



## RESTORATIVE JUSTICE IN CHILD RAPE PERPETRATORS: A CASE STUDY ON PERPETRATORS WITH INTELLECTUAL DISABILITY

Wahyu Saefudin<sup>\*\*</sup>, Rony Aryono Putro<sup>\*\*</sup>, Sriwiyanti<sup>\*</sup>  
Sultan Zainal Abidin University<sup>\*</sup>, Bapas Kelas II Pontianak<sup>\*\*</sup>  
Corresponding author. Email: [sriwiyanti1993@gmail.com](mailto:sriwiyanti1993@gmail.com)

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### ABSTRACT

The main role of probation officers is implementing restorative justice for the juvenile. However, a rape perpetrator with intellectual disability will encourage a different approach. Therefore, this study aims to explain how the application of restorative justice by probation officers on youth offenders with intellectual disabilities. The method used in this study is an empirical normative method. Primary legal materials were obtained through interviews with probation officers tasked with assisting in the investigation, prosecution, and examination in court, to assist in implementing decisions. Another source of legal materials was also obtained through the document of community research. Finally, secondary legal materials were obtained from various sources such as legislation, library books, and scientific journals. The results show three primary points. First, probation officers have realized restorative justice through their role in community research and mentoring. Second, probation officers provide recommendations for the rehabilitation of offenders. Third, probation officers reinforce other law enforcers such as police, prosecutors, and judges to conduct psychological diagnoses to ensure the child's condition. However, this study also finds that not all law enforcers can understand and handle children with intellectual disabilities.

**Keywords:** youth offenders; intellectual disability; probation officers; restorative justice

### INTRODUCTION

Rape is a legal case that causes children to undergo coaching at the Child Special Guidance Institute (formerly: child prison). One of the law enforcers tasked with assisting in criminal cases with child perpetrators, from pre-adjudication to post-adjudication, is the probation officers (PK) from the correctional center (Bapas).<sup>1</sup>

In 2019, in the jurisdiction of the Pontianak correctional center, there was a case of decency committed by Juvenile. With this kind of legal case, children who conflict with the law (Child Clients) will generally receive guidance at the Child Special Guidance Institute (LPKA) because the threat of punishment that is given exceeds the tolerance limit for solving problems by way of diversion deliberation, which is 7 (seven) years.

However, upon receiving the report from the investigator, it turned out that the Child Client

had a different condition. Investigators admitted that they had difficulty communicating with the perpetrators. Moreover, Child Clients cannot communicate in two directions. Therefore, the probation officer assisting this case attempted to understand the conditions faced by inviting a psychologist based on the report. As the interview excerpt below:

*"First, when they received Litmas (Litmas: social test) X, the investigator said, this child is a bit lacking, ma'am. It is lacking in terms of things, like IQ. Consequently, because of getting such information from investigators, a colleague at the office had an educational background as a psychology graduate. Moreover, I worked in a place for children with special needs. So, I also asked for his help to go Litmas together."*

From the foregoing statement, the probation officer realized that every condition of a child who commits a crime would have different consequences in the eyes of the law. Consequently, the considerations given in a recommendation

<sup>1</sup> Wahyu Saefudin et al., "Peran Pembimbing Kemasyarakatan Dalam Upaya Memberikan Hukuman Di Luar Penjara Pada Anak Yang Berkonflik Dengan Hukum," *Public Administration* 3, no. 1 (2021): 121-134.

in the Litmas that is being carried out must be objective and measurable. Therefore, probation officers are careful in carrying out their duties when accompanying Child Clients.

Moreover, in Indonesia, the juvenile criminal justice system essentially prioritizes protection, rehabilitation, and reinstatement.<sup>2</sup> Because the existence of children is a priceless asset for a country, consequently, the treatment must be special or distinguished from adults.<sup>3</sup> On that basis, the juvenile justice system in Indonesia is based on restorative justice.<sup>4</sup>

Restorative justice is considered a solution in a fair legal settlement because it emphasizes prevention and improvement efforts in the future.<sup>5</sup> In addition, solving problems through restorative justice can benefit perpetrators and victims, and the community in the context of accountability.<sup>6</sup> Therefore, it is natural that the restorative justice approach is considered a humane approach with the base of restoring the situation before it happens.<sup>7</sup> Accordingly, restorative justice is considered effective and efficient in combating crime.

In Indonesia, the restorative justice approach is the spirit of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (JJS Act).<sup>8</sup> Implementing restorative justice in the JJS Act is through a diversion deliberation process.<sup>9</sup>

Diversion is a solution to problems outside the criminal justice procedure. In the JJS Act, diversion efforts must refer to cases involving children as criminal actors.<sup>10</sup>

Furthermore, not all legal issues can be resolved utilizing diversion deliberation.<sup>11</sup> In Article 7, paragraph (2), it is explained that the diversion deliberation can be carried out if it meets 2 (two) requirements; namely in the event that the crime committed is threatened with imprisonment for under 7 (seven) years, and it is not a repetition of a crime.<sup>12</sup> The same rule is also contained in Government Regulation Number 65 of 2015, a derivative of the JJS Act.<sup>13</sup> If the crime committed is threatened with an imprisonment more than seven years and it is a repetition of a crime, the diversion cannot be carried out.<sup>14</sup>

Nevertheless, through a restorative justice approach, child perpetrators (referred to as Child Clients) are still not sought to go to prison.<sup>15</sup> Therefore, imprisonment is the last option in punishing children of criminal offenders (ultimum remedium).<sup>16</sup> Therefore, the JJS Act stipulates alternative punishments such as warnings, community services, coaching outside the institution, supervision, and job training.

<sup>2</sup> Afni Zahra and RB Sularto, "Penerapan Asas Ultimum Remedium Dalam Rangka Perlindungan Anak Pecandu Narkotika," *Law Reform* 13, no. 1 (2017): 18.

<sup>3</sup> Wahyu Saefudin, "Paradigma Penjara Dalam Sistem Peradilan Pidana Anak," in *Kapita Selekta Pemasarakatan*, ed. Wahyu Saefudin (Kalimantan Barat: IDE Publishing, 2020), 161–166, <https://books.google.co.id/books?id=2AXeDwAAQBAJ>.

<sup>4</sup> Rudini Hasyim; Rado and Nurul Badilla, "The Concept of Restorative Justice in an Integrated Criminal Justice System," *Jurnal Restorative Justice* 3, no. 2 (2019): 145–159.

<sup>5</sup> Tony Marshall, *Restorative Justice: An Overview, Home Office Research Development and Statistics Directorate* (London, 1999), <http://uci.or.kr/G300-jX950354.vn37p137>.

<sup>6</sup> Jennifer L. Lanterman, "Models Versus Mechanisms: The Need To Crack," *British Journal of Community Justice* 17, no. 1 (2021): 60–78.

<sup>7</sup> Eddy O.S. Hiariej, *Principles of Criminal Law* (Yogyakarta: Cahaya Atma Pustaka, 2019).

<sup>8</sup> Yul Ernis, "Diversion and Restorative Justice In Case Settlement Of Juvenile Justice System In Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 10, no. 2 (2016).

<sup>9</sup> Ni Made Ita Ariani, Ni Putu Rai Yuliarti, and Dewa Gede Sudika Mangku, "Implementation of Law Number 11 of 2012 Concerning the Criminal Justice

System for Children Against Theft Perpetrated by Children in Buleleng Regency (Case Study Number: B/346/2016/Reskrim)," *e-Journal Komunitas Yustisia* 2, no. 2 (2019): 100–112.

<sup>10</sup> Sriwiyanti, Wahyu Saefudin, and Siti Aminah, "Restorative Justice for Juvenile Offenders in Indonesia : A Study of Psychological Perspective and Islamic Law," *JIL: Journal of Islamic Law* 2, no. 2 (2021): 168–196.

<sup>11</sup> Wahyu Saefudin, *Mengembalikan Fungsi Keluarga* (Kalimantan Barat: IDE Publishing, 2019), [https://books.google.com.my/books/about/Mengembalikan\\_Fungsi\\_Keluarga.html?id=USuhDwAAQBAJ&redir\\_esc=y](https://books.google.com.my/books/about/Mengembalikan_Fungsi_Keluarga.html?id=USuhDwAAQBAJ&redir_esc=y).

<sup>12</sup> *Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak* (Republik Indonesia, 2012).

<sup>13</sup> Rini Fathonah, Nikmah Rosidah, and Mashuril Anwar, "Formulation of Diversion in National and International Law," *International Journal of Business, Economics and Law* 24, no. 2 (2021): 176–182.

<sup>14</sup> Lailatul Mufidah and Uswatul Khasanah, "Implications of Diversion in Shaping Children's Responsibility towards Restorative Justice," *Legislatif*, no. 11 (2019): 24–37.

<sup>15</sup> Erasmus A.T. Napitupulu et al., *Hukuman Tanpa Penjara*, ed. Zainal Abidin and Anggara (Jakarta: Institute for Criminal Justice Reform, 2019).

<sup>16</sup> Zahra and Sularto, "Penerapan Asas Ultimum Remedium Dalam Rangka Perlindungan Anak Pecandu Narkotika."

According to the rape cases that commit by children with intellectual disabilities, the penalties will be more than 7 (seven) years.<sup>17</sup> It means that the case settlement must go through the trial process; it can no longer proceed through the diversion approach. However, considering that the perpetrator has a different condition based on the result of a psychological test by the psychologist. This fact led to other penalties consequences related to the condition.

Therefore, the research question of this study is what is the role of a probation officer from the Pontianak correctional center in implementing restorative justice for juvenile rape perpetrators with intellectual disabilities? Furthermore, the objective of this study is to reveal the role of a probation officer from the Pontianak correctional center in implementing restorative justice for juvenile rape perpetrators with intellectual disabilities. Particularly in the process of investigation, prosecution, trial, to post-adjudication.

## RESEARCH METHOD

The research methodology used is an empirical normative method combining field research and library research. Then, the primary legal material was collected through two sources: interviews with a probation officer from Pontianak Probation Office as the informant and the community research document consisting of the perpetrators' backgrounds. In addition, the secondary legal material was obtained from various sources such as legislation, library books, and scientific journals such as Elsevier, ScienceDirect, Google Scholar, Scopus, Taylor and Francis Online, national library e-resources, and ProQuest. The keywords used in the search are, among others, restorative justice, intellectual disability, and juvenile rape perpetrators.<sup>18</sup>

Furthermore, the legal material was followed by the data analysis stage, namely data reduction, coding, categorization, and interpretation.<sup>19</sup> First,

data reduction is made by focusing on interviews to the informant's statement and community research documents. Furthermore, researchers try to rule out irrelevant data. Next, the coding is done by assigning a code to the results of the data collected in the field, typed in verbatim form. Moreover, the researchers categorize the part that has been coded manually, which describes the representation of the research objectives.<sup>20</sup> The final step is to interpret the categorized data and analyze it with the secondary legal material.

## DISCUSSION AND ANALYSIS

### A. The Role of Probation Officers in Handling the Perpetrators with Intellectual Disability

Probation officers are law enforcement officials who carry out community guidance on criminal perpetrators.<sup>21</sup> In the Pan-RB Ministerial Regulation No. 22 of 2016, the community guidance referred to is the activities of mentoring, research, mentoring, supervision, and the trial of the correctional observer team. In addition, the JJS Act explains the central role of probation officers and their great influence on the judgment of a case given by a judge to a juvenile.<sup>22</sup>

The strategic role lies in its authority to make recommendations in community research (Litmas).<sup>23</sup> Litmas is an activity of collecting, processing, analyzing, and presenting data objectively in the context of an assessment for clients.<sup>24</sup> The role of probation officers is to determine the basis for the treatment of child offenders based on the results of the Litmas that they accomplish. Moreover, Article 27 paragraph

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Revisi (Bandung: Remaja Rosdakarya, 2007).

<sup>20</sup> Louis Cohen, Lawrence Manion, and Keith Morrison, *Research Methods in Education*, Eighth Edi. (London: Routledge, 2018).

<sup>21</sup> Wahyu Saefudin et al., "The Effect of Self-Efficacy and Job Satisfaction on the Performance of Community Counselors in the West Kalimantan Region," *Dinamika Governance: Jurnal Ilmu Administrasi Negara* 11, no. 1 (2021).

<sup>22</sup> Dwi Elyana Susanti, "Optimization of the Implementation Task of Correctional Adviser in A Correctional Revitalization," *Jurnal Ilmiah Kebijakan Hukum* 14 (2020): 141-162.

<sup>23</sup> Saefudin et al., "Peran Pembimbing Kemasyarakatan Dalam Upaya Memberikan Hukuman Di Luar Penjara Pada Anak Yang Berkonflik Dengan Hukum."

<sup>24</sup> *Peraturan Menteri Hukum Dan HAM Nomor 35 Tahun 2018 Tentang Revitalisasi Penyelenggaraan Pemasyarakatan* (Kemenkumham, 2018).

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<sup>17</sup> Fahmi NoorAdly, "Diversi Sebagai Bentuk Penyelesaian Perkara Pidana Anak Di Tingkat Penyidikan Dalam Kasus Kejahatan Kesusilaan Di Wilayah Hukum Polda Jawa Timur," *Dialektika* 15, no. 1 (2020): 26-32.

<sup>18</sup> Mukti Fajar and Yulianto Achmad, *Dualism of Empirical and Normative Legal Research* (Yogyakarta: Pustaka Pelajar, 2010).

<sup>19</sup> Lexy. J Moloeng, *Metodologi Penelitian Kualitatif*, Edisi

(1) of the JJS Act explains that investigators must request consideration or advice from the probation officers. In addition, judges also use Litmas to decide a case in the adjudication process. Therefore, even if the judge does not consider the Litmas made by the probation officers, then the decision is null and void or *void ab initio*.<sup>25</sup> The role of Litmas in the JJS Act can be seen in the table below.

**Table 1**  
**Use of Community Research**

Juvenile justice stage	The Function of community research	Article
Investigation	<ul style="list-style-type: none"> <li>• Diversion consideration</li> <li>• Investigation</li> <li>• Document is transferred to the prosecutor</li> </ul>	<ul style="list-style-type: none"> <li>• Article 9 paragraph (1)</li> <li>• Article 27 paragraph (1)</li> <li>• Article 28 paragraph (4)</li> </ul>
Prosecution	<ul style="list-style-type: none"> <li>• Diversion consideration</li> <li>• Document is transferred to judge</li> </ul>	<ul style="list-style-type: none"> <li>• Article 9 paragraph (1)</li> <li>• Article 42 paragraph (4)</li> </ul>
Trial	<ul style="list-style-type: none"> <li>• Diversion consideration</li> <li>• Judgment consideration</li> </ul>	<ul style="list-style-type: none"> <li>• Article 9 paragraph (1)</li> <li>• Article 60 paragraph (3)</li> </ul>

The table above shows the function of Litmas in each stage. Furthermore, probation officers also have a mentoring function during the juvenile justice process.<sup>26</sup> In the mentoring carried out, the informant advised investigators and prosecutors to provide psychological assistance and assessments to determine the actual condition of juvenile Client's.

“So, according to the police, it is up to the prosecutor's office. Probation officers' task is to accompany the child in the process. We think our child has special needs and other disabilities, so can it be facilitated? However, yes, the process is the same as in the police.”

The advice that the informant gave to other law enforcers because she realized her function was to ensure the implementation of restorative justice for children who are criminals. Furthermore,

<sup>25</sup> Susanti, “Optimization of the Implementation Task of Correctional Adviser in A Correctional Revitalization.”

<sup>26</sup> Saefudin et al., “Peran Pembimbing Masyarakat Dalam Upaya Memberikan Hukuman Di Luar Penjara Pada Anak Yang Berkonflik Dengan Hukum.”

through their Litmas, probation officers can seek restorative justice for juvenile who are perpetrators of crimes. Both in consideration of diversion at each stage of the crime and in considering the decisions given by the judge. If the recommendations given by the Litmas are in line with the vision of restorative justice, namely, prioritizing the restoration of relations, then the judge's decision will also be in line.<sup>27</sup>

## B. Psychological Description of Perpetrators with Intellectual disability

### 1. Brief Profile of Perpetrators

Brief Profile of Child Clients	
Initial	AG
Age	13 years
Gender	Man
Education	Elementary school (not pass)
Number of siblings	One of two sibling
Results of IQ Test	50
<u>Category ID</u>	<u>Medium</u>

The Client is the first child of a 41-year-old mother. He was born in the city of Pontianak after the mother tried to protect the fetus. Her marriage was full of conflict, stress, quarrels, and violence. The father left the family while the Client was still in the mother's womb. Consequently, according to the Client's mother, she was very depressed when pregnant.

Currently, the Client is 13 years old, living with his mother, stepfather, stepsister, and grandmother. The Client studied at a public elementary school however his disability was not facilitated. In the end, the Client could not be promoted to higher grade for four times. It made him embarrassed, and he decided not to continue to go to school.

While parents have not specifically paid attention to the limitations experienced by the Client, since childhood, the Client was in the care of his grandmother because his parents were busy making a living. Neither stepfather nor mother has enough time to give attention and affection to the Client. Due to economic limitations and lack of

<sup>27</sup> Jufria Mahfud, Binti Mohamed Nazerib Norbani, and Saroja Dhanapal, “Restorative Justice: An Alternative Process for Solving Juvenile Crimes in Indonesia,” *Brawijaya Law Journal* 6, no. 2 (2019): 157–169.



knowledge about the child's condition, parents do not attempt to overcome the Client's limitations. Instead, they treat the Client like children in general.

## 2. Cognitive and Memory Aspects

The Client has difficulty remembering commands or other people's words. For example, when his parents asked him to purchase three things, he could sometimes only remember one thing. This condition explains that adolescents with intellectual disability have different memory processing times than those without disability.<sup>28</sup> As a result, much of the information fails to enter long-term memory. In addition, the ability to remember for children with mild to moderate intellectual disability is quite limited.<sup>29</sup> Only three out of six children can remember another person's name after three hours of acquaintance.

In addition to memory, the Client also has limitations in understanding cause and effect, including simple contexts. It can be seen from the results of the IQ test scores using the Wechsler Intelligence Scale for Children (WISC) test, conducted by the Indonesian Psychological Association team in West Kalimantan with a score of 50. An IQ score below 70 can be the first diagnosis for the category of intellectual disability.<sup>30</sup> This low intellectual score also affects several other capabilities such as emotional, social, and communication abilities.

The Client is also seen that he is less proficient in two-way communication. The Client tends to be slow to communicate and often only mumble or emit syllables that are related but difficult to understand. This condition is indeed common in children with intellectual disability. Children with this kind of category generally find it is difficult to understand letters so that it has an impact on communication skills.<sup>31</sup> Therefore, speech therapy is needed to stimulate expressive speech skills, especially in mastering consonants.

The Client has not demonstrated any interest in a particular area to date. As a result, neither the Client nor his parents aware of his talents. This could have happened because parents never stimulated Client development, either directly or through inclusive school facilities. Client could be given early interventions, such as using economic tokens to improve his attitudes in the learning process. Children who are treated appropriately from an early age tend to be more adaptive.

## 3. Social Aspects

Client socializes with family, friends, and the neighborhood. Every day client can help care for his grandmother, who is elderly and sickly. He can help his grandmother gets clothes, take food and drinks, and cleans the bed. However, Client rarely carries out religious orders, especially prayers and reciting the Al-Qur'an.

Occasionally, Client goes to the mosque, but he does not want to go again because his peers often bully him. The low ability of to make friendship occurs in several children with intellectual disability. Peers at school who do not have disability tend to refuse to be friend or mingle with them. The inclusive school setting is more suitable for children with special needs to learn social interaction.<sup>32</sup>

## 4. Emotional Aspects

The Client expresses angry emotions by mumbling or nagging. However, Client tends to manage angry emotions without doing anything destructive. For example, when the Client's sister asks for help, he is sometimes reluctant. He shows his feelings by talking to his self and making a voice that indicates rejection.

From an emotional point of view, children with intellectual disability feel various emotions such as anger, anxiety, fear, happiness, and even grief. However, they can also be very hurt and experience deep sadness when the loss of a loved one that is shown through various behaviors.<sup>33</sup>

<sup>28</sup> James E. Turner, "Long-Term Memory and Mental Retardation," *International Review of Research in Mental Retardation* 17, no. C (1991): 193–217.

<sup>29</sup> Claudia Morales et al., "Anuario de Psicología Jurídica 2017 Intellectual disability," *Anuario de Psicología Jurídica* 27, no. 1 (2017): 79–84.

<sup>30</sup> D O Uglas and Etterm An, "The Psychology of m Ental Retardation" (1999): 26–33.

<sup>31</sup> Thedy Yogasara and Cecilia Stefiany, "Aplikasi Terapi Wicara Bagi Remaja Penyandang Disabilitas Intelektual Ringan," *Jurnal Optimasi Sistem Industri* 18, no. 1 (2019): 86.

<sup>32</sup> Sue Cutts and Jeff Sigafoos, "Social Competence and Peer Interactions of Students with Intellectual Disability in an Inclusive High School," *Journal of Intellectual and Developmental Disability* 26, no. 2 (2001): 127–141.

<sup>33</sup> M<sup>a</sup> Inmaculada Fernández-Ávalos et al., "Evaluación de Los Procesos de Duelo En Personas Con Discapacidad Intelectual: Revisión Sistemática," *Estudios de Psicología* 38, no. 3 (2017): 779–787.

## 5. Sexual Aspects

The day before committing the crime of sexual violence, Client is given pornographic video viewing by his peers. Ironically, teens who watch porn videos tend to have high-risk sexual behavior. They also generally engage in premarital sex because of fantasies of having sex after watching pornographic videos.<sup>34</sup> Meanwhile, adolescents with limited social interaction feel insecure and focus on pornography and sexual desire satisfaction.<sup>35</sup>

In this case, sexual education is the main solution, as revealed by parents of adolescents with special needs. However, they feel unable to provide literacy about sexuality because educating about this sensitive topic requires many scientific fields, including anatomy and physiology.<sup>36</sup>

Moreover, the level of depression in adolescents with special needs who are perpetrators of sexual violence is higher than that of adolescents who are perpetrators of sexual violence. This is because adolescents with special needs generally have a background of emotional and physical neglect in the past, so the lack of protective factors, such as communication skills, coping strategies, and interpersonal skills, makes them more prone to depression.<sup>37</sup>

## 6. Children with Special Needs Perpetrators of Criminal Acts

Mental health and providing therapy to clients must be prioritized before committing a crime. It can involve many parties and facilities to provide counseling, individual therapy, and community therapy to stimulate adaptive behavior and regular care. Of course, it is supported by various facilities, integrated services, and qualified

specialists.<sup>38</sup>

Child client in this case, also feel a variety of emotions such as anxiety and fear, which can trigger tantrums, aggressiveness, or self-harm, especially for people with intellectual disability who have severe communication disorders. They even need long-term care, which is difficult for families to do without expert help.<sup>39</sup>

Therefore, it is certainly not easy to care for children with intellectual disability, including the emergence of stress and depression in parents, directly impacting the family's health. Starting from the high cost of care, pressure, and the division of more complicated parenting roles. Therefore, parents' welfare with children with intellectual disability is lower than that of parents without children with intellectual disability.<sup>40</sup>

All of these facts should be taken into consideration in making judicial policies. To empower children with intellectual disability, especially adaptive abilities, can be started with simple things such as gardening activities that involve people with intellectual disability.<sup>41</sup> In addition, through storytelling activities. By listening to stories nine times in a row, children can increase their vocabulary to improve communication skills and stimulate adaptive behavior.<sup>42</sup> It could also be by increasing family-based care, not only children with intellectual disability who are given attention. First, however, the family as a learning media for socialization

<sup>34</sup> A.C Dimas Pratama and Hari Basuki Notobroto, "Analisis Hubungan Pergaulan Dengan Teman Dan Paparan Media Pornografi Terhadap Perilaku Seksual Pranikah Pada Remaja," *Jurnal Biometrika Dan Kependudukan*, 2018.

<sup>35</sup> Peter J.B. Wilson, "The Porn Retreat: Narcissism and Adolescence," *Psychodynamic Practice* 24, no. 3 (2018): 235-244, <https://doi.org/10.1080/14753634.2018.1494621>.

<sup>36</sup> Melissa Lehan Mackin et al., "Parent Perceptions of Sexual Education Needs for Their Children With Autism," *Journal of Pediatric Nursing* 31, no. 6 (2016): 608-618.

<sup>37</sup> Jessica Bleil Walters et al., "Maltreatment and Depression in Adolescent Sexual Offenders with an Autism Spectrum Disorder," *Journal of Child Sexual Abuse* 22, no. 1 (2013): 72-89.

<sup>38</sup> Anton Dossen Day and Kenneth, *Treating Mental Illness and Behavior Disorder in Children and Adults with Mental Retardation* (Washington DC: American Psychiatric Press Inc, 2005).

<sup>39</sup> Jeffrey B. Chan et al., "Adults with Intellectual Disability in Long-Term Respite Care: A Qualitative Study," *Journal of Intellectual and Developmental Disability* 26, no. 4 (2001): 339-344.

<sup>40</sup> Joaquín Salvador Lima-Rodríguez et al., "Intellectual Disability in Children and Teenagers: Influence on Family and Family Health. Systematic Review," *Enfermería Clínica (English Edition)* 28, no. 2 (2018): 89-102.

<sup>41</sup> Retno Wulandari et al., "Pemberdayaan Warga Keterbelakangan Mental Di Desa Karangpatihan Ponorogo Melalui Frutable Greden," *Jurnal Pemberdayaan Masyarakat Universitas Al Azhar Indonesia* 1, no. 2 (2019): 78.

<sup>42</sup> Naomi Soetikno, Roslina Verauli, and Agustina, "Pengaruh Mendongeng Terhadap Kemampuan Adaptif Anak Keterbelakangan Mental," *EduHumaniora | Jurnal Pendidikan Dasar Kampus Cibiru* 9, no. 2 (2017): 84.

must understand, comprehend, and treat children with intellectual disability as they should.<sup>43</sup>

### C. Implementation of Restorative Justice for Perpetrators with Intellectual disability

#### 1. Probation Officers' Understanding of Restorative Justice

Efforts to resolve cases of children using a restorative justice approach began after the passage of the JJS Act in 2012 and began to be effective in 2014.<sup>44</sup> The restorative justice approach allows the settlement of cases committed by a child outside the criminal justice process, resolved fairly, and provides various forms or alternative punishments other than imprisonment. Settlement outside the judiciary in question is a process of deliberation on diversion. A fair settlement can occur because punishment/compensation is determined through deliberation. Providing alternative punishments is also given, such as warnings, coaching outside the institution, rehabilitation, or education. Thus, this law plays a major role in reducing the number of children in LPKA.<sup>45</sup>

Therefore, every law enforcement officer who carries out tasks as mandated in the JJS Act must understand the concept of settlement through a restorative justice approach. In this case, the informant gave an opinion about implementing restorative justice.

“Restorative justice (punishment) is not retaliation but emphasizes recovery, in its original state. The settlement of the case involves all parties. Both the perpetrator, the victim, the victim’s family, the perpetrator’s family, and related parties must find a way out.”

What informant said about the restorative justice approach was following the principles of restorative justice in the JJS Act and what was revealed by Marshall (1999) in a study entitled

Restorative Justice: An Overview.<sup>46</sup> The need for an understanding of the restorative justice approach will be the basis for carrying out the duties of the law to ensure a fair judicial process. Furthermore, if restorative justice can run optimally, it will bring many benefits for the development of children in the future. Restorative justice also plays a major role in ensuring that children’s rights are protected and preserved.<sup>47</sup>

In a restorative justice approach, victims’ rights must also be prioritized. For example, in cases such as theft, the perpetrator is asked to return the loss to the victim or according to the ability and agreed value. In addition, the JJS Act mandates Social Workers (Peksos) from the Ministry of Social Affairs. They are tasked with assisting victims at each stage of the trial.<sup>48</sup> However, this does not close the door for probation officers’ involvement to help realizing victims’ rights. This is a concern for informants considering that legal cases also impact victims.

“I also told the (mother) victim that her child (victim) was traumatized, cried in the middle of the night, there is no cost to get assistance from a psychologist, she said. Finally, I told the team that assistance from HIMPSI (Indonesian Psychological Association) could be done. Alternatively, the KPPAD (Regional Women and Children Protection Commission) can also accompany children as victims. It is like giving what is called counseling. So, is it possible to recover his trauma, self-confidence, and coordination with the KPPAD? It turned out to be so.”

Attractions in providing psychological treatment assistance through other institutions that have the authority impact are handling the protection of victims’ rights. Because in Article 91 of the JJS Act, victims are also entitled to medical rehabilitation, social rehabilitation, and social reintegration from institutions that focus on

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<sup>43</sup> Ety Rahayu & Dedek Roslina, “Peran Pendamping Dalam Meningkatkan Keberfungsian Sosial Penyandang Disabilitas Intelektual Pada Program Pelayanan Jarak Jauh Di Kecamatan Lembang Dan Cililin, Kabupaten Bandung Barat,” *Jurnal Sosio Konsepsia* 7, no. 02 (2018).

<sup>44</sup> Syahlan, “Peran Pekerja Sosial Profesional Dalam Penanganan Abh Di Lpks,” *Jurnal Quantum* 14, no. 1 (2018): 15–22, <https://ejournal.kemsos.go.id/index.php/Quantum/article/view/1746/911>.

<sup>45</sup> Saefudin et al., “Peran Pembimbing Kemasyarakatan Dalam Upaya Memberikan Hukuman Di Luar Penjara Pada Anak Yang Berkonflik Dengan Hukum.”

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<sup>46</sup> Marshall, *Restorative Justice: An Overview*.

<sup>47</sup> Ferry Fathurokhman, “The Necessity of Restorative Justice on Juvenile Delinquency in Indonesia, Lessons Learned from the Raju and AAL Cases,” *Procedia Environmental Sciences* 17 (2013): 967–975, <http://dx.doi.org/10.1016/j.proenv.2013.02.115>.

<sup>48</sup> Azriadi Azriadi and Mairul Mairul, “The Role of Community Counselors and Professional Social Workers in Diversion Efforts towards Children in Bukittinggi,” *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum* 17, no. II (2019): 112–119.

child protection. The probation officer's actions become an important point in giving victims' rights. Because, in many cases, victims' rights are often not a concern even though the principles and values of restorative justice focus on restoring the victim's condition.<sup>49</sup> The circumstances in question include physical, material, social conditions to feelings or emotions.<sup>50</sup>

## 2. The Role of Probation Officers during Investigation Stage

The initial stage that will be passed in the criminal justice process is an investigation at the police level, then prosecution, and trial in court. However, there is a special mechanism to resolve problems at the investigation stage through diversion consultations in the juvenile justice process.<sup>51</sup> If a legal case meets the requirements to seek diversion, the investigator is obliged to seek diversion at this stage. However, in the case of a Child Client, the case cannot be resolved through diversion, so the legal process cannot be resolved at the investigation level.

At this stage of the investigation, informant began to be involved in mentoring. The basis for the informant's involvement is a letter requesting assistance and community research from the police. In this case, the informant received a request letter under No B/66/I/RES.I.24/2019 on January 17, 2019. As a result, the informant provided assistance and community research, aiming to disclose and objectively find data and information about the Child Client's background. This background consists of sociological, psychological, economic, and other aspects of life. In the trial later, the community research made will be the basis for consideration for the judge in deciding the sentence for the Child Client.<sup>52</sup>

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<sup>49</sup> Jung Jin Choi, Gordon Bazemore, and Michael J. Gilbert, "Review of Research on Victims' Experiences in Restorative Justice: Implications for Youth Justice," *Children and Youth Services Review* 34, no. 1 (2012): 35-42.

<sup>50</sup> Giuseppe Maglione, "Crime and Justice Imaging Victims, Offenders and Communities. An Investigation into the Representations of the Crime Stakeholders within Restorative Justice and Their Cultural Context," *International Journal of Law* (2017): 1-12.

<sup>51</sup> Fathonah, Rosidah, and Anwar, "Formulation of Diversion in National and International Law."

<sup>52</sup> Insan Firdaus, "The Role of Community Counselors in Overcrowded Handling Efforts in Correctional Institutions," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 3 (2019): 339.

In order to provide an objective result in the case being handled, the informant decided to invite the informant's co-workers who have a deeper understanding of the issue of children with special needs.

"When they received Litmas (community research) X, the investigator said that this child is a bit lacking in terms of his IQ. If I cannot make decision whether they have special needs or not, then I ask for help from colleagues who know. So, it is not a wrong step, whether this child has special needs or not, that is all."

Informant involves colleagues to obtain accurate Litmas results, making analyses more understandable. Moreover, the Litmas contains recommendations for punishment that judges will use as a basis for reference in deciding later. However, involving colleagues alone is not enough to serve as a basis for arguments to assess the status of Child Clients. Therefore, after discussing this matter, the probation officer asked the investigator to involve a psychologist in this process to obtain information that could be legally accounted for.

"If the process itself was at the police level or the investigation level, the police had already been informed that there seemed to be something else (conditions with special needs) of the child. So, how can we proceed further while we do not call a psychologist? Meanwhile, we did not have any cooperation to go to HIMPSI (Indonesian Psychology Association) yet, at that time. So, let us just raise the case (to the prosecution stage). So, I made the Litmas (completed) and explained that in our view. That this child has mental retardation."

Even though they have coordinated with investigators in the handling process, psychologists still cannot be involved in the investigation process. In addition, if there is a longer delay, law enforcement officers will violate the investigation level procedures because the Litmas implementation must be completed within 3x24 hours.<sup>53</sup> Therefore, neither the informant nor the investigators involved an expert (psychologist) for questioning beforehand. If forced to involve, it is feared that it will harm the child. This is because the legal process at the investigation level

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<sup>53</sup> *Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak* (Republik Indonesia, 2012).



is allowed to drag on. Therefore, the informant and investigators thought that when this case was transferred to the prosecutor's office, it was the best choice to immediately obtain clarity regarding psychologists' involvement in conducting assessments on Child Clients.

### 3. The Role of Probation Officers during Prosecution Stage

The prosecution stage is in the realm of the prosecutor's office. At this stage, the informant should assist Child Clients. At this stage, children's cases can also be resolved through a diversion deliberation process if they meet the requirements. This means that when a case fails to make diversion efforts on the part of the investigator, then when it is delegated to the prosecutor's office, the prosecutor is also obliged to seek diversion.<sup>54</sup>

When assisting, the informant conveys the condition of the Child Client. The prosecutor's office also experienced difficulties conducting in-depth interviews with Child Client as experienced by investigators and informant. After that, the informant tried to explain and provide the initial assessment results of the informant's co-workers who had a background in psychology education. However, the problems faced are also the same. Therefore, for the benefit of the Child Client, the case was brought to court again.

*"So, from according to the police, it is up to the prosecutor's office. Probation officers' job is to accompany the child in the process. We think our child has special needs and other disabilities, so can it be facilitated? However, yes, the process is the same as in the police."*

Children can be detained for prosecution purposes; the period, as stipulated in Article 34 of the JJS Act, is five days.<sup>55</sup> It is just that it is not necessary in cases involving Child Clients. What more Important is that the prosecutor wants an opinion from the judge regarding the best way to treat a child client. Therefore, the case was again brought to the court level for examination to provide legal certainty. The JJS Act, starting with investigators, prosecutors, judges, and probation officers, has special requirements, namely having attended education and training

on juvenile justice. In addition, law enforcers who handle cases involving children must also have interest, dedication, attention, and understanding of children's problems.<sup>56</sup>

*"In the end, it was brought to court."*

### 4. The Role of Probation Officer during Trial Stage

The trial stage in court is where cases involving perpetrators of criminal acts are decided. To protect children's rights, the JJS Act regulates the involvement of many parties to guarantee the protection of children jointly. These parties include probation officers, lawyers, parents, and social workers. In the trial process at a court hearing in juvenile justice, children's cases are conducted privately in a courtroom specially designed for children's trials.<sup>57</sup>

At this stage, the informant again conveys the condition of the Child Client with special needs. Finally, the informant made a resume regarding the recommendations from the Litmas report, which contained the reasons why the informant's recommendation for punishment was given to the Child Client.

*"When we arrived at the court, we made another resume of recommendations. In our opinion, this child has mental retardation, it is positively according to the eyes of ordinary people. So, in the end, the judge decided how the prosecutor should find for him, present expert witnesses to see whether this child has special needs or not."*

*"It is for this purpose and for this reason that we recommend (resume), so it is even more detailed, that is it."*

Based on the opinion and submission of the informant, the judge then issues a decision to postpone the trial until the Child Client has received an assessment from a psychologist. This is because the judge cannot continue the trial without clarity on the status of the Child Client. Whether the Child Client is legally capable or not.

"So, finally, through the resume, the judge had other thoughts from the investigators and prosecutors. So ordered the prosecutor to find a

<sup>54</sup> Fathonah, Rosidah, and Anwar, "Formulation of Diversion in National and International Law."

<sup>55</sup> *Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak.*

<sup>56</sup> Fathonah, Rosidah, and Anwar, "Formulation of Diversion in National and International Law."

<sup>57</sup> Pratiwi Citra Wado, "Pemeriksaan Perkara Anak di Sidang Pengadilan Menurut Sistem Peradilan Pidana Anak," *Lex et Societatis*, IV, no. 2 (2016): 2016.

psychologist. Because he also does not dare to make decisions or hold a trial without knowing the clarity about this child.”

After a psychologist has decided to conduct an assessment, the informant and the prosecutor’s office then try to find another party to help provide the assessment. The informant then tried to contact HIMPSI and KPPAD (regional women and children protection commission) to conduct a psychological assessment.

“Finally, coincidentally, my colleague (who has a background in psychology) was also present. Let me ask HIMPSI. So, at HIMPSI, they say there is a collaboration with the Pontianak KPPAD. So finally, I called the Pontianak KPPAD, which was welcomed. Then from the Pontianak KPPAD, in a collaboration with HIMPSI, X is given a schedule to be examined whether he has special needs or not.”

A psychological assessment to find out the actual condition of the Child Client was carried out at the prosecutor’s office by presenting a psychologist from HIMPSI with the assistance of the KPPAD of West Kalimantan Province. The synergy between these institutions in providing restorative justice for Child Client solves problems encountered during the judicial process. From the psychological assessment results, the expert witness got the results of the Client’s disability category, which was in the moderate category. The judge then uses the basis of this assessment in consideration and presents expert witnesses in court to explain the psychological assessment results.

The process in court took place about 8/9 times, including bringing in expert witnesses at the trial. The judge then decided the case of the child client through the Pontianak District Court that the child client was not proven guilty; Because Child Client cannot be held accountable to him for having an intellectual disability, and get rid of all lawsuits. This decision is certainly not easily accepted by the victim’s family, who hopes that the Child Client will get a prison sentence. However, the efforts of explanation from the informant, prosecutors, judges, and social workers made the victim’s family try to understand the condition of the Child Client and accept the decision. This effort is a manifestation of the implementation of restorative justice in promoting the best interests of children. This means that all decisions take into

account the survival of the perpetrator’s child and the victim’s child.<sup>58</sup> Furthermore, the informant is also involved in assisting the implementation of decision to return the Child Client to his parents.

“At first, he did not believe it, but after hearing from probation officers, social workers, the judge, and that the trial had presented expert witnesses, the results showed that this child was mentally disabled, he was 14 years old, however his soul was six years old. So, his mental age is equivalent to only six years old.”

The consistency of the informant in fighting for the rights of children with intellectual disability manifests the implementation of restorative justice by the government through its role as state servants. The implementation of restorative justice must be maximized at every stage of the judicial process by fully providing children’s rights.<sup>59</sup> Restorative justice, which is the spirit in the enforcement of juvenile criminal justice law, should continue to be pursued by state officials as a sense of responsibility for fulfilling children’s rights. It does not matter whether he is a perpetrator or a victim, any religious background, ethnicity, and race, justice is the foundation in providing legal certainty.

“Because in my opinion, as far as I know, children with special needs like this cannot be held accountable for their actions. So now I am trying to figure out how this child can get justice even though he has committed a crime in reality. However, it is still necessary for him to fulfill his rights. Moreover, that is protected, so from the investigation level to the prosecution level to the court, there must be a psychologist.”

## CONCLUSION

This study found that the role of probation officers in realizing restorative justice is seen in every stage of the judiciary, from pre-adjudication, adjudication, and post-adjudication. In this exemplified case as herein provided;

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<sup>58</sup> Sahuri Lasmadi, Ratna Kumala Sari, and Hari Sutra Disemadi, “Restorative Justice Approach as an Alternative Companion of the Criminal Justice System in Indonesia,” *Advances in Economics, Business and Management Research* 140, no. 1 (2020): 206–209.

<sup>59</sup> Erny Herlin Setyorini, Sumiatio, and Pinto Utomo, “The Concept of Restorative Justice for Children in Conflict with the Law in the Juvenile Criminal Justice System,” *DiH: Jurnal Ilmu Hukum* 16, no. 2 (2020): 149–159.

First, in the pre-adjudication (investigation and prosecution) stage, the probation officer assist during the investigation process by providing specific treatment recommendations to the Child Client, involving psychologists, and performing community research documents. The probation officer also approached the victim and his family to obtain psychological guidance. In addition, the probation officer provided recommendations in the recovery of traumatic situations in handling through the Regional Commission for the Protection of Women and Children and the Indonesian Psychological Association. Included in the transfer of the case to the prosecution level, the probation officer still encouraged the involvement of a psychologist to ascertain the condition of the Child Client. Second, in the Adjudication (trial) stage, the informant is involved in assisting and presenting community research document results, which is done as a matter of consideration in the decision of the case by the judge and requests the judge to consider bringing expert witnesses from psychologists. Finally, probation officer assist the perpetrator's child in carrying out the judge's decision post-adjudication stage.

Another finding of this study was the difficulties of other law enforcers such as police, prosecutors, and judges during the juvenile justice system. As a result, probation officers face a challenging situation in communicating the condition of the perpetrators with others law enforcers regarding the inadequate experience and knowledge in handling children with intellectual disability.

## SUGGESTION

Through the finding of this study, there is some suggestion that addresses various elements to maximize the role of law enforcement officers in realizing the rights of children in conflict with the law. First, special training is needed to understand the condition of children with disability. Second, build a strong collaboration with the Indonesian Psychological Association at the central and regional levels to organize training for law enforcement officers. Finally, it is hoped that through this cooperation program, law enforcement officers such as police, prosecutors, judges, and probation officers can realize restorative justice for children with disability who conflict with the law.

## ACKNOWLEDGMENT

This research comes from the first and second author's experience in daily tasks as a probation officer who is accustomed to accompanying children in conflict with the law. In 2019, our senior, the main informant, Yarsi Feriana, was given a tough task in assisting a legal case. This case is the first case with a fairly complex background for the perpetrators due to having an intellectual disability, which has its legal implications. This research reveals how the informant duties at the Pontianak Probation Office are carried out in presenting and fighting for the rights of criminals.

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