



## Restorative Justice for Child Abortion Offenders

Article	Abstract
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### INTRODUCTION

Restorative justice is one form of reform in the Indonesian criminal law system. Unlike retributive justice which emphasizes retaliation or restitutive justice which emphasizes compensation. Restorative justice emphasizes more on restoring the situation after the incident. According to Tony Marshall quoted by Eva Achjani Ulfa in her book entitled *Restorative Justice*, writing that restorative justice is a process of resolving cases by bringing together all parties involved to resolve the consequences of the case for the benefit of the future.<sup>1</sup>

According to the United Nations quoted by Eva Achjani Ulfa in her book entitled *Restorative Justice*, there are several principles that form the basis of restorative justice, namely: (1) Handling

<sup>1</sup> Ulfa Eva Achjani, *Keadilan Restoratif* (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2009).

of criminal acts must bring recovery to victims as much as possible; (2) The restorative justice approach can only be carried out if the perpetrator realizes and admits his guilt; (3) The perpetrator must be willing to take responsibility because he has realized his guilt; (4) In connection with the first point, the victim is given the opportunity to participate directly in the settlement of the case; (5) This restorative justice effort not only involves the perpetrator and victim, but also involves the community.<sup>2</sup>

Restorative justice has long been applied in Indonesia, namely in customary law which always prioritizes deliberation between the community and the customary head in resolving cases that occur in customary areas. Meanwhile, criminal law is the second option (*ultimum remedium*) pursued by indigenous peoples if they do not find a solution in resolving customary law. Justice that is as fair as possible for all parties involved in the case is the achievement to be aimed for in restorative justice, not just prioritizing punishment.<sup>3</sup>

The application of restorative justice can only be applied in certain cases.<sup>4</sup> For example, cases involving children are explicitly explained in Article 1 point (6) of Law No. 11/2012 on Juvenile Justice System, regarding the definition of restorative justice. Furthermore, the case of an accident that occurred at km 3.5 Jagorawi Toll Road involving Rasyid (22), the son of former Coordinating Minister for the Economy Hatta Rajasa, resulted in 2 deaths and 3 injuries. Rasyid was sentenced by the panel of judges of the East Jakarta District Court to five months in prison with a six-month probation period, with the provision that Rasyid will not be imprisoned if he does not make the same mistake during the six months.

According to Chief Judge Suharjono, they applied Article 14a of the Criminal Code (hereinafter referred to as the Criminal Code) on Conditional Punishment because in this case there was an element of responsibility of the defendant and his family to the victim. This element exists in the principle of restorative justice. Then, what about the child as the perpetrator of abortion who has eliminated the life of his flesh and blood, whether restorative justice can be applied. Therefore, it is necessary to further review in depth and comprehensively about the restorative justice approach in the criminal justice system, and analyze the punishment of children who commit abortion based on restorative justice through the writing of *Restorative Justice Against Abortion Perpetrators*. Based on this description, there is a formulation of the problem that is the focus of this paper, namely the restorative justice approach in the criminal justice system and the punishment of child abortion perpetrators based on restorative justice.

## RESEARCH METHODS

This research uses normative legal research methods with statutory and conceptual approaches. This normative legal research is used because it wants to find legal principles, legal dogmatics, and legal arrangements in answering the legal issues at hand. This statutory approach is intended to parse the juridical aspects related to the application of restorative justice to children who have had abortions. While the conceptual approach uses restorative justice theory to resolve the legal issues at hand.

## ANALYSIS AND DISCUSSION

### *Restorative Justice Approach in Criminal Justice System*

Both penal and non-penal means are efforts to tackle crime. Handling conducive factors, among others, focusing on problems or social conditions that can directly or indirectly cause or

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<sup>2</sup> Nurul Putri Awaliah Nasution, Jubair & Abdul Wahid, 'The Concept of Restorative Justice in Handling Crimes in the Criminal Justice System' (2022) 1:5 Eur J Law Polit Sci 32-41.

<sup>3</sup> Muladi, *Kapita Selektta Sistem Peradilan Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 1995).

<sup>4</sup> Ana Fauzia & Fathul Hamdani, 'Restorative Justice: Antara Teori dan Praktik', (2022), online: *HnG Consult* <[https://hng.co.id/view/article-details?id\\_post=Restorative-Justice:-Antara-Teori-dan-Praktik-2u7zUYvkES](https://hng.co.id/view/article-details?id_post=Restorative-Justice:-Antara-Teori-dan-Praktik-2u7zUYvkES)>.

nourish crime is the main target of preventive non-punitive means. Non-penal efforts are a key and strategic position of the overall macro criminal policy efforts.<sup>5</sup> The justice system when viewed as everything related to the judiciary will include institutions, resources, procedures, infrastructure and facilities, and so on. However, when viewed as the process of adjudicating, examining and deciding cases. It cannot be separated from the legal system that applies in the country.<sup>6</sup>

In Indonesia, the legal system is based on Pancasila and the 1945 Constitution (hereinafter referred to as the 1945 Constitution). Article 24(2) of the 1945 Constitution (Third Amendment 2001) stipulates that judicial power is exercised by the Supreme Court and the judicial bodies under it within the General Court, Religious Courts, State Administrative Courts and Military Courts; and by a Constitutional Court. Furthermore, as an implementation of Article 24 of the 1945 Constitution, Law No. 4/2004 on Judicial Power (hereinafter referred to as the Judicial Power Law) was enacted.

Law Number 5 of 2004 Concerning the Amendment of Law Number 14 of 1985 Concerning the Supreme Court as amended by Law Number 3 of 2009 Concerning the Second Amendment to Law Number 14 of 1985 Concerning the Supreme Court (hereinafter referred to as the Supreme Court Law), and Law Number 24 of 2003 Concerning the Constitutional Court as amended by Law Number 8 of 2011 Concerning the Amendment of Law Number 24 of 2003 Concerning the Constitutional Court. As amended by Law Number 4 of 2014 Concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2013 Concerning the Second Amendment to Law Number 24 of 2003 Concerning the Constitutional Court into Law. As amended by Law Number 7 of 2020 Concerning the Third Amendment to Law Number 24 of 2003 Concerning the Constitutional Court (hereinafter referred to as the Constitutional Court Law).

Based on Article 24C of the 1945 Constitution and the Constitutional Court Law, the Constitutional Court is a state court at the same level as the Supreme Court, which has the authority to hear cases at the first and last instance (whose decisions are final) to test laws against the 1945 Constitution; to decide disputes over the authority of state institutions whose authority is granted by the 1945 Constitution; to decide on the dissolution of political parties; and to decide disputes over election results.<sup>7</sup> The organizational, administrative, and financial development of the judicial power as stipulated in Article 13 of the Judicial Power Law determines that:

1. The organization, administration and finances of the Supreme Court and its subordinate judicial bodies are vested in the Supreme Court;
2. The organization, administration and finances of the Constitutional Court are under the power and authority of the Constitutional Court;
3. Provisions regarding the organization, administration and finance of judicial bodies as referred to in paragraph (1) for each judicial environment shall be regulated by law in accordance with the specificity of each judicial environment.

In its development, the old Judicial Power Law was revoked and replaced by Law Number 48 of 2009 concerning the new Judicial Power (hereinafter referred to as the Judicial Power Law). Article 25 of the Judicial Power Law stipulates that:

1. General Courts are authorized to examine, hear and decide criminal and civil cases in accordance with the provisions of laws and regulations;
2. The Religious Courts have the authority to examine, hear, decide and settle civil cases between people of the Muslim religion in accordance with the provisions of laws and regulations;

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<sup>5</sup> Muladi, *supra* note 3.

<sup>6</sup> Bagir Manan, *Kekuasaan Kehakiman Indonesia: Dalam UUNo. 4 Tahun 2004* (Yogyakarta: FH UII Press, 2007).

<sup>7</sup> Fathul Hamdani et al, 'Arrangement of Judicial Power in Indonesia Through the Implementation of One-Stop Judicial Review at the Constitutional Court' (2024) 9:1 Tadulako Law Rev 336-342.

3. The State Administrative Court only handles cases of lawsuits against state administrative officials as a result of written decisions made that harm a person or civil legal entity in accordance with the provisions of laws and regulations;
4. The Military Court only handles cases and disputes on the administration of the armed forces for the military in accordance with the provisions of laws and regulations.

General Courts are regulated by Law No. 49 of 2009 on the Second Amendment to Law No. 2 of 1986 on General Courts. The courts included in the general court are the District Court and the High Court. Religious Courts are regulated by Law Number 50 of 2009 Concerning the Second Amendment to Law Number 7 of 1989 Concerning Religious Courts. The courts included in the religious judiciary are the Religious Courts and the Religious High Courts. State Administrative Courts are regulated by Law No. 51 of 2009 on the Second Amendment to Law No. 5 of 1986 on State Administrative Courts.

The courts included in the State Administrative Court are the State Administrative Court and the High Administrative Court. Military Courts are regulated in Law Number 31 of 1997 concerning Military Courts. Courts included in Military Justice are the Military Court, Military High Court, Main Military Court, and Military Battle Court. In addition, in Article 1 point 8 jo. Explanation of Article 27 paragraph (1) of the Judicial Power Law determines the existence of Special Courts that have the authority to examine, hear and decide certain cases that can only be established in one of the judicial bodies under the Supreme Court which is regulated in a special law, most of which have ad hoc judges.

These special courts are the Juvenile Court, Commercial Court, Human Rights Court, Corruption Court, Tax Court, Industrial Relations Court, and Fisheries Court. The Juvenile Court was established pursuant to Law No. 3 of 1997 Concerning Juvenile Courts as revoked by Law No. 11 of 2012 Concerning the Juvenile Criminal Justice System (to be referred to as the SPPA Law). Commercial Courts established pursuant to Law No. 4 of 1998 Concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 1998 Concerning Amendments to the Bankruptcy Law into Law as repealed by Law No. 37 of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations.

The Corruption Court was established under Law No. 31/1999 on the Eradication of Corruption as amended by Law No. 20/2001 on the Amendment to Law No. 31/1999 on the Eradication of Corruption. Furthermore, Law Number 30 of 2002 Concerning the Corruption Eradication Commission. As amended by Law Number 10 of 2015 Concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2015 Concerning Amendments to Law Number 30 of 2002 Concerning the Corruption Eradication Commission into Law. As amended by Law Number 19 of 2019 Concerning the Second Amendment to Law Number 30 of 2002 Concerning the Commission for the Eradication of the Crime of Corruption.

Human Rights Court established pursuant to Law No. 26 of 2000 Concerning Human Rights Courts as partially repealed by Law No. 1 of 2023 Concerning the Criminal Code (hereinafter referred to as the National Criminal Code). Tax Court established pursuant to Law No. 14 of 2002 Concerning Tax Court. Industrial Relations Court established pursuant to Law Number 2 of 2004 Concerning Industrial Relations Dispute Resolution. Fisheries Court established pursuant to Law Number 31 of 2004 Concerning Fisheries as amended by Law Number 45 of 2009 Concerning Amendments to Law Number 31 of 2004 Concerning Fisheries.

As amended by Law Number 11 of 2020 concerning Job Creation, and as amended by Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation. A legal regulation that regulates how to maintain and carry out material legal regulations within the scope

of criminal law is criminal procedure law.<sup>8</sup> Criminal procedure law is a series of regulations that contain how the powerful government agencies or law enforcers, namely the police, prosecutors, judiciary, and courts must act in order to achieve the state's objectives by establishing criminal law.<sup>9</sup>

Furthermore, in criminal procedure law there are 4 (four) principles, namely as follows:

1. The principle of equality before the law. This means that everyone is treated equally without distinguishing social level, class, religion, skin color, rich, poor, etc., in front of the court;
2. No one shall be brought before a court other than as provided by law;
3. No one shall be punished unless the court, by means of evidence authorized by law, is satisfied that a person who is presumed to be liable is guilty of the offense charged;
4. The principle of presumption of innocence. This means that every person who is arrested, detained, prosecuted, or brought before the court must be presumed innocent until a court decision declares his guilt and has permanent legal force.<sup>10</sup>

According to Tony F. Marshall quoted by M. Musa in his book entitled *Restorative Justice An Alternative Thought for the Juvenile Justice System in Indonesia*, wrote that restorative justice is a process in which interested parties involved in certain offenses such as mediators, victims and their families, offenders and their families, and community representatives meet to resolve the consequences of the offense for the benefit of the future.<sup>11</sup> According to Muladi, restorative justice is an approach that emphasizes the recovery of losses arising from criminal acts. With the cooperative processes of all stakeholders, this recovery will be achieved.<sup>12</sup>

The purpose of restorative justice is recovery and compensation. In other words, the criminal law enforcement process through restorative justice is a criminal settlement that aims to restore the situation and provide compensation to victims based on the provisions agreed upon by the relevant parties.<sup>13</sup> The balance of interest model that refers to *daad-dader strafrecht* is suitable for the Indonesian criminal justice system. This realistic model takes into account the various interests that must be covered by criminal law, such as the interests of the state, the public interest, the interests of individuals, the interests of criminals and the interests of victims of crime.<sup>14</sup>

The role of law enforcement officers in crime prevention efforts is very important. Bureaucrats are very strict about the rules so they often appear rigid. The police are one of the law enforcers and in the criminal justice system which has the first and main position, so its role is very important.<sup>15</sup> Police officers must carry out their profession in accordance with the mandate of the law and the police code of ethics. Therefore, every criminal case that comes in either through complaints or other offenses must be accepted. Generally, all criminal cases end in imprisonment.<sup>16</sup> However, do all criminal cases end in imprisonment even though the perpetrator of the crime is a child. The answer is no, for cases of children in conflict with the law have special courts that refer

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<sup>8</sup> Sunaryo & Ajeng Dianawati, *Tanya Jawab Seputar Hukum Acara Pidana* (Jakarta: Visimedia, 2009).

<sup>9</sup> Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2014).

<sup>10</sup> Andi Sofyan & Abd Asis, *Hukum Acara Pidana Suatu Pengantar* (Jakarta: Prenadamedia Group, 2014).

<sup>11</sup> M Musa, 'Peradilan Restoratif Suatu Pemikiran Alternatif Sistem Peradilan Anak di Indonesia' (2008) 19:2 J Mahkamah 168-185.

<sup>12</sup> Muladi, *supra* note 3.

<sup>13</sup> Hutauruk Rufinus Hotmaulana, *Penanggulangan Kejahatan Korporasi Melalui Pendekatan Restoratif Suatu Terobosan* (Jakarta: Sinar Grafika, 2013).

<sup>14</sup> Muhammad Naufal Rizky, 'Tanggung Jawab Pidana Pelaku Pengedar Obat Carnophen yang Telah Dicaput Izin Edarnya' (2020) 4:1 Lex J Kaji Huk dan Keadilan 110-125.

<sup>15</sup> Imani Suroso, 'Harmoni Pengaturan Surat Ketetapan Penghentian Penyidikan oleh Kepolisian Negara Republik Indonesia' (2019) 3:1 Lex J Kaji Huk dan Keadilan.

<sup>16</sup> Ciptono, 'Keadilan Hukum dalam Penerapan Diskresi Kepolisian Guna Penghentian Penyidikan Tindak Pidana Kecelakaan Lalu Lintas Perspektif Undang - Undang Nomor 2 Tahun 2002' (2022) 6:1 Lex J Kaji Huk dan Keadilan 60-79.

to the SPPA Law.<sup>17</sup> Restorative justice approach is one of the solutions in cases of children in conflict with the law.

### ***Punishment of Child Abortion Perpetrators Based on Restorative Justice***

Book I of the Criminal Code is a formulation for criminal threats that lead to punishment as stated in Article 10 of the Criminal Code, namely: (1) main punishment which consists of death penalty, imprisonment, confinement, fine, and exile; (2) additional punishment which consists of deprivation of certain rights, forfeiture of certain goods, and announcement of judge's decision. 3 (three) things to be achieved in formulating legal norms and criminal threats for the enactment of criminal law, namely:

1. Establishing or achieving the ideal of society or the envisioned society;
2. Maintaining and upholding noble values in society;
3. Maintaining something that is considered good and followed by the community with negative norm formulation techniques.<sup>18</sup>

Retaliation, benefit and a combination of retaliation that has a purpose or retaliation given to the perpetrator with a specific purpose and purpose are the reasons for punishment. Justice as the basis when there is a violation of criminal law is the philosophical basis of punishment. Criminalization has 2 (two) angles, namely the functional angle and the substantive norm angle. From the functional angle, the punishment system is identical as the entire criminal law enforcement system consisting of material, formal criminal law, and its implementation.<sup>19</sup>

Reviewing the basic problems in criminal law there are 3 (three), namely: punishment, criminal act and criminal responsibility. The objectives and guidelines of punishment in the Criminal Code are not mentioned, so that law enforcement officers and judges impose punishment based on different views and interpretations. In addition, the punishment in the Criminal Code is rigid and does not regulate a special minimum punishment.<sup>20</sup>

The purpose of punishment is to make the perpetrator suffer and feel the consequences of his actions which will be condemned by society. So, some people and authorities believe that the application of punishment, which always takes the form of imprisonment, so that the offender becomes better and does not repeat it in the future. Although, there are some offenders who are even influenced to take revenge after leaving prison because certain things will change their way of thinking.<sup>21</sup> In contrast to the punishment in the National Criminal Code which has objectives and guidelines.

The objectives of punishment as stated in Article 51 of the National Criminal Code are: (1) to prevent criminal offenses by enforcing legal norms for the protection and protection of society (prevention); (2) to socialize convicts by providing guidance and mentoring so that they become good and useful people (rehabilitation); (3) to resolve conflicts arising from criminal offenses, restore balance, and bring a sense of security and peace in society; (4) to foster remorse and relieve guilt in convicts (fostering remorse of convicts).

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<sup>17</sup> Abdul Wahid et al, 'Restoration of Children's Rights after Imprisonment in the Perspective of State Responsibility' (2024) 3:4 Eur J Law Polit Sci 1-6.

<sup>18</sup> Mudzakkir, *Perencanaan Pembangunan Hukum Nasional Bidang Hukum Pidana Dan Sistem Pemidanaan (Politik Hukum dan Pemidanaan)* (Jakarta: Badan Pembinaan Hukum Nasional, 2008).

<sup>19</sup> Hamdan Rampadio, Ana Fauzia & Fathul Hamdani, 'The urgency of arrangement regarding illicit enrichment in indonesia in order to eradication of corruption crimes by corporations' (2022) 9:2 J Pembaharuan Huk 225-241.

<sup>20</sup> Fathul Hamdani et al, 'Fiksi Hukum: Idealita, Realita, dan Problematikanya di Masyarakat' (2023) 1:2 Primagraha Law Rev 71-83.

<sup>21</sup> Moeljatno, *Asas-asas Hukum Pidana* (Jakarta: Rieneke Cipta, 1993).

Furthermore, Article 52 of the National Criminal Code explains that the purpose of punishment is not intended to dehumanize a person. The guidelines for punishment are set out in Articles 53-56 of the National Criminal Code, namely that judges are obliged to uphold the law and justice. If there is a conflict with these two things, the judge is obliged to prioritize justice. These sentencing guidelines attempt to harmonize the principles of punishment with those enshrined in the 1945 Constitution.

There are at least 11 (eleven) points of consideration in the provisions of sentencing guidelines. The 11 points include the form of guilt of the perpetrator of the crime, the motive and purpose of committing the crime, the inner attitude of the perpetrator of the crime, whether the crime was planned or not, the way of committing the crime, the attitude and actions of the perpetrator after committing the crime, the life history, social and economic conditions of the perpetrator of the crime, the effect of the crime on the victim or the victim's family, forgiveness from the victim and/or the victim's family, and/or the value of law and justice that lives in society.

The provisions in the objectives and guidelines of this punishment provide a philosophical basis, rationality, motivation, and justification as direction and control for law enforcers that the punishment system is a series of integrated processes.<sup>22</sup> The criminal aggravating factors in the National Criminal Code are officials who commit criminal offenses so as to violate the special obligations of the position or commit criminal offenses by abusing the authority, opportunity, or facilities provided in the position; the use of national flags, songs, or symbols when committing criminal offenses; and repetition of criminal offenses.<sup>23</sup>

Furthermore, what about the punishment for children who commit crimes such as abortion, can it be resolved based on a restorative justice approach. There are 3 (three) theories of the purpose of punishment, namely:

1. Absolute Theory (Retaliation Theory), in which everyone who commits a crime will receive an appropriate reply or punishment because the law must be enforced;
2. Relative Theory (Purpose Theory), this theory is based on the purpose of the perpetrator himself, namely to maintain public order by using a deterrent effect on punishment in order to set an example for the community so as not to commit crimes;
3. Combinatorial Theory, this combined theory seems ideal because in addition to providing appropriate punishment it also provides an example for the community not to commit crimes.<sup>24</sup>

Children who commit criminal offenses or children in conflict with the law are usually influenced by relationships, the environment and so on. Crimes committed by children are a process of imitating or being stimulated through the actions of adults or their surroundings.<sup>25</sup> One of the crimes committed by children as a result of sexual contact is abortion. Although, more abortions are committed as a result of rape.

Abortion (*Abortus Provocatus*) comes from Latin, which means intentional abortion.<sup>26</sup> General provisions on abortion in Indonesia are regulated in Articles 299, 346, 347, 348 and 349 of the Criminal Code. Furthermore, the provisions on abortion are regulated in Article 75 of Law Number 36 of 2009 concerning Health as revoked by Law Number 17 of 2023 concerning Health (hereinafter referred to as the Health Law), which states that abortion can be performed if the

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<sup>22</sup> Muhammad N Jarmoko, *Pertimbangan Pemidanaan oleh Hakim dalam KUHP Nasional* (Nusa Tenggara Timur, 2024).

<sup>23</sup> Marcus Priyo Gunarto, *Pembaharuan Kitab Undang-Undang Hukum Pidana (KUHP): Menynergikan Keadilan, Kemanfaatan, dan Kepastian Hukum* (Universitas Ahmad Dahlan, 2022).

<sup>24</sup> Marcus Priyo Gunarto, 'Sikap Memidana Yang Berorientasi Pada Tujuan Pemidanaan' (2009) 1:1 *Mimber Huk.*

<sup>25</sup> Marlina, *Pengantar Konsep Diversi dan Restorative Justice Dalam Hukum Pidana* (Medan: Usu Press, 2010).

<sup>26</sup> I Komang Suardika, 'Analisis Yuridis Tindak Pidana Aborsi yang Berkaitan Dengan Pelaku sebagai Korban Pemerkosaan' (2019) 2 *J Komunitas YustisiaYustisi*.

victim of rape threatens the life of the mother and / or fetus or health emergency pregnancy that can cause psychological trauma to the victim of rape.

Article 31 of Government Regulation No. 61/2014 on Reproductive Health (hereinafter referred to as PP Reproductive Health) also emphasizes that abortion can only be performed if there are indications of medical emergencies or as a result of rape. Abortion can only be done, starting from the first day of the last menstrual period and a maximum of 40 (forty) days of pregnancy. Abortion is performed by a qualified doctor. According to Fatwa of the Indonesian Ulema Council (MUI) No. 4/2005 on Abortion emphasizes that:

1. In general terms, an emergency is a situation where if a person does not do something that is prohibited, he will die or is about to die. A necessity is a condition that if one does not do the prohibited things, one will face great hardship;
2. By law, abortion is illegal because the blastocyst is embedded into the wall of the mother's uterus (laying eggs). Due to old age, abortion is allowed regardless of emergency or necessity. Pregnancy-related emergencies that allow abortion are: pregnant women suffering from serious physical illnesses, such as advanced cancer, cavernous tuberculosis and other serious physical illnesses, should be determined by a team of doctors.

MUI allows abortion under certain circumstances. However, MUI forbids abortion performed on pregnancies that occur as a result of adultery. Like a case that occurred in Jambi in 2020, a 17-year-old child had an abortion accompanied by her 18-year-old boyfriend. The case was revealed because there was a report from the Bhayangkara Hospital which was treating the child bleeding due to abortion. Sadly, the abortion was assisted by the girl's uncle and aunt. The lovebirds carried the body of the baby, who was about 5 (five) months old, in a backpack and buried it in front of an empty shophouse.<sup>27</sup>

Based on the SPPA Law, the juvenile criminal justice system is the entire settlement process from the investigation stage to the counseling stage after a child has violated the law through protection-based criminal procedures. For example, the best interests of the child, respect for the child, survival, growth, and development of the child, proportionality, deprivation of freedom, and punishment as a last resort to avoid retaliation. Furthermore, how is the punishment for the perpetrators mentioned above. Whether the punishment can still apply the restorative justice approach. First, we must look at the mens rea of the perpetrators.

In the above case, it is clear that the abortion was not done as a result of rape but was done in a state of consciousness to eliminate traces of the results of their misconduct. The misconduct was due to the influence of bad relationships because they often watched pornographic videos. Rice has become porridge, inevitably they must be held accountable for the crime that has been committed. Article 1 point 3 of the SPPA Law states that children in conflict with the law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a criminal offense.

In terms of age, girls who perform abortions can still be categorized as children in conflict with the law. However, boys who are 18 years old are categorized as adults who are legally capable and able to take responsibility for their actions. Based on the description above for the perpetrators, the application of punishment based on the restorative justice approach cannot be done because of the criminal acts they commit intentionally. Girls can be charged with Article 194 of the Health Law with a maximum imprisonment of 10 (ten years) and a maximum fine of Rp1,000,000,000.00 (one billion rupiah).

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<sup>27</sup> Kompas, 'Kasus Aborsi Terungkap Saat Pelaku yang Masih Remaja Dirawat di RS', (2020), online: <<https://regional.kompas.com/read/2020/08/28/22065111/kasus-aborsi-terungkap-saat-pelaku-yang-masih-remaja-dirawat-di-rs>>.



For her actions that deliberately performed abortion at the gestational age of about 5 (five) months, causing the fetus to die. There is the right of the child in the womb to live that has been negated. This violates Article 28A of the 1945 Constitution which explicitly states that the right to life is a human right protected by the constitution. Furthermore, Article 4 of Law No. 23 of 2002 on Child Protection as amended by Law No. 1 of 2016 on the Second Amendment to Law No. 23 of 2002 on Child Protection (hereinafter referred to as the Child Protection Law), states that every child has the right to live, grow, develop, and participate reasonably in accordance with the dignity of humanity, and receive protection from violence and discrimination.

Article 1 Point 1 of the Child Protection Law states that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. In addition, children's rights are human rights and for their benefit, children's rights are recognized and protected by law even from the womb as stipulated in Article 52 paragraph (2) of Law Number 39 of 1999 concerning Human Rights. Meanwhile, the male perpetrator can be charged with Article 348 of the Criminal Code jo. Article 55 of the Criminal Code with a maximum imprisonment of 7 (seven) years. The punishment for the perpetrators above aims to punish and set an example for other lovebirds not to do the same thing because the consequences are very fatal.

## CONCLUSION

The restorative justice approach in the criminal justice system can be applied to certain cases. For example, corruption, narcotics, children and so on. Punishment of children who have had abortions based on restorative justice is not necessarily applicable. This is because not all abortions are performed by rape victims. As in the case above, the perpetrators deliberately had abortions to cover up their shame. Therefore, the government is expected to provide assistance and counseling evenly throughout the country about sex, health and the dangers of abortion. Then the task for academics is expected to more often provide education to students and also the surrounding environment about sex, health and the dangers of abortion. Meanwhile, parents are expected to care more about their families, especially for girls so that they can take care of themselves and not be easily influenced by socialization, the environment, and the seduction of crocodile men because it can damage the future. Don't even hesitate to give sex lessons to them according to their age. Furthermore, children are expected to be more careful in protecting themselves. Also, do not be easily influenced by bad socialization, environment. Never be afraid to report any incidents of physical or verbal abuse, either experienced by yourself or others.

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