



Local Wisdom-based Restorative Justice Approach to Customary Violations Committed by Children

I Nyoman Budiana (Corresponding author)

Faculty of Law, Universitas Pendidikan Nasional, Indonesia

budiana@undiknas.ac.id, ORCID: <https://orcid.org/0000-0003-3344-6001>

Dewi Bunga

Faculty of Dharma Duta, Universitas Hindu Negeri I Gusti Bagus Sugriwa Denpasar, Indonesia

E-mail: dewi.bunga@uhnsugriwa.ac.id, ORCID: <https://orcid.org/0000-0003-4812-0047>

Abstract

Child protection is an effort to create conditions so that children can carry out their rights and obligations while still prioritizing their best interests. There are three things discussed in this study namely: punishment policy in the use of diversion and restorative justice, values and forms of restorative justice, and the role of custom in cases of children in conflict with the law. This study is an empirical legal study that examines the settlement of criminal cases committed by children with a restorative justice approach. The data used are primary data and secondary data. Analysis of the problems is carried out qualitatively. The policy of handling children's cases with the concept of restorative justice, which promotes peace through deliberations involving various parties, religious and traditional leaders, and the community is very much in line with the concepts of progressive law and substantive justice. To realize the settlement of cases based on restorative justice, relevant stakeholders are expected to be able to apply the values of restorative justice in practice to be able to produce peace agreements that reflect the sense of community justice. Efforts to resolve cases or customary issues carried out by deliberation by traditional elders as village peace judges, are part of the application of local Balinese wisdom and are the best step to restore the situation as before by sticking to the spirit of kinship, mutual care, compassion, and care.

Keywords: Children, customary village, diversion, local Balinese wisdom, restorative justice

1. Introduction

Protection is given to all children even though the child has committed an anti-social act. The emphasis on handling children is contained in fundamental perspectives or basic views which form

the common ground. In general, the preparation of The Beijing Rules aims to ensure fairness in the intervention of the juvenile justice system. In addition, to ensure that any interventions carried out will not harm the child and consider the best interests of the child (Sriwiyanti, et al., 2021). The years since the emergence of the Convention, there are many constitutions, laws, policies and practices adapted to its precepts by national governments and regional bodies. Its influence is as an evident in the rhetoric that individuals, institutions, and the media use to describe children, and in their treatment at home, school, and in society (UNICEF, 2019). Various laws and regulations have been issued by the government such as Law Number 39 of 1999 concerning Human Rights, Law Number 23 of 2002 as amended by Law Number 35 of 2014 concerning Child Protection, Law Number 11 of 2012 regarding the Juvenile Criminal Justice System and various other regulations. However, until now the practice of the child protection is felt to be not optimal. In various regulations, it has been stated that children have the right to survival, growth and development and are entitled to the protection from violence and discrimination.

Along with the development of an increasingly complex society, the presence of the Law on Child Protection can be a cooling breeze so that children get optimal protection away from violence and discrimination. These regulations are intended to be used as a basis for providing protection and welfare for children. The Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the Juvenile Criminal Justice System Law), regulates, among other things, special protection for children who conflict with the law and children as victims of crime. Article 5 of this Law states that the juvenile justice system must prioritize the Restorative Justice and Diversion Approaches.

Apart from being regulated in the Law on the Juvenile Criminal Justice System, the concept of restorative justice has also been regulated in the Attorney General's Regulation Number 15 of 2020 concerning the Termination of Prosecution of Cases Based on Restorative Justice. Several important provisions of the regulation, namely the termination of prosecution based on Restorative Justice is carried out by taking into account the interests of the victim and other protected legal interests; avoidance of negative stigma; avoidance of retaliation; community response and harmony; and obedience, decency and public order. Termination of prosecution based on Restorative Justice is carried out by considering the subject, object, category and threat of crime; the background of the occurrence/commitment is not criminal; level of disgrace; losses or

consequences arising from criminal acts; costs and benefits of case handling; restoration back to its original state; and there is peace between the victim and the suspect. Non-criminal cases can be closed by law and the prosecution can be terminated based on restorative justice if the condition is fulfilled that the suspect is the first time to commit a criminal act; criminal acts are only punishable by fines or threatened with imprisonment of not more than 5 (five) years; and the crime is committed with the value of the evidence or the value of the loss incurred as a result of the crime of not more than Rp. 2,500,000.00 (two million five hundred thousand rupiah).

Concerning the various provisions of the regulations above, restorative justice is the settlement of non-criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state and not retaliation. According to Iswara, restorative justice is a form of settlement of a case, both civil and criminal, which involves all parties to the dispute, in this case, the victim, the perpetrator, other third parties, the family of the victim and the perpetrator along with other third parties, such as the community in solving a case by prioritizing reconciling rather than retributive efforts to repair the balance that was injured before (Iswara, 2017). Anti-social acts committed by children are sometimes violations of law, violations of customs, even apart from being violations of law, they are also violations of customs. In the view of customary law, children are not to be punished but must be given guidance and direction/coaching so that they can grow and develop as normal, healthy and intelligent children completely (Djuniarti, 2022). In this regard, it is necessary to resolve child cases based on the local wisdom to restore balance.

2. Research Method

This research is empirical juridical research that examines the settlement of criminal cases with restorative justice. The restorative method used is sourced from local wisdom. The data used is primary data by interviewing traditional leaders in Bali. The technique used in this sampling was purposive sampling. Interviews were conducted by exploring the experiences of traditional leaders in assisting peace efforts against criminal acts committed by children, both in the criminal justice process and outside the criminal justice process. Secondary data comes from laws and scientific journals and books that are relevant to this research. The analysis was carried out qualitatively. This study examines customary law documents containing the concept of peace in conflict

resolution. The concept is continued with the practice of involving customary figures in resolving criminal cases committed by children.

3. Result and Discussion

3.1 Punishment Policy in the Use of Diversion and Restorative Justice

3.1.1 Child Protection within the Legal Framework

The purpose of child protection is to protect vulnerable children and young people from harm caused by abuse and/or neglect (Politis, et al., 2024). The protection of children's rights in Indonesia needs serious attention from various parties because this protection is a basic right as contained in the 1945 Constitution and the United Nations Convention on the Rights of the Child. The 1989 Convention on the Rights of the Child is an instrument containing the formulation of universal principles and provisions on legal norms for children's rights which is an international agreement on human rights that includes civil and political rights as well as economic, social, and cultural rights. The Convention is an aspirational document defining the human rights of children and encourages international accountability by mandating the state's signature report on progress every five years (Simon, et al., 2020). The Convention on the Rights of the Child has made some very significant achievements in global efforts to protect children's rights. This Convention has created, under international law, the new rights for children that did not exist before (Mbaku, 2019). From its inception, child protection policy has been infused with domination, and over the long arc of history has been accompanied by the spread of institutional oppression (Braithwaite, 2021).

In more detail, the legal provisions regarding children's rights in the Convention on the Rights of the Child can be grouped into 4 (four), namely 1) Rights to Survival (Survival Rights), intended to preserve and maintain life and the right to obtain the highest standard of health and the best treatment.; 2) The Right to Protection (Protection Rights), namely the protection of children from discrimination, acts of violence, and neglect for the children who do not have families and are refugees. The right to protection from discrimination, including the protection of children with disabilities to obtain special education, care and training, as well as the rights of children from minority groups and indigenous people in the life of the state community; 3) The right to growth

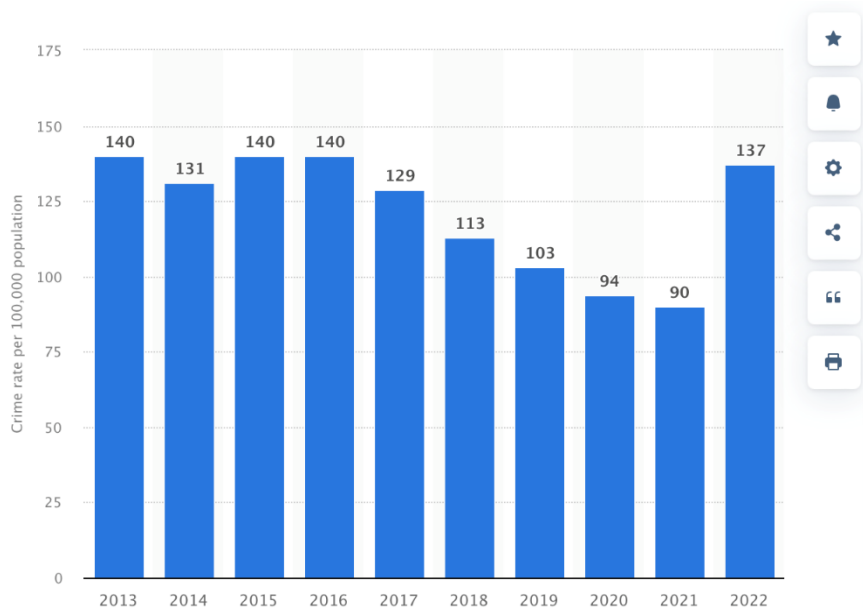
and development (Development Rights), includes all forms of education (both formal and non-formal) and the right to achieve a standard of living that is appropriate for the physical, mental, spiritual, moral and social development of the children; 4) Right to Participation (Participation Rights), namely the right to express opinions in all matters that affect children (Saraswati, 2009).

Children are a mandate and gift from God Almighty, in whom dignity and worth as a whole human being are attached. Children as the next generation of young people have a strategic role in the survival of the nation and state. Therefore, in order to make every child to be able to take responsibility in the future, they need to get proper opportunities to grow and develop optimally. Besides, they need to receive protection and to realize children's welfare by providing guarantees for the fulfilment of their rights without discrimination. Children as the next generation for the ideals of the nation's struggle, have a strategic role and have special characteristics and characteristics that guarantee the continued existence of the nation and state in the future; therefore, every child has the right to receive protection from the family, community and government and is entitled to protection (Handayani, 2022). . Children are essentially unable to protect themselves from a variety of actions that can cause mental, physical, social harm, even actions that can threaten life safety. Therefore, child protection is very important, including the protection of children who commit unlawful acts. Child protection in the implementation of the juvenile criminal justice system is an effort to avoid mistakes in the application of various laws and regulations that apply to them, which allows mental, physical and social harm to children (Falahiyati & Sukarja, 2024).

3.1.2 Restorative justice approach in the criminal justice process

The Indonesian nation is currently experiencing multiple crises, one of which is a crisis in law enforcement. At present, there is a tendency for legal activities in society to be/ marked by the increasing use of legal sources and the resolution of problems with the law. Ironically, public awareness is inversely proportional to the process of solving legal problems. In practice, the law does not always act as a counterbalance to the interests of society because law tends to accommodate the interests of certain elites (Iswara, 2017). Crime prevention can only be done by the government. The government in this case the law enforcement officers must carry out their duties and responsibilities based on the existing laws (Kaplan, et al., 2019).

Figure 1 Crime rate in Indonesia from 2013 to 2022 (per 100,000 population)



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Source: <https://www.statista.com/statistics/705464/crime-rate-in-indonesia/>

In the practice of life in society, the process of law enforcement that is carried out is felt to be far from the sense of justice in society. Legal justice that emerges is more legal-formal, justice that is based on written texts in the law (rule-bound). The child protection context is one already highly contested in terms of its aims, ideological underpinnings, and institutional mechanisms. Whether a child protection system is based on a child protection-, child welfare- or child-focussed policy orientation, for example, will shape its philosophical basis, broad institutional structures, preferred priorities and methods of social work practice (Keddell, 2019).

Laws or statutory regulations in their implementation must be fair, but what happens is injustice. In terms of law in the ideal context, it is closely related to justice, but in practice, law enforcement officials are not fully aware of this (Friedrich, 2004). Seeing the problems that occur in society, Satjipto Rahardjo offers the function of law as a tool for society which is called progressive law. The progressive legal school emphasizes the interpretation of law as an effort to explore the values that live in society to create a fair decision. This thinking is indeed very suitable for the needs of the Indonesian people, especially for small communities who do not have a strong position in economic or social terms. Not only that, progressive law also offers a new perspective in law, namely by involving conscience (Rahardjo, 2007).

The essence of progressive law lies in thinking and acting progressively which frees from the shackles of legal texts, but for human happiness and welfare (Rahardjo, 2007). Progressive law enforcement seeks to resolve cases with a restorative justice approach, in order to create justice that benefits all parties in the conflict. In the context of the application of criminal law, it should have an effective influence to prevent a crime before it occurs. As a strategic step to realize this progressive legal concept, currently the government, in this case the legislature and the judiciary have issued several legal products that reflect the sense of justice in society, such as the juvenile justice system.

The Attorney General's Office as a sub-system of the criminal justice system in cases of children in conflict with the law has always tried to prioritize the interests and welfare of children. This was done by issuing several strategic policies related to its function in handling children in conflict with the law, the Attorney General has issued Regulation Number 006 of 2015 concerning Guidelines for the Implementation of Diversion at the Prosecution Level, issued Regulation 15 of 2020 concerning Termination of Prosecution of Cases Based on Restorative Justice, conducting education and training for prosecutors who handle children, as well as establishing a Restorative Justice House which is centered in each village head's office as a forum for providing legal guidance to the community and resolving legal issues by reconciling the two parties by involving religious and traditional leaders and the community and avoiding settling cases with litigation. In this case, the prosecutor's office as a state apparatus is expected to be able to carry out the concept of *parents patriae*, the state as parents who give attention and protection to children as befits parents to their children.

The process of restorative justice is basically carried out through discretion (wisdom) and diversion, namely the transfer of the criminal justice process outside the formal process to be resolved by deliberation. Diversion is the transfer of settlement of child cases from the criminal justice process to the processes outside of criminal justice. Muladi, in detail states several characteristics of restorative justice, namely 1) Crime is defined as a violation of one person against another and is recognized as a conflict; 2) Focus on solving problems, accountability and obligations in the future; 3) The normative nature is built on the basis of dialogue and negotiation; 4) Restitution as a means of improving the parties, reconciliation and restoration as the main goal (Muladi, 1995).

By paying attention to the various understandings of the concept of law and restorative justice as stated above, it seems that it cannot be separated from Emile Durkheim's view of the rule of law which is associated with various types of solidarity found in society. A rule of law is formulated as a rule of sanction, the severity of which depends on the nature of a violation, the assumptions and beliefs of society about the pros and cons of an action and the role of the sanction in society. According to the type of sanction which is the main part of the rule of law, a classification of various rules of law can be made, namely the rule of law which is repressive and restitutive. Repressive legal rules are legal rules whose sanctions cause suffering to those who violate these legal rules, while restitutive legal rules, the main purpose of applying sanctions is not solely to bring suffering to those who violate them. The main purpose of these restitutive legal rules is to restore the situation to how it was before the shock occurred as a result of a violation of these rules (Soerjono, 1983).

In practice, the application of restorative justice policies sometimes still has the view that law enforcers including the prosecutor's office have not consistently implemented various regulatory policies issued, which can be seen from the efforts to detain them during the investigation process following the provisions of the Criminal Procedure Code (KUHAP). In addition, when settling cases with the concept of restorative justice, it must be carried out through a process of application from the reporting party and the reported party to law enforcement agencies according to the level, there still appears the impression that there is a long bureaucratic legal process that does not seem smooth or does not yet reflect special protection to children's interests. Based on this, the community view emerged that if a case involving a child occurs, do not rush to report it to the authorities, but it is more elegant that the child's case is resolved at the village level through deliberations to make peace.

The objectives of the juvenile justice system are based on 3 (three) paradigms, namely the individual development, the retributive, and the restorative paradigm. The three paradigms essentially emphasize maintaining the dignity of children and receiving special protection in the justice system, so the main focus is not only on emphasizing the imposition of criminal sanctions but is also intended to foster them so that they are deterrent and protect the dignity and rights of victims/families, restore conditions or the order of norms damaged by the criminal act of the perpetrator. The spirit of diversion stems from Article 17.4 of The Beijing Rules or the United

Nations Standard Minimum Rules for The Administration of Juvenile Justice, that the competent authority has the power not to proceed with the process at any stage, as a statement of the best decision in the case. The authorized official is the diversion Facilitator. The diversion facilitators exist at three stages of the criminal justice system, namely at the Police, Prosecutor's Office and Court levels. The diversion facilitator at the Police level is carried out by Child Investigators. The diversion facilitator at the Prosecutor's Office level is carried out by the Child Prosecutor while at the Court, it is carried out by the Juvenile Judge (Saraswati, 2009).

Settlement with the diversion approach through deliberations between perpetrators and victims as well as their families and community leaders, is actually not a new thing for the Indonesian people. In this meeting, the offender expresses remorse for the harm caused and the group agrees on actions the offender can take to repair the harm and prevent re-offending (Lanni, 2021). Before the Dutch occupation, the Indonesian people already had their own law, namely customary law. The customary law does not distinguish the settlement of criminal cases and civil cases, all cases can be resolved by deliberation with the aim of achieving balance and restoration of the situation. By using a restorative concept, the expected result is to reduce the number of children who are arrested, detained and sentenced to prison, to eliminate the stigma or labeling of naughty children and to return to being normal human beings so that they are expected to be useful in the future. Various other objectives of restorative policies such as: a. juvenile offenders can realize their mistakes so they do not repeat their actions; b. reduce the workload of the police, prosecutors, detention centers, courts and prisons; c. saving state finances; d. does not cause a feeling of revenge because the perpetrator has been forgiven by the victim; e. victims quickly get compensation; f. empower parents and the community in overcoming child delinquency; and g. reintegrating children into society (Saraswati, 2009).

As an affirmation of what has been described above, that in fact the settlement of criminal cases using a restorative justice approach basically resolves a criminal problem by remedial efforts to the original state through an agreement between the parties involved. It is including improving the relationship between the parties (victims, perpetrators, their families and the community) related to the incident. According to Adrianus Meliala, the restorative justice model was introduced because the current criminal and criminal justice system does not solve a problem, but instead creates new problems (Rahardjo, 2007).

As the main requirement for settlement through deliberations on recovery, there is recognition from the perpetrator and the consent of the perpetrator and his family and the victim to resolve the case through deliberations on recovery. If the parties do not want a settlement through deliberations on recovery, a new judicial process will take place. In the case of a judicial process that must take place, the process that is executed is a process that can recover. This means that cases are really handled by law enforcement officials who have interest, concern, dedication, understanding in children's problems, and have attended restorative justice training, and detention is carried out as a last resort by heeding the basic principles of the Convention on the Rights of the Child which have been adopted into the Child Protection Act and various other laws and regulations. Which can be seen in the juvenile justice system, it appears that it has been regulated that criminal imposition in the Juvenile Criminal Justice System Law adheres to a double track system not only of criminal imposition but also of action (treatment). Punishment is not merely retribution or even retaliation but aims to improve the character of the offender.

The restorative justice model is a model whose basic concept takes the theory of John Braithwaite about reintegrative shaming. This model can be in line with the approach that underlies the provisions and values in the Convention on the Rights of the Child, namely the welfare approach, in which young offenders are as far away from the process of punishment as possible by the criminal justice system. All actions that will be taken by the state in relation to the violations committed by the child shall prioritize the best interests of the child as far as possible. This can be because children are considered as individuals who are easily influenced, both in all forms of actions and words that are done or said by other people (Saraswati, 2009). The legal procedure will be favorable to the child's best interests and will be carried out in an atmosphere of mutual respect, allowing the youngster to participate and openly express himself. They have the right to be represented by an attorney or to seek free legal aid. The parent or legal guardian has the right to participate in the court process and may be ordered to do so by the competent authority (Hasibuan, 2022). Restorative justice could represent one of these alternatives. Its practices are oriented not only at the alternative management of incorrect and violent behaviours, for example, bullying, but mainly at the promotion of prosocial behaviours through the development of social and emotional skills (e.g., empathy, awareness, and responsibility), with the broader goal of building safe school communities that promote well-being (Lodi, et al., 2021).

3.2 Values and Forms of Restorative Justice

One important thing that cannot be left behind in sentencing policies in the use of diversion and restorative justice is the need to understand basic values as a feature of restorative justice. The importance of restorative justice is that it can be a proactive policy approach to preventing harm and conflict within the energy sector if applied and accounted for at the outset of an energy project or activity (Hazrati & Heffron, 2021). The concept of restorative justice may refer to an alternative process for solving disputes, to alternative sanctions options, or to a distinctively different, new model of criminal justice organized around principles of restoration to victims, offenders and the communities in which they live. In this context, Braithwaite suggests several basic values which are the characteristics of restorative justice that distinguish it from other sentencing theories (Hirsch et al., 2003). These basic values are grouped into 3 types, namely:

1. Values of Implementing Restorative Justice in Practice:
 - a. Non-Domination. In resolving a criminal case using restorative justice, it is expected that all parties will be in the same and equal position. In this case, none of the parties involved are in a dominant position. Therefore, it is expected that the decisions can be taken together.
 - b. Empowerment. There is a necessity of empowerment (protection) for those who are in a disadvantageous position. This empowerment is not meant to be favoritism, but as an effort to build the courage to express thoughts, views and wishes so that the needs of perpetrators, victims or the community can be heard and considered in the decision-making process.
 - c. Honoring legally specific upper limits on sanctions. When the parties have decided to resolve an issue using this concept, they must accept all decisions resulting from the settlement model.
 - d. Respectful listening. In resolving cases, the parties must have mutual respect and empathy between them.
 - e. Equal concern for all stakeholders. There must be attention to all stakeholders to complete this model.
 - f. Accountability, Appealability. Restorative justice is the freedom to choose a settlement mechanism based on the choices of all parties.

g. Respect for the fundamental Human Rights. In resolving criminal cases, it must refer to human rights instruments. Human rights values must be accommodated in the purpose of sentencing and in designing a sentencing model.

2. Values related to the ability to forget past events. The willingness to forget past events is not a reason to neglect or prevent ongoing processes. Forgetting is not eliminating or leaving it without a solution. However, trying to reconstruct the mindset of related parties, that the settlement pattern implemented is a model with a new paradigm, which reflects justice for all parties.

3. The values contained in restorative justice are preventing injustice, mutual forgiveness and gratitude. The concept of restorative justice is the concept of solving cases that is always evolving, not static in a certain way but will be able to develop by the development of a sense of justice in society.

4. Religious values in restorative justice. Many experts review the concept of restorative justice from the perspective of religious teachings and values. History has proven that the Prophets and statesmen resolved problems non-violently but with reconciliation. For example, in Islam it is known as *Islah*, the Balinese indigenous people know *paras paro sarpa naya, salunglung sabhayantaka* which means synonymous with restorative justice, resolving problems based on mutual compassion and care to achieve the common good.

Stephenson, Giller, and Brown divide forms of restorative justice into 4 (four) forms, namely 1) Victim Offender Mediation (Penal Mediation), a restorative justice approach that forms a forum by encouraging meetings for the parties, namely victims, perpetrators and the third party, a neutral and impartial one (mediator), to help all the parties communicate each other in the hope of reaching an agreement; 2) Restorative Conference (conferencing), problem-solving does not only involve the perpetrator and the direct victim (primary victim), but also involves indirect victims (secondary victim), such as family, close friends and relatives of the perpetrator. The form of solving this model is an application of restorative justice developed by the Maori Tribe (New Zealand), but in reality, many countries use this model application; 3) Family Group Conference (FGC), the focus of completing this model is an effort to provide lessons or education for actors on what is done. Both parties (perpetrators and victims) make an action plan that comes from information from victims, perpetrators, and professionals. This is done as a form of prevention, so that the mistakes are not repeated; 4) Community Panels Meetings, meetings attended by community leaders,

perpetrators, victims and parents of perpetrators to reach an agreement to correct mistakes (Stephenson, et al., 2007).

3.3 The Role of Custom in Cases of Children in Conflict with the Law

In society, it is common for various social tensions to occur due to customary violations by the person or group of members of the community concerned. These various tensions will recover when the community's reaction in the form of imposing customary sanctions has been carried out or fulfilled, by the customary violator. According to Hilman Hadikusuma, customary offenses are events or actions that disrupt the balance of society and due to a reaction from the community, the balance must be restored. Events or actions that have caused upheaval in society must be restored by fines or by traditional ceremonies (Hadikusuma, 1992). Meanwhile, according to Bushar Muhammad, customary offenses are unilateral acts of a person or group of individuals threatening or offending and even disrupting the balance and life of the community which are material and immaterial, against individuals or society in the form of a unit, from this action causes a reaction from *adat* or custom (Muhammad, 1983).

From the various concepts of customary offenses, according to Widnyana, customary offenses are all actions or events that are contrary to harmony, order, security, a sense of justice and legal awareness of society, whether as a result of actions committed by a person, group of people or actions committed by the administrator himself. Such actions are seen as causing shocks because they disturb the balance of the cosmos and cause reactions from indigenous peoples in the form of customary sanctions (Widnyana, 2013). The characteristics of customary criminal law in practice can be seen in several forms, namely 1) Comprehensive and Unifying, because it is imbued with a cosmic nature in which one is related to one another. Customary criminal law does not distinguish between criminal and civil violations; 2) Open Provisions, this is based on the ability to predict what will happen so that it is not certain. Thus, the provisions are always open to all events or actions that may occur; 3) Distinguishing Problems, when a violation occurs, what is seen is not merely the act and its consequences, but what is the background and who is the perpetrator. With that way of thinking, the way to resolve an event is different; 4) Courts by Request, resolving customary violations mostly based on requests or complaints of claims or lawsuits from parties who have been harmed or treated unfairly; 5) Reaction or Corrective Action, this action is not only

imposed on the perpetrator but also imposed on his family, relatives and even charged to the community to restore the disturbed balance.

In the perspective of the Balinese indigenous people, customary law in Bali is given several names, such as: *Adat, Drsta, Gama, Sima, Cara, Kerta Sima, Geguat, Pengilng-eling, Tunggul, Awig-awig* and *Pararem* (Windia & Sudantra, 2006). Meanwhile, according to Moh. Koesnoe, Balinese customary law is categorized into 3 (three) customary categories, namely 1) *Gama*, customs that are very abstract in nature which all members of the Balinese community hold in high esteem and strive to implement; 2) *Sima*, is the implementation of general teachings and principles in *Gama*, which are limited in an area of a village or a group of villages, 3) *Pararem*, a type of custom that is formulated in village meetings called *sangkepan* (Iswara, 2017). The authority of the customary village as a judge of the village's peace cannot be separated from the power of the customary village. The power can be distinguished into three types, namely (1) the power to establish rules to maintain organizational life in an orderly and peaceful manner; (2) The power to carry out organizational life that is socially religious; and (3) the power to resolve disputes that indicate the existence of interests between villagers or in the form of actions that deviate from the rules which are considered as actions that disrupt social life (Sihotang, 2019). Restorative justice is practiced in many parts of the world (Kirkwood, 2022).

In the Balinese customary community, the purpose of customary law is to create harmony based on the philosophy of *Tri Hita Karana*. The essence of this harmonious concept is the harmony in the relationship between humans and God (*Parahyangan*), humans relations and other humans (*Pawongan*) and humans and the environment (*Palemahan*). *Tri Hita Karana*, as an elaboration of Hindu religious teachings in Balinese society, is outlined in a group of customary regulations, known as *awig-awig*. In general, various types of non-traditional Balinese crimes are distinguished in various ways, such as:

1. Customary offenses of decency, namely:
 - a. *Lokika Sanggraha*, regulated in article 359 of the Adigama Book, which means a love relationship between a man and a woman who are both getting married, having sexual relations based on consensual action because of a faithful promise from the man to marry the woman. However, after she becomes pregnant, the man breaks the promise and breaks up with her for no reason.

- b. *Tonsil Sanggama*, an offense in the form of a wife leaving her husband for no apparent reason, while her status is still in a legal marriage bond.
 - c. *Drati Krama*, sexual relations between a man and woman who are in a marriage bond with another person (in the Criminal Code it is called adultery).
 - d. *Gamia Gamana*, sexual relations between a man and woman who are still in a close family relationship, in a straight line or sideways.
 - e. *Mamitra Ngalang*, a married man has a relationship with another woman who is not his wife and is given a living physically and spiritually like husband and wife, but has not been legally married.
 - f. *Salah Krama*, having sexual relations with non-humans or between humans and animals.
 - g. *Kumpul Kebo*, a man lives with a woman out of wedlock, just like husband and wife, but they are not yet married.
2. Customary Offenses Concerning Property, theft, or destruction of sacred (holy) objects is an act that disturbs the cosmic balance in an area, including in the form of:
 - a. *Pratima* or *Pralingga*, is a sacred object that is placed in a temple or a sacred place belonging to the village or family, it symbolizes the power of Hyang Widhi Wasa or God the Almighty.
 - b. *Tapakan*, various sacred objects that are also placed in the sacred place as a symbol of Hyang Widhi Wasa's power as *Istadewata*.
 - c. Ceremonial tools, all special tools used in the implementation of Hindu religious ceremonies in Bali.
 3. Customary Offenses Concerning Personal Interests, such as issuing harsh words: swearing and *mapisuna* or committing slander.
 4. Violation of Customs for Not Carrying Out Traditional Institutional Obligations (Village, Banjar or Temple), not attending meetings or *sangkepan* many times, not paying contributions or *peson-peson* (Widnyana, 2013).

Of the various types of Balinese customary offenses mentioned above, several ordinary and customary offenses are often violated by children, such as *gamia gamana* (incest), theft of sacred objects, *salah krama*, *lokika sanggraha*, even the crime of *kumpul kebo*. Customary violations committed by these children can interfere with the occurrence of a magical imbalance, which is called *leteh*, resentful, dirty or *cuntaka*. These actions resulted in significant losses, in terms of material and immaterial losses, including defaming the reputation and dignity of a person or family, such as sexual acts that are contrary to the norms prevailing in that place. The magical imbalance resulting from the act, the violation by the indigenous people will soon be carried out by a purification ceremony to restore the balance of *buana agung* (macro cosmos) and *buana alit* (micro cosmos).

In the context of restorative justice for ordinary offenses or customary offenses committed by children in Bali, actions are taken by way of deliberation, village messages as a form of Balinese local wisdom, in the form of:

1. If the customary offense committed by the child is against village property rights or family associations (*pemaksan*), such as theft or destruction of sacred objects at temple's holy place, and it has been reported to state law enforcement, then the steps taken by the community through community leaders custom is to ask the police or the prosecutor's office so that the customary offense can be resolved by customary deliberations through diversion. If this has not been reported to the authorities, then the action taken by the customary village is through village meetings to restore the situation, restorative justice whether due to a report (*pasadok*) or not.
2. If the customary offense is committed by a child which can harm the rights of an individual or a group of people, then the steps taken by the customary village are to hold deliberations, *pesangkepan* (meetings) to restore the situation to normal, restorative justice after the village officers receive a report (*pasadok*) from the victim or the aggrieved party.
3. The level of customary institutions that are authorized to deal with ordinary and customary offenses committed by children, can be carried out in deliberations or *pesangkepan banjar* (traditional institutions part of a customary village). If the structure of the banjar institution is unable to resolve the problem, or there is no agreement between the parties, then the problem is resolved at the customary village level.

4. In a deliberation or *pesangkepan* held in the village, the perpetrators, the victims, the families of both parties, the banjar elders from where the parties come from, *pecalang* or traditional Balinese security, traditional village leaders called *Bandesada*, community leaders, and other official apparatus must be present such as *Lurah* or *Perbekel* and *Babimkamtibmas* who are in charge of the village.

5. Deliberations or *pesangkepan* are carried out by upholding equality, equality of all parties based on the spirit of *kinship paras paro sarpa na ya, gilik saguluk sabhayantaka, tat twam asi, vasudaiwa kukumbhakam* and similar local wisdom called the concept of *bebrayan*.

6. The results of the deliberations or village councils are in the form of an agreement between the parties, which among other things contains: a. apology; b. declared no longer to repeat any acts or criminal acts; c. able to perform purification ceremonies; d. able to pay compensation for recovery; e. carry out the contents of the agreement with full responsibility, not breaking promises, which are outlined in the Village Agreement Minutes.

The various steps for resolving Balinese customary conflicts as described above are not dissimilar to the findings by Lestawi, which states that the handling of customary conflicts carried out by the customary head as a village peace judge has carried out his function as a 'mediator' by conducting deliberations with various components of society and involve the perpetrators and victims and their families to find a way of settlement peacefully and can restore the situation as before the incident or criminal act occurred (Lestawi, 1999). The process taken by way of deliberations of village peace judges is an attempt to avoid formal justice processes which tend to lead to imprisonment which does not necessarily reflect the community's sense of justice.

4. Conclusion

Child protection is an effort to create conditions so that children can carry out their rights and obligations while still prioritizing the best interests of the child. Based on the concept of *patria*, that is, the state gives attention and protection to children as parents do to their children, children who conflict with the law must also do so in the best interests of the children and be based on *Pancasila* values. The policy of handling cases (children) with the concept of restorative justice, which promotes peace through deliberations involving various parties, religious leaders, traditional

leaders, and the community is very much in line with the concepts of progressive law and substantive justice. Restorative Justice provides confirmation that children in conflict with the law are not to be punished but must be guided and fostered so that they can become better children, because the main goal of Restorative Justice is recovery or returning to their original condition and providing opportunities for children to improve themselves and achieve a better future. To realize the settlement of cases based on restorative justice, relevant stakeholders are expected to be able to apply the values of restorative justice in practice to be able to produce peace agreements that reflect the sense of community justice. Efforts to resolve cases or customary issues that have been carried out by deliberation by traditional elders as village peace judges, are part of the application of local Balinese wisdom and are the best step to restore the situation as before by sticking to the spirit of kinship, mutual care, compassion and care.

5. Suggestion

The application of restorative justice policies that have been regulated in various laws and regulations should be accompanied by an increase in the quality of human resources who have a high dedication to law enforcement in accordance with the principle of the Trilogy of Justice: Justice is carried out in a "Fast, Simple and Low Cost" manner. If in resolving cases (children) with the concept of restorative justice, traditional leaders, religious and community leaders are involved, then these community leaders need to be given education and training on restorative justice and the provision of mediation theory, so that they can carry out their duties effectively and efficiently.

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