



## ***Restorative Justice for The Protection of Children in Conflict with the Law: A Legislative Perspective in Muslim Countries in Southeast Asia***

### **Keadilan Restoratif untuk Perlindungan Anak-Anak yang Berkonflik dengan Hukum: Perspektif Legislatif di Negara-Negara Muslim di Asia Tenggara**

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#### **Keyword:**

*Children in Conflict with The Law; Restorative Justice; Southeast Asian Muslim Countries; Comparative Law*

#### **Abstract**

*Children in conflict with the law represent one of the most vulnerable groups within the criminal justice system because they stand at the intersection of legal accountability and the state's responsibility to safeguard their rights and best interests. In the development of contemporary criminal law, restorative justice has gained increasing recognition as an alternative paradigm that prioritizes restoration, rehabilitation, and the social reintegration of child offenders, particularly in response to the shortcomings of retributive justice. This research examines the substance of restorative justice within the juvenile justice systems of three Muslim-majority Southeast Asian countries, namely Indonesia, Malaysia, and Brunei Darussalam, with particular attention to differences in normative recognition and their implications for the protection of children's rights. This study uses qualitative research with a normative legal analysis and comparative legal approach, which focuses on the legal framework and institutional mechanisms that regulate the rehabilitation of children in conflict with the law in the three jurisdictions. The findings reveal that Indonesia expressly incorporates restorative justice and diversion into its positive legal framework, while Malaysia and Brunei Darussalam recognize similar principles more implicitly through rehabilitative and non-custodial measures. These normative differences affect the consistency of implementation, the degree of legal certainty, and the overall effectiveness of restorative justice practices. Accordingly, regulatory strengthening and policy harmonization among Southeast Asian Muslim countries are essential to promoting a sustainable juvenile justice system that is consistently oriented toward rehabilitation and the best interests of the child.*

#### **Kata Kunci:**

*Anak Berkonflik dengan Hukum; Keadilan Restorative; Negara Muslim Asia Tenggara;*

#### **Abstrak** (maksimal 250 kata)

*Anak-anak yang berkonflik dengan hukum merupakan salah satu kelompok paling rentan dalam sistem peradilan pidana karena mereka berada di persimpangan antara pertanggungjawaban hukum dan tanggung jawab negara untuk melindungi hak-hak serta kepentingan terbaik mereka. Dalam perkembangan hukum pidana kontemporer, keadilan restoratif semakin diakui sebagai paradigma alternatif yang mengutamakan pemulihan, rehabilitasi, dan reintegrasi sosial anak-*

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anak pelaku tindak pidana, terutama sebagai respons terhadap kelemahan keadilan retributif. Penelitian ini mengkaji substansi keadilan restoratif dalam sistem peradilan anak di tiga negara Asia Tenggara mayoritas Muslim, yaitu Indonesia, Malaysia, dan Brunei Darussalam, dengan perhatian khusus pada perbedaan pengakuan normatif dan implikasinya terhadap perlindungan hak-hak anak. Studi ini menggunakan penelitian hukum normatif dengan pendekatan hukum komparatif, berfokus pada kerangka hukum dan mekanisme kelembagaan yang mengatur rehabilitasi anak-anak yang berkonflik dengan hukum di ketiga yurisdiksi tersebut. Temuan menunjukkan bahwa Indonesia secara eksplisit memasukkan keadilan restoratif dan diversifikasi ke dalam kerangka hukum positifnya, sementara Malaysia dan Brunei Darussalam mengakui prinsip-prinsip serupa secara lebih implisit melalui langkah-langkah rehabilitasi dan non-penahanan. Perbedaan normatif ini memengaruhi konsistensi implementasi, tingkat kepastian hukum, dan efektivitas keseluruhan praktik keadilan restoratif. Oleh karena itu, penguatan regulasi dan harmonisasi kebijakan di antara negara-negara Muslim di Asia Tenggara sangat penting untuk mempromosikan sistem peradilan anak yang berkelanjutan yang secara konsisten berorientasi pada rehabilitasi dan kepentingan terbaik anak.

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## INRODUCTION

### Background of the Problem

Children in conflict with the law occupy a particularly vulnerable position within the criminal justice system, as they are simultaneously treated as offenders and recognized as children who remain entitled to protection, guidance, and social rehabilitation. This dual status places them in a legally and morally sensitive category that requires a child-oriented justice approach. Such vulnerability has been explicitly acknowledged in the Convention on the Rights of the Child, which establishes that in all actions concerning children, the best interests of the child must be a primary consideration under Article 3(1), and that arrest, detention, or imprisonment may be imposed only as a measure of last resort and for the shortest appropriate period of time under Article 37(b) (Protection, 2015).

In the development of modern criminal law, the retributive approach that emphasizes punishment through criminalization is increasingly seen as ineffective, especially in the context of children. Various studies show that formal criminalization has the potential to reinforce stigmatization, increase the risk of recidivism, and hinder children's psychological and social growth and development (Lundman, 2001b). Therefore, restorative justice has emerged as an alternative paradigm that emphasizes restoration of losses, social reconciliation, and constructive accountability of perpetrators, without neglecting the rights of victims and the interests of society (Ria Juliana & Arifin, 2019).

Normatively, the CRC does not explicitly use the term restorative justice, but its spirit is reflected in Articles 37 and 40, which encourage the use of alternative mechanisms outside the formal justice system for children in conflict with the law (Andrews, 2019). This normative flexibility provides space for each country to develop a model of

- Restorative Justice for the Protection of Children in Conflict with the Law: A Legislative Perspective in Muslim Countries in Southeast Asia; *Pages 2723-2742* [Ernawati; Erwan Baharudin; Moh Shohib; Henry Arianto]

restorative justice that is appropriate to its legal system and socio-cultural context. In this context, the Muslim countries of Southeast Asia—Indonesia, Malaysia, and Brunei Darussalam—are interesting to study comparatively, given that all three have ratified the CRC, share a relatively similar religious value base, but show significant differences in the design of regulations, institutions, and implementation of restorative justice for children.

Indonesia is often positioned as the most progressive country in the region, especially after the enactment of Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA), which explicitly states that the juvenile criminal justice system is implemented based on a restorative justice and diversion approach (Jumat, 2019). Further strengthening can be seen through Indonesian Attorney General Regulation Number 15 of 2020 and Indonesian National Police Regulation Number 8 of 2021, which explicitly define and operationalize the concept of restorative justice. However, various studies show that although Indonesia has explicitly adopted restorative justice in its norms, its implementation still faces serious challenges, particularly in relation to limited technical regulations, institutional development standards, and the capacity of law enforcement officials.

In contrast, Malaysia and Brunei Darussalam show different patterns. Malaysia, through the Child Act 2001, does not explicitly mention the term restorative justice, but it does contain various rehabilitative and non-custodial mechanisms, such as probation orders, community service orders, and victim involvement through Victim's Impact Statements (Al-Adib Samuri et al., 2012). Brunei Darussalam, through Chapter 219 of the Children and Young Persons Act (CYPA), has even established a Juvenile Court and provides mechanisms such as family conferences and various non-custodial alternatives (Ernawati, 2023a). However, in both countries, the restorative approach tends to be present as a "policy spirit" rather than a structured normative concept, so its application is highly dependent on the discretion of law enforcement officials and is generally only carried out after the child has been found guilty (post-adjudication), rather than as a pre-trial diversion.

This is where the conceptual and normative issues lie, which have not been studied in depth. Most previous studies have focused their analysis on a single country, or have only compared institutional aspects and types of sanctions without critically exploring the substance of restorative justice as a legal paradigm (Pradityo, 2016b). In fact, the difference between explicit normative recognition and implicit recognition has serious implications for the consistency of child protection, legal certainty, and the sustainability of social rehabilitation for children in conflict with the law.

Based on these conditions, the novelty of this research lies in its attempt to: (1) examine restorative justice not only as a criminal policy, but as a normative substance in the juvenile justice system in Muslim countries in Southeast Asia; (2) dissect the differences between explicit and implicit recognition of restorative justice and its implications for institutional design, guidance mechanisms, and child rights protection; and (3) formulate comparative findings showing that although the three countries have the same orientation—namely, avoiding the imprisonment of children and emphasizing rehabilitation—the absence of explicit normative formulations in Malaysia and Brunei has the potential to weaken the effectiveness and consistency of the implementation of restorative justice.

Thus, this research is relevant and significant both academically and practically, as it not only enriches the discourse on family law and child protection law in Southeast Asia, but also offers an argumentative basis for strengthening and harmonizing restorative justice policies oriented towards recovery, social reintegration, and the best interests of children in a sustainable manner.

## **Identification of Problems**

Children in conflict with the law are placed in a highly vulnerable position within the criminal justice system. They are not only treated as individuals who must bear legal responsibility for their actions, but are also still recognized as children whose rights to protection, rehabilitation, and proper development must be safeguarded by the state. This dual position creates a fundamental tension in the administration of juvenile justice, particularly when legal processes are still dominated by punitive approaches.

In response to the weaknesses of retributive justice, restorative justice has increasingly been promoted as an alternative framework that is more responsive to the needs of children. However, its normative recognition across Muslim-majority countries in Southeast Asia has not developed in a uniform manner. Indonesia has formally and explicitly adopted restorative justice and diversion within its juvenile justice framework. By contrast, Malaysia and Brunei Darussalam do not regulate these concepts in the same explicit way, although similar values can still be found through rehabilitative measures and non-custodial mechanisms.

This disparity gives rise to important legal concerns, especially with regard to legal certainty, consistency of application, and the overall effectiveness of child rights protection within juvenile justice systems. In addition, existing studies have generally approached these issues in a fragmented way, often focusing on particular national contexts or practical mechanisms without sufficiently examining restorative justice as a normative legal substance through a comparative legal perspective.

## **Formulation of the Problem**

Based on the above background, this study formulates the following research questions:

1. How is restorative justice regulated in the juvenile justice systems of Indonesia, Malaysia, and Brunei Darussalam?
2. What are the differences between explicit and implicit normative recognition of restorative justice in those countries?
3. What are the juridical implications of such differences for the protection of children in conflict with the law?
4. How relevant is the harmonization of restorative justice policy in strengthening child-oriented justice systems in Muslim countries of Southeast Asia?

## **Objectives and Benefits of Research**

### *Research Objectives*

This study aims to examine the normative construction of restorative justice in the juvenile justice systems of Indonesia, Malaysia, and Brunei Darussalam. More specifically, it seeks to identify and compare how restorative justice is recognized within the legislation of each country, whether explicitly or implicitly.

In addition, this study aims to analyze the juridical consequences arising from differences in normative formulation, especially in relation to the protection of children's rights and the implementation of child-friendly justice. Through this comparative approach, the study also intends to assess the relevance of regulatory strengthening and policy harmonization as part of a broader effort to develop a more coherent and sustainable restorative justice framework in Southeast Asian Muslim countries.

### *Research Benefits*

Theoretically, this study contributes to the development of legal scholarship in the fields of child protection law, juvenile criminal justice, and comparative law by positioning restorative justice as a normative legal substance rather than merely a criminal policy option. Practically, this study provides an argumentative basis for legislators, law enforcement officials, and child protection institutions in strengthening regulatory frameworks and institutional mechanisms for restorative justice. In terms of policy, this study offers a comparative foundation for harmonizing child justice policies in Southeast Asian Muslim countries so that juvenile justice systems are more consistently oriented toward recovery, rehabilitation, and social reintegration.

## **THEORETICAL AND CONCEPTUAL FRAMEWORK**

### **Theoretical Framework**

This study is anchored in two main theoretical foundations, namely restorative justice theory and child protection theory. These frameworks are relevant to the normative and comparative legal character of the research, which examines the juvenile justice systems of Indonesia, Malaysia, and Brunei Darussalam (GPCC, 2015) (Pradityo, 2016a). In this context, theory is used not only as a conceptual reference, but also as an analytical instrument to evaluate how restorative justice is normatively recognized in the legal systems of the three countries.

Restorative justice theory understands crime not merely as a violation against the state, but as a harm that affects the relationships between the offender, the victim, the family, and the community (Ab Aziz et al., 2022) (Ness & Daniel, 2015). Accordingly, the response to crime should not rely solely on punishment, but should also promote accountability, dialogue, reconciliation, restitution, and reintegration (R Juliana & Arifin, 2019) (Ness & Daniel, 2015). This perspective is particularly relevant in cases involving children in conflict with the law, since children are still developing individuals who require guidance and rehabilitation rather than a purely punitive response (Lundman, 2001a) (Ab Aziz et al., 2022). In this study, restorative justice theory is applied to explain why punishment-oriented juvenile justice is insufficient and to assess differences in legal recognition among the three countries.

Child protection theory complements this framework by emphasizing that children are legal subjects with specific physical, psychological, and social vulnerabilities, and therefore deserve a higher degree of legal protection than adults (R Juliana & Arifin, 2019). In the context of juvenile justice, this theory requires that every legal action involving children be oriented not only toward responsibility, but also toward dignity, development, recovery, and future well-being (Ab Aziz et al., 2022). Thus, child protection theory serves as the normative basis for evaluating reintegration (Ness & Daniel, 2015). This perspective is particularly relevant in cases involving children in conflict with the law, since children are still developing individuals who require guidance and rehabilitation rather than a purely punitive response (Lundman, whether the legal arrangements in each country genuinely prioritize rehabilitation and the best interests of the child.

### **Conceptual Framework**

The conceptual framework of this study begins with the understanding that children in conflict with the law are not merely offenders, but also legal subjects who continue to

possess fundamental rights as children, including the rights to protection, guidance, and rehabilitation (R Juliana & Arifin, 2019). This position reflects the vulnerability of children within the criminal justice system and leads to the assumption that juvenile justice cannot be based solely on punishment, but must also accommodate child protection (Ab Aziz et al., 2022).

From this premise, restorative justice becomes the second central concept in this research. It is understood as an approach to resolving cases by involving the offender, the victim, the family, and the community, with emphasis on restoration, accountability, and reintegration (Ness & Daniel, 2015). In the context of juvenile justice, restorative justice is important because it provides a framework that connects legal responsibility with the child's need for recovery and rehabilitation (Ab Aziz et al., 2022).

The next concept is the normative recognition of restorative justice, which in this study is divided into explicit and implicit forms (Ernawati, 2023b). Explicit recognition refers to legal provisions that clearly state restorative justice as a formal basis for resolving juvenile cases, while implicit recognition refers to the presence of restorative values through rehabilitative and non-custodial mechanisms without express statutory formulation (Ahmad, 2023). This distinction is significant because it affects institutional design, implementation patterns, and ultimately the quality of children's rights protection.

At the end of this conceptual chain lies the protection of children's rights, which is reflected in limits on detention, the availability of alternative measures, a focus on rehabilitation, the involvement of family and community, and conformity with the principle of the best interests of the child (Ab Aziz et al., 2022). Thus, the framework of this study shows that the crucial issue is not merely whether restorative justice exists in regulation, but how clearly it is recognized normatively and how far that recognition shapes institutional practice in favor of child protection.

## **RESEARCH METHODS**

This study uses qualitative research with a normative legal analysis and comparative legal approach, which focuses on the legal framework and institutional mechanisms that regulate the rehabilitation of children in conflict with the law in the three jurisdictions. The analysis centers on the legal norms that regulate restorative justice and the protection of children in conflict with the law within the legal systems of Indonesia, Malaysia, and Brunei Darussalam. The legal materials used consist of primary, secondary, and tertiary sources. Primary legal materials include international legal instruments and national legislation related to the juvenile criminal justice system, diversion, and non-custodial mechanisms. Secondary legal materials include books, journal articles, and relevant previous research findings, while tertiary legal materials are used to support the exploration of legal terms and concepts. The collection of legal materials was conducted through a literature review and systematic search of legal documents. Subsequently, the legal materials were analyzed qualitatively and normatively through the stages of norm inventory, comparative classification, legal interpretation, and the derivation of comparative arguments to assess the similarities, differences, and implications of the normative recognition of restorative justice for the protection of children's rights in the three countries.

## RESULTS AND DISCUSSION

### Results

#### *The Primary Purpose of Restorative Justice in Case Resolution Processes*

As emphasized by the United Nations (UN), the welfare and best interests of the child are the primary considerations even in the juvenile justice system. Every child who commits a criminal offense must still be held accountable for their actions. International law allows children who commit crimes to undergo a judicial process that includes investigation, prosecution, trial, and sentencing if found guilty. However, considering the principles of the welfare and best interests of the child, especially if the crime committed is classified as a minor offense, the resolution of juvenile cases can be directed through the application of restorative justice as a more humane and socially oriented alternative (Ab Aziz et al., 2022).

Restorative justice is defined as a process in which all parties involved in a criminal offense sit together to resolve the issue and formulate a way of dealing with both the victim and the perpetrator, while continuing to prioritize the best interests of the child. In this framework, the criminal justice process is positioned as a last resort (*ultimum remedium*) without neglecting the fulfillment of children's rights.

In principle, restorative justice involves all parties affected by criminal acts, including perpetrators, victims, families, and communities, with the assistance of a neutral third party. This third party plays a role in facilitating the search for solutions aimed at restoring losses, reconciling relationships, and rebuilding social relations that have been disrupted by criminal acts (Ness & Daniel, 2015). Restorative justice is oriented towards the settlement of cases through mutual agreement between the perpetrator and the victim. The restorative justice process (Sinta, 2022) is as follows:

1. The victim is willing to participate in all stages of the legal process with the guarantee of protection for their personal safety;
2. The perpetrator gains a reflective awareness of the impact and harm caused by their actions on the victim's life;
3. The outcome of the settlement is a flexible solution, mutually agreed upon by both parties, prioritizing the principle of rehabilitation over retribution or repetition of harm;
4. The perpetrator expresses a commitment to take full legal responsibility for their actions; and
5. Not only is the aspect of legal satisfaction fulfilled, but both the victim and the perpetrator gain a deep understanding of the events that occurred and their impact, thereby fostering a sense of security to reintegrate into social life.

In the restorative justice process, perpetrators and victims have the opportunity to exchange information about the crime, including the perpetrator's motives for committing the crime, the impact of the crime on the victim, and a space to express feelings, ask questions, and discuss appropriate forms of compensation. Restorative justice provides opportunities for the victim to be actively involved not only in the dialogue process, but also in determining the outcome of the case. The main objective of this approach is to place the perpetrator in a position of active responsibility by requiring direct involvement in the recovery process and explaining to the victim the reasons for their actions and the ways in which the harm caused can be remedied. The impact of the application of restorative justice can be seen in the orientation of the parties, which places greater emphasis on reconciliation, reparation or restoration of losses, and social

reintegration, thereby creating a resolution that is not merely retributive in nature, but focuses on restoring relationships and social harmony (Stubbs, 2002).

### *Restorative Justice Models*

Restorative justice models can be implemented through various programs developed as mechanisms for resolving criminal conflicts with the main objective of achieving recovery for both victims and perpetrators. Some of the most commonly practiced models include: (1) victim–offender mediation, (2) family group conferences, and (3) circle sentencing (Ab Aziz et al., 2022).

*First*, victim–offender mediation, in which the victim and offender meet with the assistance of a mediator who coordinates and facilitates the meeting to discuss the criminal act and the steps to resolve it. In this forum, the perpetrator and victim exchange information about the crime. Generally, the perpetrator explains the reasons for their actions to the victim and answers questions asked by the victim. Meanwhile, the victim describes the impact they have experienced as a result of the crime. This process can be carried out in a face-to-face forum or conducted separately through the communication of each party's feelings to the mediator. It is hoped that all parties can reach a fair and mutually acceptable settlement agreement. In this process, the parties are required to actively participate in the discussion and contribute to determining a fair settlement (Burford, 2017).

*Second*, in the family group conference model, the perpetrator and victim, along with their respective families, are directly involved in the case resolution process with the assistance of a neutral third party. The involvement of family members is necessary because they are also affected by the crime and play a role in providing moral support to the perpetrator and victim. The facilitator helps organize meetings and facilitates communication between the parties. Discussions generally begin with the perpetrator explaining the events that occurred and their views on the impact of their actions on others. Next, the victim explains how the crime has affected their life, followed by the family members of both parties expressing their feelings. After that, all participants discuss the steps needed to recover the losses. In this context, family involvement is very important, especially if the perpetrator or victim is still a child, as it can provide psychological support and motivate the perpetrator to take responsibility for their actions. In addition, the discussion process and the agreement witnessed by the family strengthen the perpetrator's commitment to fulfilling the agreed-upon restoration promises, thereby contributing to the prevention of future criminal acts (Ab Aziz et al., 2022).

*Third*, the circle sentencing model requires the involvement of the perpetrator, the victim, family members of both parties, and community representatives, with the assistance of a neutral third party. In this process, the perpetrator explains the reasons for committing the crime, then each participant in the circle is given the opportunity to express the impact they feel as a result of the crime and to express their views on the best way to resolve the case. All parties then discuss collectively to formulate a fair and just solution (Kirchengast, 2016). Although the form and mechanism of restorative justice may vary, there is a fundamental similarity, namely that the perpetrator admits their actions and apologizes to the victim. This process opens up communication for all parties to express their views and needs openly. Restorative justice can only be successful if there is a mutual agreement approved by all parties, and the child as the perpetrator fully implements all the agreements that have been made (Ab Aziz et al., 2022).

Restorative justice is important because it offers an alternative to criminal punishment in the prevention of crime, while still ensuring that the state fulfills its obligation to

- Restorative Justice for the Protection of Children in Conflict with the Law: A Legislative Perspective in Muslim Countries in Southeast Asia; Pages 2723-2742 [Ernawati; Erwan Baharudin; Moh Shohib; Henry Arianto]

provide justice to victims of crime. The basic principle of restorative justice focuses on restoring the losses caused by criminal acts and repairing social relationships that have been disrupted or affected by those criminal acts (Rochaeti, 2023). The restorative justice approach can be an alternative in resolving issues involving children in conflict with the law. However, its implementation requires close coordination between law enforcement officials, families, schools, and community leaders. In addition, adequate socialization of law enforcement officials is also needed so that the implementation of restorative justice can run more effectively (Nuryasva & Jadidah, 2022).

## Discussion

### *The Substance of Restorative Justice in the Juvenile Justice System in Southeast Asian Muslim Countries (Indonesia, Malaysia, and Brunei)*

The Convention on the Rights of the Child (CRC) recommends that all States Parties treat children in conflict with the law fairly as children, while still holding them accountable for the criminal acts they have committed. The CRC does not exempt children from legal responsibility, but rather encourages States Parties to use alternative measures in the resolution of criminal cases involving children. Although the term restorative justice is not explicitly mentioned in the CRC, its meaning and spirit can be interpreted from the provisions of Articles 40 and 37, which encourage States Parties to prioritize the use of alternative mechanisms in the handling of criminal cases involving children. Therefore, States Parties need to consider the application of various forms of restorative justice processes as an integral part of the juvenile justice system, in order to maintain a balance between the welfare of the child and the level of the offense committed. Thus, in order to balance the principle of the best interests of the child, including when the child is a perpetrator of a criminal offense, States Parties are encouraged to handle children's cases through restorative justice mechanisms. Since the CRC does not specify the model of restorative justice process that must be applied, this condition provides flexibility for each country to determine and legally regulate the restorative justice mechanism that best suits the needs, interests, and socio-cultural context of children in each country (Ab Aziz et al., 2022).

Therefore, children in conflict with the law are a vulnerable group that requires special treatment in the criminal justice system. Normatively, the international community, through the Convention on the Rights of the Child (CRC), affirms that the detention of children should be a last resort and that the best interests of the child should be a primary consideration in every decision. In this context, the restorative justice approach is an important paradigm that emphasizes the recovery, rehabilitation, and social reintegration of children, rather than merely punishment. Indonesia, Malaysia, and Brunei Darussalam, as Southeast Asian Muslim countries with different socio-cultural and legal backgrounds, show variations in regulating the guidance of children in conflict with the law. These differences are evident in the legislative framework, institutional design, and the degree of explicit integration of restorative justice principles into the positive law of each country.

### *Indonesia*

In Indonesia, the term restorative justice is explicitly defined in two important regulations, namely: First, Indonesian Attorney General Regulation No. 15 of 2020. Article 1 paragraph (1) of Regulation of the Attorney General's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice defines Restorative Justice as the settlement of criminal cases by involving the perpetrator, victims, families of perpetrators/victims, and other related parties to jointly seek a fair resolution that emphasizes restoration to the original state

rather than retribution. In other words, the focus is on repairing the damage and restoring social relations, not simply imposing punishment. Second, Perpol No. 8 of 2021, in Article 1 point (3) of the Indonesian National Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice provides a slightly broader definition. In essence, restorative justice is defined as the resolution of criminal acts that: (1) involves the perpetrator, victim, perpetrator's family, victim's family, (2) as well as community leaders, religious leaders, traditional leaders, or other stakeholders, (3) to jointly achieve a fair resolution through peace, (4) with an emphasis on restoring the original situation, rather than mere punishment (Sukma, 2024). When this is linked to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), it does not provide an explicit definition of “restorative justice”, but: First, it affirms that the juvenile criminal justice system is based on a restorative justice and diversion approach, and Second, diversion is defined in Article 1 point 7 of Law No. 11 of 2012 as the transfer of the settlement of juvenile cases from the criminal justice process to a process outside the court system. Therefore, in principle, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) prioritizes restorative justice in all stages of juvenile cases (investigation, prosecution, trial, and execution of sentences) even though it does not explicitly mention the mechanism of Restorative Justice for children in conflict with the law (Ismail et al., 2025).

### *Malaysia*

In Malaysia, if a child is suspected of committing a criminal offense, the child will be investigated by the police and may be charged with the alleged offense. The child will then be brought before the Court of Children and asked to plead guilty or choose to stand trial. If the defendant pleads guilty, they will be punished in accordance with applicable laws (Randawar et al., 2025). However, if the defendant chooses to stand trial, the trial process and procedures as stipulated in the Child Act 2001 will be applied (Mallow, 2015). The Child Act 2001 (Act 611) was introduced with the main objective of protecting children's rights in accordance with international standards. However, the practice of resolving children's cases is still dominated by formal judicial mechanisms through the Court for Children, where children in conflict with the law must still undergo a police investigation and then be placed in a criminal litigation process as applicable in the conventional judicial system (Ramli, 2021). If a child is found guilty and convicted, before the judge hands down a sentence, the victim's opinion will be heard through a Victim's Impact Statement. This Victim's Impact Statement mechanism has been adopted into the Criminal Procedure Code (Amendment) 2012. Based on the provisions of Article 11 paragraph (6), if there is a procedural gap in the Child Act, reference can be made to the standard procedures as stipulated in the Criminal Procedure Code. Because the Child Act 2001 does not specifically regulate the Victim's Impact Statement, the process and procedures are adopted from the provisions in the Criminal Procedure Code. The Children's Courts have the authority to impose sanctions as stipulated in Article 91 of the Child Act 2001, which include probation orders, fines, compensation, or placement of the child in an approved school. If the sanction imposed is in the form of compensation, the court may require the child's parents or guardians to pay compensation to the victim on behalf of the child. The order for payment of compensation by the parents or guardians is carried out in accordance with the procedures stipulated in the Criminal Procedure Code, as if the order had been imposed on the basis of criminal punishment of the parents or guardians as the parties blamed for the criminal acts committed by the child concerned (Ab Aziz et al., 2022). Although formal recognition of restorative justice and diversion programs is not explicitly regulated in the Child Act 2001, a number of provisions in the law reflect the idea of rehabilitation and reintegration of child offenders. The tendency of the courts to impose

non-custodial sanctions, such as reprimands and probation, bonds of good behavior, payment of compensation, fines or court costs, surrender of the child to a suitable relative or guardian, and the application of community service orders, demonstrates the courts' commitment to upholding the principles of restorative justice (Randawar et al., 2025).

### *Brunei Darussalam*

Furthermore, Brunei Darussalam has shown progress in its efforts to strengthen legal protection for children in order to comply with international norms since ratifying the United Nations Convention on the Rights of the Child (UNCRC). In 2006, after a lengthy process, Brunei passed a special regulation called the Children and Young Persons Act, which contains specific protection provisions for children, both in the context of judicial proceedings, detention, and their position as victims or perpetrators of crime. Chapter 219 of the Children and Young Persons Act (CYPA) is the main legislation in Brunei Darussalam that regulates matters concerning children, including children in conflict with the law. Based on Article 2 of the Children and Young Persons Act (CYPA), a minor (juvenile) is defined as any person who is over 7 years of age but has not yet reached the age of 18. In addition, Article 10 of the Children and Young Persons Act (CYPA) regulates the establishment of a Juvenile Court, which has the authority to implement and enforce the provisions of the law. Within the Brunei legal framework, the age of criminal responsibility is set at between 7 and 12 years old, a standard that is considered to be far below the ideal as recommended in the international legal framework (Duncan, 2015). Legally, child offenders are subject to fines, imprisonment, or both. However, instead of imposing fines or imprisonment, the Juvenile Court has the authority to handle children's cases in accordance with the provisions of the Children and Young Persons Act (CYPA) Offenders (Probation or Community Service) Order 2006. Based on Article 51 of the Children and Young Persons Act (CYPA), the authority of the Juvenile Court includes proving criminal acts committed by children and imposing various forms of alternative sanctions, including probation orders, community service orders, and bonds of good behavior (Ahmad, 2023). Overall, Brunei's legislation through the Children and Young Persons Act (CYPA) has established a fairly strong foundation for the protection of children in conflict with the law, including through a special juvenile court, an emphasis on child welfare, and non-custodial options. However, to fully realize restorative justice, more targeted normative reforms and systemic implementation are still needed.

Regarding institutions or agencies involved in the protection of children in conflict with the law, in Indonesia, within the context of the Juvenile Criminal Justice System (SPPA), imprisonment of children is only used as a last resort. Based on the principle of deprivation of liberty and punishment as a last resort, every child in the criminal justice process has the right not to be arrested, detained, or imprisoned, except as a last resort and for the shortest possible time. For the purposes of investigation, investigators have the authority to detain children who are strongly suspected of committing a criminal offense (delinquency) based on sufficient preliminary evidence that the child has committed a criminal offense (delinquency). However, detention can only be carried out if the child who committed the criminal act is 14 years of age or older and is threatened with imprisonment of 7 (seven) years or more as determined by law. The detention of children is carried out in a special place for children, namely a temporary child placement institution (LPAS) or a social welfare institution (LPKS) if there is no temporary child placement institution (LPAS). Investigators who carry out detention must first consider the consequences of detention in terms of the interests of the child, such as the child's physical, mental and social growth and development (Setyorini et al., 2020). In addition, the interests of the community must also be considered, for example, by detaining suspects, the community will be safe and peaceful. However, this is difficult to implement

because, considering the interests that must be protected, detention is not easy and makes it difficult for investigators. In detention, investigators should involve competent parties, such as social workers, psychologists, criminologists, and other necessary experts, so that investigators do not make the wrong decision in carrying out detention.

In Malaysia, institutions dealing with children in conflict with the law under the Children Act 2001 divide children into three types of detention facilities, namely: (1) Probation Hostel, (2) Sekolah Diluluskan/Sekolah Tunas Bakti (STBs); and (3) Sekolah Henry Gurney (SHG) (Winarni et al., 2025). These institutions include: First, the Probation Hostel. The Probation Hostel is an institution established and designated by the Minister of Women, Family, and Community Development as a place of residence for children under the Children Act 2001. The Probation Hostel is a place of rehabilitation for children who are involved in probationary crimes. At the Probation Hostel, children are educated and trained to have a positive attitude and are given skills. Second, Sekolah Tunas Bakti (STBs) was established for the education, training, and detention of children. The Tunas Bakti School (STBs) was formed and established by the Minister of Social Welfare as stipulated in the Children's Act 2001. The Tunas Bakti School (STBs) serves children who have broken the law, children who are beyond control, and sometimes children who are prisoners. Third, Henry Gurney School (SHG) was established by the British to address juvenile crime in Malaya. Henry Gurney School (SHG) is under the Malaysian Prison Department, Ministry of Welfare, and under the supervision of the Ministry of Home Affairs. The Henry Gurney School (SHG) is operated by the Prison Department with a higher level of security than the Tunas Bakti School (STBs). The Henry Gurney School (SHG) is a rehabilitation institution managed by the Malaysian Prison Department for children aged 14 (fourteen) to 21 (twenty-one) years old (Fatriansyah, 2020). In general, the institutions that deal with children in conflict with the law in Malaysia and the Children's Act 2001 do not specifically regulate the concept of housing for institutions that deal with children in conflict with the law in Malaysia.

In Brunei, the Juvenile Court, together with the Ministry of Culture, Youth, and Sports of Brunei Darussalam, has established a Welfare Home Complex for children and adolescents. This institution is managed by the Community Development Department of the ministry, with a number of welfare homes tasked with providing protection to children. When a child is brought before the Juvenile Court, one or more of the following alternatives may be considered: 1) Releasing the child conditionally or unconditionally; 2) Imposing an obligation on the parents or guardians to ensure the proper care, guidance, and supervision of the child; 3) placing the child in the care of a designated person; 5) imposing a community service order; 6) placing the child on probation for a period of between 6 months and 3 years, with or without additional requirements; and Sixth, placing the child in an Approved School accompanied by a rehabilitation program for 24 to 36 months. In fact, to protect children from all forms of abuse and exploitation, the Brunei government has established a service called Talian Anak 121, which is a toll-free child helpline that operates for the protection of children in Brunei Darussalam. Thus, Brunei's position can be described as a country that has a fairly progressive legal framework for child protection, but has not yet systematically adopted a restorative model as its main operational foundation.

Based on the above explanation, the indicators of “restorative justice” that can be seen in three Muslim countries in Southeast Asia in relation to children in conflict with the law are as follows:

1. Legal framework (Regulations)

Regarding the legal framework or regulations governing children in conflict with the law: *First*, Indonesia's guidance for children in conflict with the law is

comprehensively regulated in Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA), which is integrated with Law No. 12 of 1995 on Corrections. This law explicitly places children as subjects who must be protected and emphasizes that the juvenile criminal justice system is implemented based on a restorative justice and diversion approach. The rehabilitation of children is carried out through the Special Child Rehabilitation Institution (LPKA), with a rehabilitative and educational orientation (Anwar et al., 2024). *Second*, unlike Indonesia, Malaysia regulates the rehabilitation of children in conflict with the law through the Child Act 2001. This law does not explicitly mention the term restorative justice, but it embodies the spirit of rehabilitation through the regulation of various rehabilitation institutions and programs. Child guidance in Malaysia is known as the “human development program,” which includes academic programs, curriculum, religion, and guidance and counseling. *Third*, meanwhile, Brunei Darussalam regulates children in conflict with the law through the Children and Young Persons Act (CYPA). Chapter 219 of the Children and Young Persons Act (CYPA) legislation establishes a Juvenile Court and provides mechanisms such as family conferences and various non-custodial alternatives. However, as in Malaysia, the Children and Young Persons Act (CYPA) legislation does not explicitly define restorative justice, so the restorative approach is more present as a policy spirit than a structured normative concept (Aprilianda, 2014).

The strengths and weaknesses of the rules or norms governing children in conflict with the law are as follows: First, in Indonesia, the main weakness lies in the general nature of the regulations. The Child Criminal Justice System Law (SPPA) does not yet regulate in detail the concepts of housing, rehabilitation standards, and management of Special Child Rehabilitation Institutions (LPKA) or Temporary Child Placement Institutions (LPAS), nor is it fully supported by comprehensive implementing regulations. However, its strength lies in the affirmation that children who are sentenced to criminal punishment must be rehabilitated in Special Child Rehabilitation Institutions (LPKA), as well as the recognition of Special Child Rehabilitation Institutions (LPKA) and Social Welfare Institutions (LPKS). Second, in Malaysia, the weakness of the Children Act 2001 is that it regulates correctional institutions in general terms without providing conceptual details regarding accommodation and correctional standards. Its strength lies in the division of institutions into several types, which allows for a more varied and contextual approach to correction. Third, in Brunei, despite the Children and Young Persons Act (CYPA) providing for family conferences, this mechanism is only applied after a guilty verdict, not as a pre-trial diversion. In addition, the terms “restorative justice” and “diversion” are not explicitly mentioned in the law, so their implementation is highly dependent on the interpretation of law enforcement officials. The advantage is the existence of the family conference mechanism. Based on the ASEAN Intergovernmental Commission on Human Rights (AICHR) Thematic Study on Juvenile Justice, Brunei, despite having the Children and Young Persons Act (CYPA) legislation, still needs to strengthen the implementation of diversion and restorative justice as part of the juvenile justice standards in ASEAN (Kurniaty et al., 2024). Thus, Brunei’s position can be described as a country that has a fairly progressive legal framework for child protection, but has not systematically adopted the restorative model as its main operational foundation.

## 2. Forms and Models of Child Guidance

Conceptual differences in child guidance are evident between Indonesia and Malaysia and Brunei. First, in Indonesia, guidance for children in conflict with the law is known as a guidance and mentoring program. Rehabilitation includes personality development (moral, mental, and spiritual) and independence training

(work skills and vocational education). Meanwhile, guidance is directed at the process of reintegration into society, including through parole and conditional leave. In Malaysia, child rehabilitation is formulated more as a holistic human development program. This program emphasizes not only discipline and rehabilitation, but also academic development, co-curricular activities, religious education, and guidance and counseling services. This approach demonstrates a strong orientation toward character building and the social identity of children (Kurniaty et al., 2024). Brunei Darussalam, through its Children and Young Persons Act (CYPA) legislation, combines a child welfare approach with mechanisms such as family conferences, probation, and placement in specific correctional institutions. However, correctional measures are still closely linked to the formal judicial process, as restorative mechanisms are generally applied after a child has been found guilty, rather than as an initial alternative before the judicial process.

### 3. Institutions that Handle Children in Conflict with the Law

The institutions authorized to handle children in conflict with the law are: First, Indonesia with the Special Child Guidance Institution (LPKA) as regulated in the Juvenile Criminal Justice System (SPPA). Second, in Malaysia, there are institutions that handle children as determined by the Children's Act 2001, with types of institutions including the Asrama Akhlak, Sekolah Tunas Bakti, and Sekolah Henry Gurney. Third, in Brunei, the Juvenile Court, together with the Ministry of Culture, Youth, and Sports of Brunei Darussalam, has established a Welfare Complex for children and adolescents. This institution is managed by the Community Development Department of the ministry, with a number of welfare branches tasked with providing protection to children.

The fundamental differences between Indonesia and Malaysia and Brunei lie in institutional design and age criteria. In Indonesia, the Special Child Guidance Institution (LPKA) can only provide guidance to children aged 14 years and above, and the system is relatively centralized. In contrast, in Malaysia, there are three main types of institutions that deal with children in conflict with the law, and the placement of children is determined by the Children's Court before the rehabilitation process is carried out. Meanwhile, Brunei's Children and Young Persons Act (CYPA) establishes a Juvenile Court and provides mechanisms such as family conferences and various non-custodial alternatives. In terms of institutions, Indonesia implements a single model with the Special Child Guidance Institution (LPKA) as the guidance center, while Malaysia implements a pluralistic model with the division of institutions based on the level of need and type of offense. As for Brunei, the restorative approach is more present as a policy spirit than a normative concept.

The weaknesses and strengths of institutions in each Muslim country in Southeast Asia are as follows: *First*, in Indonesia, the main weakness lies in the general nature of the regulations. The Juvenile Criminal Justice System (SPPA) has not yet regulated in detail the concepts of housing, rehabilitation standards, and management of Special Juvenile Rehabilitation Institutions (LPKA) and Temporary Child Placement Institutions (LPAS), and is not yet fully supported by comprehensive implementing regulations. However, its strength lies in the affirmation that children who are sentenced to criminal punishment must be rehabilitated in Special Child Rehabilitation Institutions (LPKA), as well as the recognition of Temporary Child Placement Institutions (LPAS) and Social Welfare Institutions (LPKS). *Second*, in Malaysia, the weakness of the Children Act 2001 is that it regulates correctional institutions in general terms without providing conceptual details regarding accommodation and correctional standards. Its strength lies in the division of institutions into several types, which allows for a more

- Restorative Justice for the Protection of Children in Conflict with the Law: A Legislative Perspective in Muslim Countries in Southeast Asia; Pages 2723-2742 [Ernawati; Erwan Baharudin; Moh Shohib; Henry Arianto]

varied and contextual approach to correction. *Third*, weaknesses in Brunei, despite the Children and Young Persons Act (CYPA) legislation, mention family conferences, the terms “restorative justice” and “diversion” are not explicitly mentioned in the text of the law. Therefore, the family conference mechanism only appears “after a guilty finding” (the child is found guilty) and not as the main scheme before a formal trial (pre-trial diversion). This implies that the system is still very oriented towards formal litigation processes. Its advantage lies in the fact that the juvenile justice system in Brunei can strengthen the involvement of the community and victims in the settlement of juvenile cases, so that the restorative model can bring double benefits: repairing social damage and preventing the recurrence of juvenile delinquency (Fatriansyah, 2020).

### Research Limitations

This study has several limitations. *First*, as a normative juridical study employing a comparative legal approach, it focuses primarily on statutory regulations, institutional arrangements, and legal mechanisms concerning children in conflict with the law in Indonesia, Malaysia, and Brunei Darussalam. Consequently, this study does not empirically measure how restorative justice is implemented in practice by law enforcement officers, families, victims, or child offenders. *Second*, the scope of comparison is restricted to three Muslim-majority countries in Southeast Asia, and therefore the conclusions of this study cannot be generalized to the whole ASEAN region or to all Muslim-majority legal systems. *Third*, the study is primarily concerned with the distinction between explicit and implicit normative recognition of restorative justice, rather than with evaluating its implementation through empirical indicators such as diversion rates, repeat offending, victim satisfaction, or reintegration after rehabilitation. Accordingly, this article should be read as a normative-comparative basis for the development of further socio-legal and empirical research.

### Novelty/Contribution

The originality of this article lies in its attempt to position restorative justice not simply as an alternative criminal justice policy, but as a substantive normative element within juvenile justice systems in Muslim countries of Southeast Asia. While many earlier studies have tended to concentrate on single-country analyses or have limited their comparison to institutional structures and sentencing patterns, this research develops a comparative normative reading of Indonesia, Malaysia, and Brunei Darussalam by focusing on the distinction between explicit and implicit legal recognition of restorative justice. This distinction is important because it demonstrates that the way restorative justice is formulated in law has direct implications for institutional design, the consistency of its application, the degree of legal certainty, and the overall quality of child rights protection. On that basis, this article offers contributions at both the theoretical and practical levels. Theoretically, it enriches comparative legal scholarship in the fields of juvenile justice and child protection. Practically, it provides an argumentative foundation for the strengthening and harmonization of restorative justice policies across Muslim jurisdictions in Southeast Asia.

## CONCLUSIONS AND SUGGESTIONS

### Conclusion

This study concludes that restorative justice within the juvenile justice systems of Indonesia, Malaysia, and Brunei Darussalam should not be understood merely as a technical alternative in criminal justice policy. More fundamentally, it reflects the way each state perceives children as legal subjects whose rights, development, rehabilitation, and social recovery must be protected. Although the three countries share a general commitment to child protection and rehabilitative justice, they differ considerably in the extent to which restorative justice is normatively formulated and institutionally embedded. Indonesia shows the clearest legal recognition by expressly incorporating diversion and by affirming imprisonment as a measure of last resort. By contrast, Malaysia and Brunei Darussalam tend to accommodate restorative values indirectly through rehabilitative and non-custodial mechanisms, yet the absence of explicit normative formulation makes their implementation more reliant on institutional discretion. These differences between explicit and implicit recognition have important consequences for legal certainty, the consistency of child protection, and the effectiveness of social reintegration. Accordingly, this study affirms that strengthening restorative justice in Muslim countries of Southeast Asia requires not only procedural improvement, but also a firmer normative commitment to the best interests of the child.

### Suggestions

Based on the findings of this study, several recommendations can be advanced. *First*, from a normative standpoint, states that have not yet expressly incorporated restorative justice into their juvenile justice legislation, particularly Malaysia and Brunei Darussalam, should consider reinforcing their legal frameworks so that restorative principles are not applied solely on the basis of institutional discretion. In Indonesia, regulatory strengthening is still required, especially in relation to technical implementation standards and institutional mechanisms, so that restorative justice can operate more consistently in practice. *Second*, at the institutional level, law enforcement officers, probation officers, social workers, and child protection institutions need continuous training and capacity building in order to implement restorative justice in a uniform and child-oriented manner. *Third*, broader community participation should be encouraged, because restorative justice in juvenile cases requires the involvement of families, victims, and the social environment in the recovery process. Finally, future studies should move beyond normative analysis and undertake socio-legal or empirical research to examine how restorative justice is implemented in practice, including its impact on diversion, rehabilitation, recidivism, victim satisfaction, and the long-term reintegration of children in conflict with the law.

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### AUTHOR CONTRIBUTION STATEMENT

**Ernawati:** Collaborated with other team members to conceptualize the main research theme, developed a legal theoretical framework and a study on restorative justice for children, and contributed to the overall structure and intellectual direction of this research.

**Erwan Baharudin:** Conducted an initial literature review and collected materials, as well as prepared the documentation necessary for this study.

**Moh Shohib:** Conducting a literature review and legal analysis of the legal framework for children in conflict with the law in Indonesia, Malaysia, and Brunei Darussalam, and providing the historical and doctrinal context essential for the normative analysis in this study.

**Henry Arianto:** Focused on the collection and comparative analysis of legislation and case studies from Indonesia, Malaysia, and Brunei Darussalam, which are discussed in the findings and analysis section.

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