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## THE APPLICATION OF *RESTORATIVE JUSTICE* AGAINST CHILDREN AS PERPETRATORS OF THEFT CRIME IN BULELENG POLICE STATION

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### Abstract

*This research aims to find out and analyzed To: (1) Application of Restorative Justice towards children as criminal act of theft in the Buleleng police station; (2) Obstacles faced by the police in implementing Restorative Justice towards children who commit criminal thefts at Buleleng Police Station. This research is empirical juridical legal research that uses observations, interviews and document studies. The sampling technique in this research uses non-probability sampling techniques in the form of purpose sampling. The legal materials used in this research are primary, secondary and tertiary legal materials, which are useful in drawing conclusions relevant to the problems of this research. The results of the research show that (1) The implementation of Restorative Justice includes parents of the perpetrator and the victim, Correctional Center, social workers from social services. A then attempted mediation through diversion, (2) There were several obstacles to the implementation of Restorative Justice, including the victim's family's lack of desire to make peace, the perpetrator's lack of good faith, the victim's demand for compensation which was irrelevant and inadequate, and a lack of public knowledge about Restorative Justice efforts.*

### Introduction

Children are part of the younger generation as one of the human resources that has a strategic role and has special characteristics and traits. Children need protective guidance in order to ensure physical, mental, social growth and development in a complete, harmonious, harmonious and balanced manner. The position of children in the legal environment as legal subjects is determined from the legal system towards children as a group of people who are in legal status and classified as incapable or underage. The meaning of incapacity is due to the position of reason and physical growth that is developing in the child concerned (Hutahaean, 2013).

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Therefore, it is necessary for a coaching that is carried out continuously in order to achieve good survival, growth and also physical, mental and social development and to protect children from everything that is likely to damage children. The position in the family is very important because it has a vital role in protecting and educating children, if in educating children it fails, what happens is that the child will tend to commit various kinds of delinquency in society and will fall into criminal acts (Wardana et al., 2021).

The legal protection provided through the *Restorative Justice* process, involving children, is expected not to enter the realm of law and can be resolved openly and responsively between victims, perpetrators, and affected communities. On the one hand, there is still accountability of the perpetrator to the victim. On the other hand, the perpetrator also does not lose their rights as a child or the next generation. One of them is the right to education. *Restorative Justice* is understood as a process that involves all parties related to a particular criminal offense to sit together to solve problems and think about how to handle victims and perpetrators.

Theft is generally formulated in Article 362 of the Criminal Code which reads: "Any person who takes property, wholly belonging to another person, with intent to unlawfully possess it, shall, being guilty of theft, be punished by a maximum imprisonment of five years or a maximum fine of nine hundred rupiahs". From the provisions of the article, the theft is clearly mentioned in general in Article 362 of the Criminal Code. Along with the times, the crime of theft that occurs is certainly not only committed by adults, but in fact a child also has the potential to commit the crime of theft. Every child needs to get the widest possible opportunity to be able to grow and develop optimally, both in terms of physical, mental and social aspects, because in essence children are not yet able to protect themselves from various kinds of actions and influences that will cause harm in various fields of life. For this reason, it is necessary to make efforts to protect and resolve criminal acts with children as the perpetrators, this is in order to realize the welfare of children, namely by providing guarantees for the fulfillment of their rights without discriminatory treatment, this is in accordance with the general explanation of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (Anggraeni et al., 2021).

More specifically, the form of legal protection for children in conflict with the law is realized through Law Number 3 of 1997 concerning Juvenile Courts which has been replaced by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. There are fundamental changes as an effort to overcome the weaknesses of Law No. 3 of 1997. The fundamental changes include the use of *Restorative Justice approach*, *Restorative Justice* is one of the main approaches that currently, based on Law No. 11/2012 on Juvenile Criminal Justice System, must be carried out in cases of children in conflict with the law. The criminal procedure and justice mechanism that focuses on punishment is changed to a process of dialogue and mediation to create an agreement on the resolution of criminal cases that is fairer and more balanced for the victims and perpetrators. *Restorative Justice* committed by children is closely related to the juvenile justice system which is based on the principles of protection, recovery and reintegration of children in conflict with the law. *Restorative Justice* is an approach to the legal system that emphasizes the restoration of damaged relationships between perpetrators, victims, and society following a criminal act. It also focuses on social responsibility and accountability so that offenders can make amends for their negative actions.

In this case the role of law enforcement, namely the Buleleng Resort Police, is to provide supervision and legal protection and provide guidance to children who commit the crime of theft carried out by the Criminal Investigation Unit (Sat Reskrim) of the Buleleng Resort Police which is

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obliged to handle and provide special protection to children in conflict with the law. The use of this mechanism is given to law enforcers in handling law violators involving children without using the formal justice system, the application of *Restorative Justice* through diversion is intended to reduce the negative impact of children's involvement in a judicial process so that it is fair to children for the sake of their future and growth and development, rather than having to involve children in the formal justice system. So that in the end the child can return to the social environment reasonably.

**Table 1.1 Data on the number of thefts committed by children**

No.	Year	Case	Diversion	Transferred
1	2021	4	3	1
2	2022	3	1	1
3	2023	5	1	4

(Source: Buleleng Police PPA Unit)

In this regard, it can be seen that cases of theft committed by children show an increase and there are still more cases that are not successfully resolved outside of criminal justice. To protect children in conflict with the law, law enforcers become so subjective in resolving a criminal case, one of which is a case of theft committed by a child as happened in the jurisdiction of the Buleleng Resort Police. Because in reality, judging from some of the problems that have been described, it shows that the application of *Restorative Justice* to children is still not optimal in practice, even though children are the younger generation as the nation's successor who must be protected. This is also contrary to the purpose of *Restorative Justice*, one of which is to jointly seek a fair settlement. So from the background description, the author is interested in conducting a thesis research entitled "**Application of Restorative Justice Against Children as Perpetrators of Theft Crimes at Buleleng Police Station**".

## Research Methods

The type of research used in this research is empirical legal research. Empirical legal research is research that refers to legal reality or commonly referred to as *field research*. The characteristic of this empirical juridical legal research is a research that departs from the gap between *das sollen* and *das sein*, namely the gap between theory and the world of reality and is a research that discusses how the law operates in society. The nature of this research is descriptive, namely research that explains the solution of existing problems based on data and then based on the data will be analyzed.

Data and data sources in this research are primary data and secondary data, secondary data consisting of primary, secondary, and tertiary legal materials. The data collection technique used in this research is by conducting interview techniques, documentation techniques and library (Muhaimin, 2020). The sampling technique in this research is a *non-probability sampling* technique which means using a sample of choices based on the subjectivity of the researcher and not randomized. *Non probability sampling* used is *purposive sampling (judgmental sampling)* which is a sampling technique by selecting samples according to the researcher's knowledge of the research. The data analysis technique in this research is described from the data obtained both primary and secondary data. All legal materials obtained in the research, then classified and analyzed to produce conclusions from the results obtained in accordance with the problems discussed.

## Results and Discussion

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## Implementation of *Restorative Justice* for Children as Perpetrators of Theft Crime in Buleleng Police Station

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System already regulates diversion, diversion functions so that children in conflict with the law are not stigmatized due to the judicial process they undergo. The use of the diversion mechanism is given to law enforcers in handling law violators involving children without using the formal justice system, the application of this diversion is intended to reduce the negative impact of children's involvement in a judicial process so that it is fair to children for the sake of their future and growth and development, rather than having to involve children in the formal justice system. So that in the end the child can return to the social environment reasonably. Based on the results of direct research at the Buleleng District Police, they have implemented the application of *Restorative Justice* to the crime of theft committed by children based on Article 1 Paragraph (6) of the SPPA Law. From the results of data collection conducted by researchers at the PPA Unit of Buleleng Police, it was found that criminal acts committed by children based on data from Buleleng Police showed that there were fluctuations in the number of criminal acts committed by children from year to year.

The data on theft crimes committed by children in the Buleleng Resort Police from 2021 to 2023 as found in table 01 on page 11, based on this data it can be seen that in 2021 there were 4 cases of theft committed by children, 3 of which could be resolved out of court, while 1 case will be handed over. In 2022 there were 2 cases of theft committed by juveniles, 1 of which was settled out of court, while the other case will be transferred. And in 2023

There were 5 cases of theft committed by children, 1 of which could be resolved out of court, while 4 cases will be submitted. Of course, with the existence of Law Number 11 of 2012 concerning the Child Criminal *Justice* System in the jurisdiction of Buleleng Police, it is mandatory to go through diversion efforts with a *Restorative Justice* approach. However, not all diversion efforts led to peace agreements at the investigation stage at Buleleng District Police and some cases of juvenile delinquency rose to the prosecution stage.

The settlement carried out with the *Restorative Justice* approach at Buleleng Police Station is a mediation process in accordance with the habit of deliberation, in the application of the principles of *Restorative Justice* at Buleleng Police Station which is carried out by the police with the perpetrator / offender, family group deliberation, which is restorative for both the victim and the perpetrator, where the involvement in the settlement process is the victim and the perpetrator as well as the third party, namely the police who become mediators and facilitators to bridge the two parties to reach an agreement and the goal to be achieved through the deliberation process is to restore all losses and injuries that have been caused by the child delinquency event. Thus, the negative impact of children who commit criminal acts when dealing with law enforcement officials can be minimized. The police as the diversion authority is responsible for determining the policy mechanism to be taken in implementing diversion. With the application of diversion for crimes committed by minors, it can be concluded that Buleleng Police have implemented diversion efforts with a *Restorative Justice* approach first, it is clear that the police do not solely apply written law but first carry out *Restorative Justice* actions against children who commit criminal acts.

The mechanism for the application of *Restorative Justice* in the settlement of theft crimes committed by children that must be carried out in the diversion process, namely, investigators in the

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Criminal Investigation Unit (Sat Reskrim) section Idik IV Unit for the Protection of Women and Children / PA Buleleng Police, namely: Report, the entry of a report from the victim to the police stating that there has been a case of theft committed by a child. The police conduct an examination that it is indeed a criminal offense of theft. Summoning, the investigator summons the parents/guardians of the perpetrator, namely the child who committed the crime of theft. The police contacted BAPAS (Correctional Center) to conduct research, and also contacted the PEKSOS (Social Worker) from the social service to assist the child. In this case the Social Worker from the social service not only assisted the child as a perpetrator of theft, but also assisted the victim. Implementation of mediation, the investigator as the leader mediates between the parties involved, namely the child, victim, parents / guardians, BAPAS. In resolving the case, the investigator of Buleleng Police conducted an examination process by persuading the child to be able to provide honest information and find out what was behind the child committing the crime of theft, as for the reasons the child committed theft due to several facts that influenced him such as needs, school environment, living environment, economic factors, lack of attention from parents that made the child dare to commit a crime. During mediation the investigator seeks to resolve the case with *Restorative Justice*. Case settlement can be resolved with *Restorative Justice* if the application has been agreed upon by the victim, then Bapas supervises the agreement regarding compensation and the return of stolen goods to the victim. After the settlement, the investigator made a peace agreement letter signed by all parties involved.

During the trial process of criminal cases committed by children, the prosecutor also participates in trying to resolve the case with the application of *Restorative Justice*. All of this is done by the police and prosecutors for the best interests of the child as long as there is a willingness of the victim and perpetrator to forgive each other and fulfill conditions such as; the existence of an admission or statement of guilt from the perpetrator, the willingness of the victim or the victim's family, the child suspect is not a recidivist (has been repeatedly convicted by the court), and there are certain considerations for cases of juvenile crime.

Based on the results of observations, it is stated that not all children's cases can end in peace between the two parties, this is based on the number of theft crimes committed by children, many of which were not successfully resolved outside of criminal justice. In this case, the Buleleng Police investigators have attempted the process of resolving children's cases by applying *Restorative Justice* through diversion. However, law enforcement officials, namely investigators of the Criminal Investigation Unit (Sat Reskrim), Idik IV Unit for the Protection of Women and Children / PA of Buleleng Police in terms of understanding the concept of children and the requirements for diversion, have not referred to the provisions of Article 7 paragraph (2) of Law Number 11/2012 concerning the Juvenile Justice System. However, the application of *Restorative Justice* is in accordance with the SPPA Law. While in the process, the application of *Restorative Justice* has not run perfectly.

## **Obstacles in the Implementation of *Restorative Justice* for Children as Perpetrators of Theft Crime at Buleleng Police Station.**

There are several obstacles encountered in the process of implementing *Restorative Justice* towards children as perpetrators of theft crimes at Buleleng Police Station. based on the results of interviews conducted with the police there are still obstacles encountered in carrying out the juvenile criminal justice system including: The victim's family does not want to reconcile, Most cases that are not resolved by *Restorative Justice* 76 because the parties involved do not find an agreement to resolve the case peacefully, this is usually because the victim's family does not want to reconcile with the

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perpetrator of the crime even though mediation has been carried out. The lack of good faith on the part of the perpetrator, which causes most victims to not want to settle the case amicably, is that the perpetrator is not willing to compensate for the losses suffered by the victim and the perpetrator can no longer return the goods that have been stolen from the victim. The victim asks for irrelevant and unreasonable compensation, not how to resolve and provide appropriate sanctions and then what is the best solution between the victim / family of the victim, but instead as a place to bargain for compensation requested by the victim's family which is irrelevant and unreasonable, namely too high and also does not think about the ability of the perpetrator's family. Lack of public knowledge about *Restorative Justice* efforts, the term *Restorative Justice* is less well known within the community, so that in minor criminal cases resolved through the application of *Restorative Justice* is better known as a family settlement or deliberation. As a result of public ignorance of *Restorative Justice* efforts that can be applied in the criminal law system, especially in the settlement of minor crimes, there are still many rejections, because the public only knows that someone who commits a criminal offense must be punished and the punishment is imprisonment. From the lack of public knowledge, it is necessary to socialize to the public regarding *Restorative Justice* efforts in resolving criminal acts, especially theft.

Based on what is presented, the author can conclude that the obstacles faced by the diversion facilitator in this case the investigator at Buleleng Police Station in implementing *Restorative Justice* as a settlement of cases of children in conflict with the law are the attitudes of the victim's family who think that *Restorative Justice* cannot represent responsibility for children who commit crimes and children will escape responsibility for their actions. And this obstacle also occurs because of the factor of the lack of public knowledge about *Restorative Justice* efforts.

## Conclusion

From the results of the research and discussion above, the following conclusions can be drawn:

### 1. Implementation of *Restorative Justice*

The implementation of *Restorative Justice* in handling theft crimes committed by children at Buleleng District Police is not fully in accordance with the provisions of Law Number 11 of 2012 concerning the Juvenile Justice System. The implementation of *Restorative Justice* at Buleleng District Police in the process not all children's cases can lead to peace between the two parties, which from 2021 to 2023 there were 11 cases of theft crimes committed by children, 5 of which were successfully resolved by the application of *Restorative Justice* through diversion, while the other 6 cases were submitted. This is based on the number of theft crimes committed by children, many of which were not successfully resolved outside of criminal justice.

### 2. Obstacles faced by Buleleng Police investigators

The obstacles faced by Buleleng Police investigators in applying *Restorative Justice* were found to be several obstacles, including, the victim's family did not want to reconcile, the absence of goodwill from the perpetrator, the victim asked for irrelevant and unreasonable compensation, lack of public knowledge about *Restorative Justice* efforts.

## Recommendations

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1. To the Buleleng Police investigators to better understand the concept of children in conflict with the law and the requirements for diversion in accordance with the provisions of the Law on the Juvenile Criminal *Justice System*, and also to the investigators to further improve the importance of applying *Restorative Justice* in terms of resolving criminal acts committed by children, especially in this case is the case of theft. This is done so that all parties involved can understand the importance of applying *Restorative Justice* in children's cases, so that later in the settlement of theft crimes committed by children can run well and perfectly to realize justice for both parties.
2. To the Buleleng Police to provide counseling and socialization to the community regarding *Restorative Justice* in order to provide understanding to the community, because many people still do not understand the application of *Restorative Justice*.
3. Law enforcers are expected to develop theories that are relevant to all forms of cases in an ideal society, with all alternative ideas and solutions in handling the application of *Restorative Justice* with concepts in legal values.

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