

The problem that often arises is that the value of justice is not fulfilled, especially the sense of justice that lives in society. Judges do not solemnly explore the values that live in the society (*the living law*) as

mandated by the Judicial Authority Act with reasons related to formal law rules that are actually rigid, which often deviates from the sense of justice in the society.

This is where law enforcement has experienced its formal legality impasse to present substantive justice. The thing that needs to be done in order to break through the formal legality impasse, is by conducting a *non of enforcement of law* which is the policy of not enforcing the law. The *restorative justice* approach is the answer to the impasse experienced by the criminal justice system in presenting the substance of justice in solving criminal law problems that occur in society, especially to answer the issue of law protection for juveniles' against the law.

The *restorative justice* model departs from the assumptions that opinion or reaction towards a child's delinquency behaviour is ineffective without the cooperation and involvement of victims, perpetrators and the society. The underlying principle is that justice is best served if each party receives fair and balanced attention, and actively involved in the judicial process.[12]

The *restorative justice* model is more about efforts to restore the relationship between the perpetrator and the victim, for example, someone steals a book, so the justice process is how and what steps to resolve the problem so that the good relationship between the person and the professor goes on as before without harming anyone. Meanwhile *retributive justice*, the society is not involved because they have been represented by lawyers, while in *restorative justice* the society is involved through community leaders who have authority in the environment, for example religious figures, influential people, and so on.[11]

*Restorative justice* is naturally suitable with the basic values of Pancasila. But as the implementation of *restorative justice* is a new thing, especially in the criminal law system. *Restorative Justice* began to be acknowledged and applied in the Indonesian law system after the issuance of Act Number 11 of 2012 concerning the Juvenile Justice System, which regulates the settlement of cases by juveniles' against the law through a *restorative justice* approach.

Historically, *restorative justice* has been inspired by "*community justice*" which is still used in some cultures of non-Western societies, especially *indigenous populations*. In its development, *restorative justice* is much influenced by thoughts about equality and public relations. Although the ideas of *restorative justice* do not come from the culture of Indonesian people, but the patterns of *restorative justice* are embedded in several traditions of indigenous peoples in Indonesia.[13]

The renewal of the juvenile justice law is done by applying a new concept in handling cases of juveniles' against the law, by transferring the juvenile criminal justice process from formal trial to informal trial (diversion). Diversion in handling juveniles' against the law is carried out through a *restorative justice* approach, in accordance with Article 5 paragraph (1) of the SPPA Law, which states: "The Juveniles Criminal Justice System must prioritize the "*restorative justice*" approach.

Settlement of cases of juveniles against the law using a restorative justice approach is carried out by means of implementing diversion. Implementation of diversion according to the SPPA Law, has several objectives, such as:

1. Achieving peace between victims and the juveniles;
2. Settling cases of children outside the judicial process;
3. Avoiding juveniles from deprivation of freedom;
4. Encourage society to participate; and
5. Instil a sense of responsibility to the child.[14]

Considering the purpose of implementing the diversion above, it can be understood that the diversion is a distraction process of solving law issues that are being faced by juveniles from the formal trial process to the informal trial process.

The law basis for implementing diversion in the settlement of cases of juveniles against the law by investigators refers to the provisions of Article 7 paragraph (1) and (2) of the Juveniles Criminal Law System, which states that at the level of investigation, prosecution and interrogation of juvenile's case in court, must be pursued diversion. The diversion is carried out on criminal offences that are punishable by imprisonment for under seven years and does not constitute a repetition of the crime.

Diversion is a concept to divert a case from formal to informal processes. The litigation is intended to provide protection for juveniles against the law.[6] Diversion is a renewal in criminal laws in order to provide protection for the juveniles in accordance with the mandate of the Juvenile Protection Act. The Juvenile Protection Act provides several principles for the protection of juvenile, including:[15]

1. Non-discrimination;
2. The best interests of the child;
3. The right to life, survival and development;
4. Respect for The Views of the Child

The provisions of Article 8 paragraph (1) of the SPPA Law, states that in the implementation of Diversion is carried out by holding deliberations to reach an agreement between the victim and parents/guardians with juvenile/offenders or parents / guardians, Bapas, and social workers based on the approach of restorative justice. The provisions of this article emphasize that the settlement of cases of juveniles' against the law using a restorative justice approach is carried out based on the implementation of diversion.

Diversion is the shifting of the settlement of a juvenile's case from a criminal justice process to a process outside of criminal justice.[16] Conceptually, Diversion is a mechanism that enables the process of resolving cases of juveniles' against the law to be transferred from the judicial process to the social service process. Thus, diversion is the shifting of the settlement of juveniles' cases suspected of committing a criminal offence from a formal criminal process to an informal settlement through a mediation between the offender and the victim.

In addition, diversion is being regulated in Act Number 11 of 2012 Concerning the Juvenile Criminal Justice System, is also regulated and found in Article 1 of the Supreme Court Regulation Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System. The implementation of diversion in the juvenile justice process is mandatory (*imperative*). The obligation for law enforcement officials to implement diversion in the juvenile justice process is regulated and explicitly stated in Article 7 paragraph (1), which states that at the level of investigation, prosecution and interrogation of juveniles' cases in courts it's a "mandatory" to provide diversion.

Realizing the principles of juvenile protection, then in the settlement of juvenile's cases against the law we must always pay attention to the best interests of juveniles. According to Wagati Soedtejo, the best interest of the juvenile is in all actions involving juveniles taken by the government, societies, the legislative, and the judiciary, should be in the best interests of the juvenile and shall be taken into consideration.[2]

The basic principles of implementing diversion in the juvenile justice system are[17]:

1. Diversion is done to avoid the negative effects of formal justice and repetition of criminal offences.
2. There must be an agreement/reconciliation between the perpetrators, victims and the society.
3. Parents and juveniles agree will accept the diversion program, and show a sense of responsibility.
4. Crimes committed are not serious crimes or certain violent crimes.
5. Diversion programs will be in the form of warnings, fines/compensation, training skills, coaching by parents, and counselling.

The implementation of *restorative justice* in the settlement of cases of juveniles' against the law, according to statement submitted by the Assistant Investigator at the Women's and Juvenile's Services Unit (PPA) at Medan District Police Station, explains that:

"The implementation of restorative justice is based on the provisions of Article 1 paragraph (7) in conjunction with Article 7 paragraph (1) of the SPPA Law, where the settlement of juvenile's cases can be resolved outside the court through the application of diversion. Implementation of diversion in juvenile's case can be carried out for criminal cases that are punishable for under 7 (seven) years. Diversion aims to improve juvenile's behaviour and avoid children from punishment, because juvenile punishment does not guarantee the child will be better after finishing the sentence." [18]

At level of investigation and interrogation, the *restorative justice* approach can be used based on *discretionary powers*. Discretionary power is one of the facilities provided for officials or state administrative institutions to be able to act without having to be fully bound by the law.

In accordance with Article 5 paragraph (1) of the SPPA Law, Investigators in Women and Juvenile's Service Unit at Medan District Police Station have the responsibility to forward the settlement from the formal justice process to the informal justice process as far as possible. Regarding to these responsibilities, in resolving juvenile's cases against the law, Investigators in Women and Juvenile's Service Unit at Medan District Police Station carry out some following steps:[19]

1. Investigators in Women and Juvenile's Service Unit at Medan District Police Station reunite the perpetrators and victims or the victim's family;
2. Investigators in Women and Juvenile's Service Unit at Medan District Police Station provide leniency (time period) for the perpetrators and victims to hold a discussion.
3. Investigators in Women and Juvenile's Service Unit at Medan District Police Station will grant or not grant conciliation between the perpetrators and victims, and will continue to see consideration of the concerns or benefits for the society and the real conditions between the perpetrators and victims;
4. Investigators in Women and Juvenile's Service Unit at Medan District Police Station will stop or discontinue the transfer of juvenile's cases prosecution, if there are circumstances such as: the complaint is revoked, the victim has been given restitution, because there is advice from public figures, there is direction from the public figures so the case is halted.

In accordance with the provisions of Article 7 paragraph (2) of the Juvenile Criminal Justice System Law, the conditions in the implementation of diversion, both at level of investigation, prosecution and examination in court must consider the following matters[20]:

1. Criminal category

Judging from the criminal sanctions, criminal acts committed by juveniles threatened with punishment under 7 years must be diverted. Meanwhile for the category of criminal offenses threatened with imprisonment above 7 (seven) and constituting repetition of criminal acts, it is not mandatory to be diverted with a *restorative justice* approach. Marlina stated that criminal offenses committed by juveniles which can be resolved through a restorative justice approach are:[6]

- a. The case is not a case of child delinquency which sacrifices the concerns of many people and is not a violation of road traffic;
- b. The delinquency of the juvenile does not result in loss of human life, serious injury or life disability;
- c. The juvenile's misbehaviour is not a crime against serious decency which concerns honour.

2. Juvenile's age

Judging from the age limit of children stipulated in the SPPA Law, the consideration of the age of the offender is very urgent. The SPPA Law has determined the age limit in demanding criminal responsibility for children, which has reached or is 12 (twelve) years old, but has not reached 18 (eighteen) years or more. Based on these provisions, no child who is under 12 years old can be held responsible for criminal offences. Thus, the younger the perpetrators, the more likely *restorative justice* to be implemented.

3. Willingness (consent) of the victim and the support of the victim's family for the diversion.

Settlement of juvenile's cases as perpetrators of crime using *restorative justice* requires the involvement of victims and or their families. Law enforcement officers on each level of the judicial process who will conduct diversion need to hear and consider the opinions or desires of victims. In other words, parents/guardians and family support is needed to be actively involved in the settlement of the case. However, in the case of a crime committed by juvenile in the form of a violation, a minor crime, a crime without a victim, or the value of the victim's loss is not more than the value of the local provincial minimum wage, the diversion agreement can be carried out cooperatively between the perpetrator and/ or his family with the victim and/or her family. In the case of diversion carried out at the level of investigation, the agreement was made by the Investigator on the recommendation of the Society Guidance. Opportunities created by investigators can take the form of:

- a) Recovery of losses in regards of a victim;
- b) Medical and psychosocial rehabilitation;
- c) Recovery back to parents/guardians;
- d) Participation in education or training in educational institutions or LPKS at least 3 (three) months;

or

- e) Community service for a maximum of 3 (three) months.[21]

4. Confession and regret of the perpetrator

Settlement with *restorative justice* approach will be effective if the juvenile confesses and regrets his actions. Confession and regret of a juvenile for an act should not be imposed with threats or inducements for rewards (will be resolved using a restorative justice approach). Settlement through the restorative justice approach cannot be considered if the child the juvenile not confess nor regret it.

5. Society Support

The settlement of juvenile's cases against the law is carried out by holding deliberations (mediation) between the victim and the perpetrator. In the mediation process, of course a mediator is needed, the party who facilitates or is a facilitator in the mediation process itself. In resolving juvenile's cases against the law through a restorative justice approach, society support is needed, in this case society trusted figures can be neutral facilitators in the deliberation process.

Implementation of diversion through the restorative justice approach in the settlement of juvenile's cases against the law, by law enforcement officers at each level of the criminal justice process can be done in several stages, such as:

1. Stage of consideration by investigators, public prosecutors or judges in the context of diversion.
2. Stage of deliberation (mediation) between the perpetrator and or his family with the victim and or with the family.
3. Stage of negotiations and making agreements

Restorative justice through the implementation of diversion has been regulated in the SPPA Law. In essence, the juvenile justice system has provided legal protection for the rights and best concerns of the juvenile.

Based on these considerations, then in the juvenile criminal justice process, imprisonment is as a last option (*ultimum remedium*). [22]

The existence of the SPPA Law has guaranteed protection for juveniles. The juvenile offenders need to get special legal treatment, especially when a juvenile commit a crime. To guarantee the enforcement of juveniles' rights, it can be seen on the implementation of the SPPA Law, which is related to the implementation of juveniles' rights against the law in accordance with those stipulated and enacted laws.

Handling of juveniles' against the law must be carried out specifically, as regulated in Article 64 paragraph (2) of the Juvenile Protection Act. Special handling of juvenile's cases against the law as referred to in Article 64 paragraph (2) of the Juvenile Protection Act, then introduced as juveniles' rights that must be obtained by the offenders in the juvenile justice process, which is in accordance with the provisions of Article 3 of the SPPA Law.

The implementation of juveniles' rights against the law as mentioned in Article 3 of the SPPA Law, if further analysed both in terms of law substance, law structure, and law culture, there are still problems in realizing the juvenile's rights. Therefore the law protection for juveniles in criminal justice process has not been able to run as expected or cannot run optimally.

The SPPA Law is a renewal in criminal law which has implications for changes in law substance and law structure, which not only establish an implemented organization, but also facilities such as buildings and facilities as supporting elements in the implementation of the SPPA Law. Likewise, the fulfilment of the juveniles' rights in conflict with the law in the implementation of the criminal justice process, is very closely related to the law structure, they are the institutions that carry out the provisions stipulated in the SPPA Law.

The obligation to build correctional centre (Bapas) in each district/city in accordance with the mandate of Article 105 paragraph (1) letter d, and the development of specialized child institutions (LPKA) and social welfare institutions (LPAS) in each province in accordance with the mandate of Article 105 paragraph (1) letter e, which must be formed within 5 years after The SPPA Law was formed and issued, until 2016 only 71 Bapas, 20 LPKA, and 4 LPAS were formed. So it is still necessary to form 465 Bapas, 14 LPKA and 34 LPAS in each district/city and province. Based on these conditions, there is still a lot of infrastructure that needs to be built, of course, it must be supported by the availability of the budget that exist to realize it. [23] The required infrastructure that has not yet been fulfilled is a hindering factor in the implementation of the SPPA Law, especially in law protection for children in conflict with the law.

If we see from the institutional aspect (law structure), in addition to being influenced by lack of human resources, minimum application of restorative justice in the settlement of juvenile's cases against the law, it is also influenced by the lack of coordination between relevant agencies and law enforcement agencies.

Besides the law structure, the problem of law culture also greatly influences the application of restorative justice in the settlement of juvenile's cases against the law. The validity of a law must be accompanied by an understanding and common perception of all implementing elements of the law. In regards to the implementation of the SPPA Law, law enforcement officers are the key element in realizing a criminal justice system in accordance with the desired conditions contained in the SPPA Law. The absence of equality of perception between law enforcement agencies has become an obstacle in the implementation of *restorative justice* in the settlement of juvenile's cases against the law.

In addition, the society has an important role in implementing *restorative justice* in the settlement of juvenile's cases against the law, because the SPPA Law has the purpose of *restorative justice* which means it requires a social reintegration process that includes the society in it. Therefore, socialization and equal perception are important, both between the law enforcement officials and public in general within the context of understanding the overall regulations contained in the SPPA Law, so that disparities in the juvenile justice process can be avoided.

The emergence of conflict in some communities over the diversion process, where some people assume as if the law enforcement officers release the perpetrators from the snares of the law and the disparities committed by law enforcement officials in processing juvenile cases, shows that the substance of the SPPA Law has not been socialized. As a result, an assumption emerged in the society, that every child who violates the law must be jailed like an adult. In other words, the lack of public understanding of the concept of *restorative justice* has caused the absence of public legal awareness. As a consequence, the effect of the law provisions of *restorative justice* in the settlement of juvenile's cases against the law does not apply effectively, because of the low level of awareness of society's law.

Settlement of juvenile's cases against the law through a *restorative justice* approach is an effort to provide protection for children's rights and at the same time seeking settlement of child cases that prioritize the best interests of children.

The implementation of diversion in settlement of juvenile's cases in conflict with the law has legal consequences that investigation might be terminated, if between the victim and the perpetrator discovered a diversion agreement or reconciliation agreement is reached between the victim and the perpetrator or between

the victim's family and the perpetrator's family. Thus, the purpose of law protection for juveniles against the law can be realized, which to avoid the children from being in formal justice process.

Diversion in handling juvenile's cases against the law aims to avoid the settlement from the formal criminal justice system. Thus, in dealing with children as perpetrators of crime, investigators must always pay attention to the conditions of children who are different from adults.

The alternative is to avoid children from a formal criminal justice system, placement of children in prison, and stigmatization of children's position as prisoners, then one solution is to divert or assign juvenile offenders out of the criminal justice system. This means that not all of juvenile's case must be resolved through formal trial, the law provides an alternative solution to the justice approach in the best interest of children while still considering justice for victims called the *restorative justice* approach.

The application of *restorative justice* in the settlement of juvenile's cases against the law is believed to provide law protection for children. This is because, in the settlement of juvenile's cases against the law through the implementation of *restorative justice* is done by applying diversion, managing the transition of cases' settlement from formal to informal criminal trial. In such conditions, of course, it will remove the children from bad stigma in society, because they avoid criminal sentences by the juvenile court.

Implementing *restorative justice* in the settlement of cases of juvenile crime not only provides law protection for children who are in conflict with the law, but also provides protection for the rights of victims. Therefore, the implementation of *restorative justice* also reflects the justice for victims and also for perpetrators. This is based on the theory of justice which considers crime and violations, in principle, it is a violation towards individuals or society and not to the country.

Within the implementation of *restorative justice*, there will be a dialogue between victims and perpetrators, which in turn will lead to satisfaction for all parties, including victims. Where the measure of justice is no longer based on retaliation from the victim to the perpetrator (whether physical, psychological or punishment), but the painful act is cured by giving support to the victim and demanding the perpetrator to be responsible, with the help of family and society.

## Conclusion

1. The SPPA Law regulates that each juvenile criminal justice prioritizes a restorative justice approach that aims to bring about peace between victims and perpetrators, resolve cases of children outside the court, avoid children from deprivation of freedom and encourage children to be more responsible. The implementation of restorative justice by law enforcement officers at each level of the juvenile justice process is carried out by transitioning the formal criminal justice process to informal (diversion) by considering the indictment of a criminal offense committed by the juvenile, age, victim's consent, acknowledgment of wrongdoing by the offender and public supports.
2. The consistent implementation of *restorative justice* by law enforcement officials in the settlement of juvenile's cases against the law is believed to provide protection for children who are in conflict with the law. In the settlement of juvenile's cases against the law through the implementation of restorative justice carried out through diversion, the settlement of juvenile's case will divert from formal to informal criminal justice. Under these conditions, of course, it will help releasing children from bad stigma in society, because they avoid being sentenced by the court. Settlement of juvenile's cases against the law through a restorative justice approach is an effort to provide protection for children's rights and at the same time seeking the settlement of juvenile's cases that prioritize the best interests of children.
3. The obstruction in applying *restorative justice* are influenced by the factors of law structure, the lack of human resources and the lack of maximum coordination carried out by related agencies and law enforcement agencies. Besides law structure, the problem of law culture also greatly influences the application of *restorative justice* in the settlement of juvenile's cases against the law which is the absence of common perceptions between law enforcement agencies and public understanding. The SPPA law has the purpose of restorative justice which means it requires a social reintegration process that includes the society in it. Therefore, socialization and equal perception are important, both between law enforcement officials and the public in general within the context of understanding the overall regulations contained in the SPPA Law, so that disparities in the juvenile justice process can be avoided.

## References

- [1] Gultom Maidin, Perlindungan Hukum Terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia, Bandung; Refika Aditama, p. 11 (2008)
- [2] Soetedjo, Wagiati, Hukum Pidana, Jakarta; Refika Aditama, p. 2 (2012)
- [3] Article 7 Paragraph (1), The Acts of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal System.

- [4] Article 1 number 7 , The Acts of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal System.
- [5] Waluyadi, *Hukum Perlindungan Anak*, Bandung; Mandar Maju, p. 12 (2010)
- [6] Marlina, *Peradilan Pidana Anak di Indonesia: Pengembangan Konsep Diversi dan Restorative Justice*, Bandung; Refika Aditama, p. 23 (2009)
- [7] Article 8, The Acts of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal System.
- [8] Article 9 Paragraph (2) of The Acts of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal System.
- [9] Ediwarman, *Metodologi Penelitian Hukum*, Medan; Sofmedia, p. 25 (2015)
- [10] Utomo, Setyo, *Sistem Pemidanaan Dalam Hukum Pidana Berbasis Restorative Justice*, *Mimbar Justitia Fakultas Hukum Universitas Suryakencana*, Cianjur, Vol.V No. 01, 2016, p. 86
- [11] Effendy, Marwan, *Teori Hukum, dari perspektif kebijakan, perbandingan dan harmonisasi hukum pidana*, Jakarta; Referensi Pers., p. 85 (2014)
- [12] *Ibid* , p. 86
- [13] Supeno, Hadi, *Kriminalisasi Anak*. Jakarta; Gramedia Pustaka, p. 203 (2015)
- [14] *Ibid* , p. 165
- [15] Purba, Jonlar, *Penegakan Hukum Terhadap Tindak Pidana bermotif Ringan Dengan Restoratif Justice*, Jakarta; Permata Aksara, p. 61 (2017)
- [16] See, Article 6 of the Act of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal System.
- [17] Marlina, *Op.cit*, p. 168
- [18] See, Article 2 of the Act of the Republic of Indonesia Number 23 of 2002 concerning Juvenile Protection.
- [19] See, Article 1 Number 7 of the Act of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal System.
- [20] Soedtejo, Wagiaty, *Op.cit* , p. 130
- [21] Wahyudi, Setya, *Implementasi Ide Diversi Dalam Pembaruan Sistem Peradilan Pidana Anak di Indonesia*, Yogyakarta; Genta Publishing, p. 62-63 (2011)
- [22] Interview with Assistant Investigators at the Medan District Police Station Women's and Juvenile's Services Unit , on March 15<sup>th</sup> 2020.
- [23] Interview with Assistant Investigators at the Medan District Police Station Women's and Juvenile's Services Unit , on March 15<sup>th</sup> 2020.
- [24] Makarao, Taufik, *Pengkajian Hukum Tentang Penerapan Restoratif Justice Dalam Penyelesaian Tindak Pidana Yang Dilakukan Anak*, Jakarta; BPHN, p. 114-118 (2013)
- [25] Marlina, *Op.cit* , p. 207
- [26] See Article 10 Paragraphs (1) and (2) of the Act of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System.
- [27] Priyatno, Dwidja, *Wajah Hukum Pidana Asas dan Perkembangan*, Bekasi; Gramata Publishing, p.308 (2012)
- [28] Eliza, Pocut et. al, *Laporan Akhir dan Evaluasi Hukum Dalam Rangka Membangun Sistem Hukum Pidana Anak*, Jakarta; Badan Pembinaan Hukum. Nasional Hukum dan HAM, p. 138 (2016)