



RECONSTRUCTION OF THE PENAL SYSTEM POLICY AGAINST CHILDREN OF CYBER CRIME PERPETRATORS BASED ON RESTORATIVE JUSTICE IN THE REFORM OF NATIONAL CRIMINAL LAW

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Abstract

The development of information technology has given rise to various forms of cyber crime involving children as perpetrators. This condition is a new challenge in the juvenile criminal justice system in Indonesia. The penal system that is still oriented towards punishment is considered not to fully reflect the principles of child protection and the best interests of the child. This study aims to analyze the penal policy for children of cyber crime offenders and reconstruct the restorative justice-based criminal model in the reform of national criminal law. The research method used is normative legal research with legislative, conceptual, and case approaches. The results of the study show that the application of *restorative justice* to children of cyber crime perpetrators still faces various obstacles, both in terms of regulations, law enforcement officials, and the rapid development of digital technology. Therefore, it is necessary to reconstruct a criminal policy that emphasizes rehabilitation, diversion, digital education, and victim recovery in order to realize a humane and fair national criminal law system.

Keywords: Child Punishment System, Cyber Crime, Restorative Justice, Criminal Law Reform.

A. Introduction

The development of information and communication technology in the digital era has brought great changes in the lives of modern society. The internet and social media are the main means of social, educational, economic, and even government

activities. However, these developments have also given rise to new forms of crime known as *cyber crime*. Children as active users of digital technology are not only vulnerable to becoming victims, but can also



become perpetrators of cybercrimes.¹ The phenomenon of increasing children's involvement in cybercrime is a serious concern in the criminal justice system in Indonesia. Forms of cybercrime committed by children include *cyberbullying*, online fraud, spreading hoaxes, hacking social media accounts, online gambling, and the spread of illegal content.² This condition shows that the development of digital technology has not been balanced with the readiness of the juvenile criminal law system that is adaptive to social changes.

The penal system for children is in principle different from the punishment for adults. Children must be seen as individuals who are still in the stage of physical and psychological development that are classified

as syndic so that the punishment approach must prioritize coaching, rehabilitation, and protection of children's rights.³ This principle has been accommodated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which emphasizes the concept of diversion and restorative justice, However, law enforcement practices against children of cyber crime perpetrators still tend to use a repressive and formalistic approach. Children involved in digital crimes are often processed through litigation without considering their psychological and social aspects. As a result, children are vulnerable to social stigma, psychological trauma, and loss of a future

¹ Muhammad Ibnu Maulana Ruslan, "Restorative Justice for Children of Cyber Crime Offenders in Indonesia," *Indonesian Journal of Intellectual Publication*, Vol. 2 No. 3, 2025, p. 115.

² Irma Roito Veronika, "Alternative Settlement of Illegal Content Hoaxes Through a

Restorative Justice Approach," *Pendas Journal*, Vol. 10 No. 2, 2025, p. 88.

³ Reski Anisari et al., "Efforts to Minimize Crime for Children of Criminal Offenders with a Restorative Justice Approach," *Journal of Judicial Legality*, Vol. 5 No. 1, 2023, p. 42.



which is the hope and aspiration of the nation that children are the nation's next generation.⁴

The reform of the national criminal law through Law Number 1 of 2023 concerning the Criminal Code brings a new paradigm in the Indonesian penal system by prioritizing human values and restorative justice. Therefore, it is necessary to reconstruct the policy of the penal system for children of cyber crime offenders based on restorative justice in order to realize a national criminal law system that is more humane and adaptive to technological developments. The development of cybercrime in Indonesia shows an increasing trend along with the high use of the internet by the public, including by children in today's era where the internet is one of the needs for interacting and carrying out other things. Children as the digital

generation (*digital native*) have extensive access to information technology, but do not fully have the ability to self-control and adequate legal awareness in the use of this technology. This condition causes children not only to potentially become victims of cybercrime, but also to be involved as perpetrators of cybercrimes.⁵

The phenomenon of children's involvement in cybercrime is a serious problem in the juvenile criminal justice system in Indonesia today, the same as we know that the level of internet use at this time is more likely to be used by children. The forms of cybercrime committed by children are very diverse, including *cyberbullying*, online *fraud*, spreading fake news (*hoaxes*), online gambling, illegal access to electronic systems, hacking of social media accounts,

⁴ Akhmad Syafii, "The Implementation of Restorative Justice in the Handling of Child Crimes," *Journal of Pro Law*, Vol. 11 No. 1, 2025, p. 57.

⁵ Marlina, "Legal Protection of Children in the Juvenile Criminal Justice System in Indonesia", *Mercatory Journal*, Vol. 13, No. 2, 2020, p. 145.



and the dissemination of content that violates morality.⁶ These acts are generally carried out due to the influence of the social environment, low digital literacy, weak parental supervision, and lack of children's understanding of the legal consequences of digital activities carried out.⁷ The criminal justice system for children of criminal offenders in Indonesia has basically undergone development through the birth of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which places the *restorative justice* and diversion approach as the main priority in resolving children's cases.⁸ This approach aims to protect children's futures by avoiding children from negative stigma and the adverse effects of criminalization. However,

in practice, the application of restorative justice to children of cyber crime perpetrators still faces various obstacles, both in terms of regulations, law enforcement officials, and the characteristics of cybercrime itself.⁹

The problem arises because most of the provisions for cybercrimes still refer to Law Number 1 of 2024 concerning Electronic Transactions, which is more oriented towards a repressive approach and has not specifically regulated a restorative justice mechanism for resolving children's cases.¹⁰ As a result, children of cyber crime offenders are often still processed through formal justice mechanisms and lead to criminalization, even though the punitive approach alone is not always effective in resolving the problem of child digital delinquency. The characteristics

⁶ Maskun, *Cyber Crime: An Introduction*, Jakarta: Kencana, 2018, p. 47.

⁷ Rika Saraswati, *Child Protection Law in Indonesia*, Bandung: Citra Aditya Bakti, 2021, p. 98.

⁸ M. Nasir Djamil, *Children Not to Be Punished*, Jakarta: Sinar Grafika, 2019, p. 132.

⁹ Setya Wahyudi, "The Implementation of Diversion in the Juvenile Criminal Justice System", *Judicial Journal*, Vol. 14, No. 1, 2021, p. 64.

¹⁰ osua Sitompul, *Cyberspace, Cybercrime, Cyberlaw: An Overview of Criminal Law Aspects*, Jakarta: Tatanusa, 2020, p. 211.



of cybercrime that are cross-regional, anonymous, and have a wide impact often raise doubts for law enforcement officials to implement diversion and restorative justice. On the other hand, the absence of a criminal policy that specifically regulates the handling of children of cybercrime offenders has caused a gap in norms in law enforcement practices.¹¹ This condition shows that the development of digital technology has not been balanced with the readiness of the juvenile criminal law system that is adaptive to social changes and information technology advances.

In the context of national criminal law reform, the existence of Law Number 1 of 2023 concerning the Criminal Code brings a new paradigm in the criminal system that is more humane and oriented towards balanced

values, protection of human rights, and social recovery.¹² This paradigm is in line with the concept of restorative justice which emphasizes the resolution of criminal cases through dialogue, recovery of victims' losses, responsibility of perpetrators, and the re-harmonization of social relations in society. Therefore, it is necessary to reconstruct the policy of the penal system for children of cyber crime offenders that not only focuses on the punishment aspect, but also prioritizes educational, rehabilitative, and restorative approaches. It is important to reconstruct the policy so that the national criminal law system is able to provide protection for children while still ensuring legal certainty and justice for victims of cybercrimes. Thus, the reform of the national criminal law is expected to create a child penal system that is

¹¹ Barda Nawawi Arief, *Criminal Law Reform in the Perspective of Comparative Studies*, Jakarta: Kencana, 2021, p. 89.

¹² Eva Achjani Zulfa, "Restorative Justice in National Criminal Law Reform", *IUS Law Journal QUA IUSTUM*, Vol. 29, No. 3, 2022, p. 412.



more responsive to the development of digital technology and in line with the principles of child protection and restorative justice.

B. Problem Formulation

Based on the description presented by the author above, the author takes the following questions: How to reconstruct the policy of the penal system for children of cyber crime offenders based on restorative justice in the reform of the national criminal law and How to regulate the policy of the penal system for children of cyber crime offenders in criminal law in Indonesia today

C. Research Objectives

Referring to the background of the main problem above, the purpose of this study is to analyze and reconstruct the policy of the penal system for children of cyber crime perpetrators based on restorative justice in the reform of national criminal law in order to realize a juvenile criminal justice

system that is oriented towards child protection, legal certainty, justice, and social recovery for victims and perpetrators.

D. Research Methods

This paper is descriptive with a *library research approach*, by inventorying various main library materials with supporters related to the focus of the problem to obtain a general picture of Policy Reconstruction, about the Criminal system, about Cyber Crime and Restorative Justice

E. Research and Discussion Results

1. Reconstruction of the penal system policy for children of cyber crime offenders based on restorative justice in the reform of the national criminal law

The development of information technology at this time which is full of sophistication has given birth to various new forms of criminal acts that utilize electronic media as a means of crime which is caused by the ease of accessing very wide and



unlimited information so that it becomes one of the gateways to be able to commit criminal acts. One of the problems that is developing in society is the increasing involvement of children in cyber *crimes*. Children are not only victims of the abuse of digital technology, but also perpetrators of criminal acts such as *cyberbullying*, online fraud, hacking of social media accounts, online gambling, the spread of illegal content, and the spread of fake news (*hoaxes*).¹³ This condition shows that the development of digital technology has brought a fairly complex social and legal impact on the juvenile criminal justice system in Indonesia at this time.

Criminalization of adults because children are individuals who are still in the stage of growth and psychological development. Therefore, the punishment of

children should not be solely oriented towards retributive *justice*, but must prioritize the protection, coaching, education, and social recovery of children. This principle is very clearly affirmed in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which places *restorative justice* and diversion as the main approach in resolving cases that occur to children both as perpetrators, victims and witnesses.

Law enforcement against children of cyber crime perpetrators still finds various weaknesses, the handling of child cases in cybercrime tends to use a formal and repressive approach because law enforcement officials are more oriented towards the enforcement of the Information Law and Electronic transactions.¹⁴ As a result, children are often still processed through

¹³ Maskun, *Cyber Crime: An Introduction*, Jakarta: Kencana, 2018, p. 52.

¹⁴ Josua Sitompul, *Cyberspace, Cybercrime, Cyberlaw*, Jakarta: Tatanusa, 2020, p. 214.



formal criminal justice mechanisms that lead to the imposition of prison sentences. In fact, the prison sentence for children can have a negative impact in the form of stigmatization, psychological development disorders, and an increase in the likelihood of children repeating criminal acts in the future and it can be an absolute obstacle for children to achieve the ideals of the citatanta as the next generation of the nation as entrusted in the law. This condition shows the need to reconstruct the policy of the penal system for children of cyber crime offenders based on restorative justice in the reform of national criminal law. Policy reconstruction is intended as an effort to improve and rebuild a penal system that is more adaptive to the development of digital technology and in line with the principles of child protection. In this

context, the restorative justice approach must be placed as the main foundation in handling the case of children of cyber criminals.

Restorative justice is a concept of criminal case resolution that focuses on recovering victims' losses, perpetrators' responsibility, and restoring social relations in society through deliberations involving perpetrators, victims, families, and the community.¹⁵ This concept emphasizes more humanistic settlements than mere condemnation. In children's cases, restorative justice is important because the main goal of the juvenile criminal justice system is to ensure *the best interest of the child*. Reconstruction of criminal policies against children of cyber crime perpetrators can be carried out through several steps.

¹⁵ Eva Achjani Zulfa, *Restorative Justice in Indonesia*, Depok: FHUI Publishing Board, 2021, p. 44.



First, there needs to be a harmonization of regulations between the Law on the Juvenile Criminal Justice System and the Law on Information and Electronic Transactions so that the application of diversion and restorative justice can be carried out more effectively in cases of cybercrimes committed by children. So far, there has been no special arrangement that provides guidelines for law enforcement officials in implementing a restorative approach to cybercrime involving children as perpetrators.¹⁶

Second, it is necessary to limit the use of prison sentences for children who commit cyber crimes and replace them with alternative crimes that are more educational and rehabilitative, such as information technology-based coaching, digital literacy

training, social work, psychological rehabilitation, and parental and community supervision. The policy is in line with the goals of modern punishment which is no longer oriented towards retribution, but on efforts to rehabilitate and reintegrate the perpetrators into society.

Third, the reform of the national criminal law must provide a wider space for the application of penal mediation in the settlement of cyber crimes committed by children. Penal mediation can be a means to bring together perpetrators and victims to reach a fair settlement agreement without having to go through a formal judicial process. In the context of certain cybercrimes that do not cause major losses, this approach is more effective in restoring social

¹⁶ Barda Nawawi Arief, *Criminal Law Reform in the Perspective of Comparative Studies*, Jakarta: Kencana, 2021, p. 103.



relationships and preventing children from being over-criminalized.¹⁷

Fourth, it is necessary to strengthen the role of families, schools, and communities in the process of fostering children of cyber crime perpetrators. Social environmental factors have a great influence on children's behavior in the use of digital technology. Therefore, the reconstruction of criminal policy must be integrative by involving educational and preventive approaches through increasing digital literacy, supervision of internet use, and social media ethics education for children.¹⁸

From the perspective of national criminal law reform, the birth of Law Number 1 of 2023 concerning the Criminal Code shows a change in the criminal paradigm that is more humane and oriented

towards a balance between the interests of perpetrators, victims, and society. This paradigm is an important basis for reconstructing criminal policies against children of cybercrime perpetrators based on restorative justice. Thus, the national criminal law system emphasizes not only legal certainty, but also child protection, social justice, and the restoration of social relations in society.

2. Policy regulation of the penal system for children of cyber crime offenders in the current criminal law in Indonesia

Cybercrime is a crime committed by utilizing electronic systems, internet networks, and digital technology as the main means of committing unlawful acts. In practice, cybercrime is not only committed by adults, but also involves children as

¹⁷ Lilik Mulyadi, *Penal Mediation in the Indonesian Criminal Justice System*, Jakarta: Alumni, 2020, p. 58.

¹⁸ Rika Saraswati, *Child Protection Law in Indonesia*, Bandung: Citra Aditya Bakti, 2021, p. 122.



perpetrators due to the high access and use of digital technology among children. Children's involvement in cybercrime is a complex legal issue because children are basically legal subjects who must obtain special protection from the state. Children do not yet have perfect emotional and psychological maturity, so the handling of children who commit crimes must be different from adults.¹⁹ Therefore, the policy of the penal system for children of cyber crime perpetrators in Indonesia is regulated through several interrelated legal instruments, namely the Criminal Code, the Juvenile Criminal Justice System Law, and the Electronic Information and Transaction Law.

The main regulation regarding the child penal system in Indonesia is contained in

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). The law emphasizes that the juvenile criminal justice system is obliged to prioritize *a restorative justice* approach and diversion in resolving children's cases. Diversion is interpreted as the transfer of the settlement of children's cases from the formal criminal justice process to an out-of-court settlement involving the perpetrator, the victim, the family, and the community to achieve peace and restore the original situation.²⁰ In the context of cybercrimes, the criminal provisions used generally refer to Law Number 1 of 2024 concerning Electronic Information and Transactions, the ITE Law regulates various forms of cybercrime such as illegal access to electronic systems, defamation through electronic media, the

¹⁹ Marlina, *Juvenile Criminal Justice in Indonesia*, Bandung: Refika Aditama, 2019, p. 41.

²⁰ Setya Wahyudi, "The Implementation of Diversion in the Juvenile Criminal Justice System", *Judicial Journal*, Vol. 14, No. 1, 2021, p. 70.



spread of fake news, online gambling, the spread of immoral content, and electronic fraud. However, the ITE Law has not specifically regulated the mechanism for handling children of cyber crime offenders, so its application must still refer to the principles of child protection in the Law on the Juvenile Criminal Justice System.

Normatively, children who commit cyber crimes can still be held criminally liable if they have met the age requirements for criminal responsibility as stipulated in Article 1 number 3 of the Law on the Juvenile Criminal Justice System, namely children who are 12 years old but not yet 18 years old. However, the punishment of children is the last resort (*ultimum remedium*) and must be carried out proportionately taking into account *the best interest of the child*.²¹

In the current law enforcement practice in Indonesia, the penal policy against children of cyber crime offenders still faces various obstacles, including that law enforcement officials tend to use a repressive approach because cyber crimes are often seen as serious crimes that have a wide impact on society. As a result, diversion and restorative justice have not been applied optimally to cases of cybercrimes committed by children. In addition, the characteristics of cybercrime that are anonymous, cross-regional, and use digital technology often make it difficult to resolve the process restoratively. The current penal policy against children in Indonesia's criminal law also still shows a sentencing orientation through imprisonment, even though the Law on the Juvenile Criminal Justice System has provided criminal

²¹ Rika Saraswati, *Child Protection Law in Indonesia*, Bandung: Citra Aditya Bakti, 2021, p. 114.



alternatives and actions for children. Based on Article 71 of the Law on the Juvenile Criminal Justice System, the principal crimes against children include a warning crime, a conditional crime, job training, in-institution coaching, and imprisonment.²² In addition to criminal charges, judges can also impose actions in the form of restitution to parents, treatment at educational institutions, rehabilitation, or the obligation to participate in formal education and training. This provision shows that Indonesian criminal law has actually led to a rehabilitative approach to children, However, the absence of specific regulations regarding the child penal system in cybercrime has led to a gap in norms in law enforcement practice. The current criminal law policy is still general and has not been able to accommodate the special

characteristics of cybercrimes committed by children. For example, there are no regulations that specifically regulate digital rehabilitation mechanisms, technology literacy education, and information technology-based coaching for children of cyber crime offenders.

On the other hand, the reform of the national criminal law through Law Number 1 of 2023 concerning the Criminal Code has brought a new paradigm in the criminal system that is more humane and oriented towards the value of restorative justice. The reform emphasizes that criminalization is not only aimed at inflicting suffering on the perpetrators, but also aims to improve the perpetrators and restore balance in society.²³ This paradigm is an important basis for the development of criminal policies against

²² Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 71

²³ Muladi and Barda Nawawi Arief, *Criminal Theories and Policies*, Bandung: Alumni, 2018, p. 78.



children of cyber crime offenders in the future. Thus, the policy arrangement of the penal system for children of cyber crime offenders in the current Indonesian criminal law has basically accommodated the principles of child protection and restorative justice through the Law on the Juvenile Criminal Justice System. However, the arrangement is not fully effective because there is still a gap in norms and weak harmonization between the juvenile criminal law and the regulation of cybercrimes. Therefore, it is necessary to reform criminal law policies that are more adaptive to the development of digital technology so that the juvenile penal system can run effectively, fairly, and oriented towards the best interests of children.

F. Conclusion

The reconstruction of the penal system policy against children of cyber crime offenders based on restorative justice in the

reform of the national criminal law needs to be carried out through the harmonization of regulations between the Law on the Juvenile Criminal Justice System and the Law on Information and Electronic Transactions, restrictions on the use of prison sentences against children, the application of alternative penal crimes that are educational and rehabilitative, and the strengthening of penal mediation mechanisms in the settlement of children's cases. The reconstruction aims to realize a more humane penal system, adaptive to the development of digital technology, and oriented towards child protection, social recovery, and the best interests of children as the next generation of the nation.

The policy arrangement of the penal system for children of cyber crime offenders in the current Indonesian criminal law has basically accommodated the principles of child protection and restorative justice



through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and supported by the provisions of the Electronic Information and Transaction Law. However, in practice, there are still weaknesses in the form of the lack of special arrangements regarding the handling of children of cyber crime offenders, the weak implementation of diversion and restorative justice, and the still dominant repressive approach through prison sentences. Therefore, it is necessary to reform the national criminal law that is more responsive to the development of cybercrime by focusing on rehabilitative, educational, and restorative approaches for children.

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