

The Restorative Justice in the Juvenile Criminal Justice System

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Abstract. *Children as the next generation of the nation deserve special attention. This is aimed at fostering children to create quality human resources. Therefore, legal facilities and infrastructure are also needed to anticipate all problems that arise. This legal facility is aimed at anticipating the stigma or evil brand that arises when children face the law, as well as at the same time restoring and re-socializing the child. One solution is to divert or place juvenile offenders out of the criminal justice system and provide alternatives for settlement with a justice approach in the best interest of the child, which is then known as a restorative justice approach. The purpose of the research made in this journal is to contain how to apply restorative justice in the juvenile justice system and how to provide justice to cases of children who commit crimes. Restorative justice in the juvenile justice system is part of the implementation of diversion. Diversion and restorative justice arrangements have been formulated in the Law on the Juvenile Criminal Justice System. Ideally, restorative justice involves three stakeholders, namely, victims, perpetrators, and civil society or society in determining the settlement of child cases. Through restorative justice, there are efforts to bring together victims and perpetrators with the aim of seeking recovery for victims.*

Keywords: Children; Diversion; Criminal; Justice; Restorative.

1. Introduction

It has been realized that children are the successor of the nation because on their shoulders lies the task of the nation that has not been completed by previous generations.¹ Maybe at this time for some people, children do not mean

¹For details, see Sunarjati Hartono, *Legal Politics Towards a National Legal System* (Bandung: Alumni, 1991). p. 154.

anything. However, in the future, it is children who play the main role in determining the direction to be taken by this nation and country.

Children as one of the human resources and are the next generation of the nation deserve special attention, both from parents, society and government. This is aimed at fostering children to create strong and quality human resources. In addition, the interests of the child must be used as the basis for guidelines by those who are responsible for the education and guidance of the child concerned, and of course the main holders of this responsibility are parents.²

A sense of affection, protection, coaching and proper direction is the most basic psychological need in life and the life of a child which actually rests on the conscience of parents. In fact, many parents are not aware of this, which affects the development of children's lives. Children who are brought up in an atmosphere of conflict tend to experience mental unrest which can encourage children to take negative actions, which are categorized as juvenile delinquency. The resulting delinquency may even lead to unlawful acts.

In connection with the guidance and development of children's lives, legal facilities and infrastructure are also needed to anticipate all problems that arise. The facilities and infrastructure in question concern the interests of the child as well as those involving deviations in attitudes and behavior that force the child to face the law or be brought before a court. Apart from that, this legal means aims to anticipate the stigma or brand of evil and naughty that arises when a child commits a crime or encounters the law, as well as to rehabilitate and re-socialize the child.

Children as perpetrators of criminal acts are referred to as delinquent children or in criminal law it is said to be juvenile delinquency. Romli Atmasasmita is of the opinion that juvenile delinquency is any act or behavior of a child under the age of 18 and who is not yet married which is a violation of applicable legal norms and can endanger the child's personal development.³

Facing and overcoming these various problems, it is necessary to consider the position of children with all the characteristics and characteristics that are typical as perpetrators of criminal acts. Not seeing whether the act is based on his thoughts, feelings and will, but must also look at various things that can influence a child to commit a criminal act. Therefore, the role of parents and the surrounding community is needed.

²See Abdul Hakim Garuda Nusantara's article, "Prospects for Child Protection," in *Law and Children's Rights*, ed. Mulyana W. Kusumah (Jakarta: Rajawali and the Indonesian Legal Aid Foundation, 1986). p. 19.

³Romli Atmasasmita, *The Problem of Juvenile Delinquency* (Bandung: Armico, 1983). p. 40.

In dealing with children as perpetrators of criminal acts, law enforcement officials must always pay attention to the conditions of children who are different from adults. The basic nature of children as individuals who are still unstable, the future of children as national assets, and the position of children in society who still need protection can be used as a basis for finding an alternative solution how to prevent children from a formal criminal justice system, placing children in prison, and stigmatization on the status of children as prisoners.

One solution is to divert or place child offenders out of the criminal justice system. This means that not all cases of delinquent children must be resolved through formal justice channels, and provide alternatives for settlement with a justice approach in the best interest of the child and taking into account justice for victims known as a restorative justice approach.

2. Research Methods

The type of research used in this research is normative juridical analysis. Refers to the application of law contained in laws and regulations, as well as norms and conditions that exist in society. The approach taken is a statutory approach, namely an approach using laws related to restorative justice. To obtain relevant data in this study, the data collection technique in this study used the library research method. By using this data collection technique the authors are able to describe the problem systematically and accurately.

3. Results and Discussion

3.1. Juvenile Justice Discourse

When viewed from a sociological point of view, justice is a social institution or a social institution that processes to achieve justice. Judiciary is also referred to as a social institution which is a set of rules from all levels that revolve around a basic need in people's lives. These principles include regulations that are hierarchically structured and culminate in courts which have a role in fulfilling basic needs in people's lives, namely the need to be able to live in an orderly and peaceful manner.

According to Sudikno Mertokusumo as quoted by Romli Atmasasmita, justice is an implementation of the law in concrete terms of claims for rights, the function of which is carried out by an independent body and held by the state and free from any influence or anyone by way of giving decisions that are binding and aim prevent eigenrichting (thuggery).⁴

⁴ Romli Atmasasmita, *Juvenile Justice in Indonesia* (Bandung: Mandar Maju, 1997). p. 51.

The use of the word child in juvenile justice terminology shows the limitations of the cases handled, namely only children's cases. Juvenile court includes all activities of examining and deciding cases concerning the interests of the child⁵, so that the process of providing justice in the form of a series of actions carried out by the judicial body or institution must also be adapted to the needs of the child.

As previously stated, Juvenile Justice which has its own characteristics and differences in many respects, especially treating children when faced with the law (both as victims, perpetrators and witnesses), is of course seen as a specialization of the justice system in general. This statement is supported by the formulation of the qualifications for criminal acts of the same type as adults listed in the Criminal Code (KUHP), but the judicial process and sanctions obtained are of course different.

Suwantji Sisworahardjo stated the same thing, that children who commit delinquency must be treated differently from adults who commit crimes.⁶This is also stated in Act No. 11 of 2012 concerning the Juvenile Criminal Justice System. Thus, in a legal systematic (recht systematization) the contents of the Juvenile Justice authority shall not and may not be, as follows:⁷

1. Beyond the absolute competencies of the General Courts;
2. Examining, adjudicating and deciding on cases that have become the absolute competence of other judicial bodies, such as the Religious Courts.

In the Juvenile Criminal Justice System, there are several elements that form one unit, namely: Child Investigators, Child Prosecutors, Child Judges and Children's Correctional Institution Officers. Fair Juvenile Justice will provide protection for children's rights, both as suspects, defendants, and as convicts/convicts. Therefore, in regulations governing Juvenile Justice, children's rights are the basis for establishing these regulations.

3.2. Restorative Justice and the Juvenile Criminal Justice System

⁵ See Soedarto's lecture entitled Definition and Scope of Juvenile Justice at the Workshop on Juvenile Justice organized by the National Legal Development Agency in collaboration with the Law Faculty of Diponegoro University, August 8-10 1977 in Semarang, which was later edited and published in book form. See Soedarto, *Capita Selekta Criminal Law* (Bandung: Alumni, 2010). p. 129.

⁶See Suwantji Sisworahardjo's article, "Children's Rights in the Criminal Justice Process," in *Law and Children's Rights*, Op. cit. p. 25.

⁷Atmasmita, *Juvenile Justice in Indonesia*. p. 57.

Handling the problem of children who are in conflict with the law does not only focus on their rights. More than just that, it is necessary to apply restorative justice. Restorative justice in the juvenile justice system is part of the implementation of diversion. The main principle of implementing the concept of diversion is a persuasive approach or non-penal approach and provides an opportunity for someone to correct mistakes.⁸The formulation of diversion is even regulated clearly in Indonesian positive law, to be precise in article 1 number 7 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, which reads as follows:

"Diversion is the transfer of settlement of child cases from the criminal justice process to processes outside of criminal justice."

The Covenant on Civil and Political Rights in Article 24 paragraph (1), states that every child has the right to obtain the right to protective measures, because his status as a minor should be used as a legal basis for Judges to stop child cases. This formulation is the legal basis for implementing restorative justice. Such a decision is valid because the judge is indeed given the freedom to explore, follow and understand legal values and the sense of justice that lives in society.

This is in line with the formulation of Beijing Rules Point 11.1 which stipulates that the transfer of formal legal processes to non-formal settlement channels through the application of the restorative justice model in handling child cases can be carried out by judges. Restorative justice can be used as a reference for judges to resolve child cases. The Beijing rules provide maximum protection for the future of children because they contain the following principles:

- a. The best interests of the child are priority.
- b. Criminal trials should be avoided as much as possible.
- c. All forms of intervention as minimal as possible.
- d. The Police, Prosecutors, Judges and other law enforcement officials use discretion/discretion as much as possible in handling child cases.
- e. The criminalization and punishment of children must be avoided unless there is serious harm to the child or another person.
- f. Legal aid must be provided immediately without charge.

⁸Randy Pradityo, "Straight Line of Diversion as a Non-Penal Approach," *Journal of RechtsVinding Online* (Jakarta, 2016). p. 1.

Basically, restorative justice involves three stakeholders, namely, victims, perpetrators, and civil society or society in determining the settlement of child cases. Through restorative justice, there are efforts to bring together victims and perpetrators with the aim of seeking recovery for victims. On the other hand, child perpetrators, even though their status is perpetrators, children who become perpetrators are also victims⁹ those who are entitled also get recovery and even socialize the child perpetrators, not by retaliating. This is in accordance with the formulation of article 1 point 6 of the Law on the Juvenile Justice System, which regulates restorative justice, along with the complete formulation:

"Restorative justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation."

Restorative justice can be formulated as a thought that responds to the development of the criminal justice system by focusing on the need for community involvement and victims who are felt to be marginalized by the mechanisms that work in the existing criminal justice system. In addition, restorative justice can be used as a frame of mind that can be used in responding to a crime for law enforcers.

In various principles and models of restorative justice approaches, the process of dialogue between perpetrators and victims is the basic capital and the most important part of the application of this justice. Direct dialogue between perpetrators and victims allows victims to express what they feel, express hopes for the fulfillment of rights and desires from a settlement of criminal cases. Through dialogue, it is hoped that the perpetrators will be moved to self-correct, realize their mistakes and accept responsibility as a consequence of a crime committed with full awareness. From this dialogue process, the community can also participate in realizing the results of the agreement and monitoring its implementation. Therefore, basically restorative justice is also known as settlement of cases through mediation (mediation penal).

Penal mediation in criminal law has a noble goal in resolving criminal cases that occur in society. Conceptually, Stefanie Trankle said in Barda Nawawi Arief, the penal mediation developed was based on the following ideas and working principles:

⁹In the case of children, the child perpetrator has the status of a victim as well. Victims are not only addressed to child victims. But it is also pinned on child perpetrators. Child perpetrators who are referred to as victims, may be victims of parental neglect, or even victims of poverty perpetrated by the state on them, so that supervision and guidance that is not obtained by children results in these children losing control and committing crimes or crimes.

1. Conflict Handling (Konfliktbearbeitung): The mediator's job is to make the parties forget about the legal framework and encourage them to get involved in the communication process. This is based on the idea that crime has created interpersonal conflict. Conflict is what the mediation process aims at.
2. Process-oriented (Process Orientation/Prozessorientierung): Penal mediation is more oriented to the quality of the process than the results, namely: making the perpetrators of a crime aware of their mistakes, conflict needs are resolved, calming victims from fear, etc.
3. Informal proceedings (Informal Proceedings/Informalität): Penal mediation is an informal process, not bureaucratic in nature, avoiding strict legal procedures.
4. There is active and autonomous participation of the parties (Active and autonomous participation/Parteiautonomie/Subjektivierung): The parties (perpetrators and victims) are not seen as objects of criminal law procedures, but rather as subjects who have personal responsibility and the ability to act. They are expected to act of their own free will.¹⁰

Therefore, in penal mediation as well as in restorative justice, the concept of mediation in the dialogue process is prioritized, known as a communication medium, which is the main capital in organizing mediation institutions. That whole process can be found in the model of administering restorative justice, as stated by DS. Dewi and Fatahillah A. Gratitude, the following:

- a. *Victim Offender Mediation* (VOM: Mediation between perpetrators and victims), namely a forum that encourages meetings between perpetrators and victims who are assisted by mediators as coordinators and facilitators in these meetings.
- b. *Conferencing* namely a forum that is the same as VOM, but in this form there is a difference, namely the involvement of the settlement does not only involve the perpetrator and the direct victim (primary victim), but also indirect victims (secondary victim), such as the victim's family or close friends as well as family and friends near the perpetrator. The reason for the involvement of these parties is because they may be directly or indirectly affected by the criminal acts that have occurred or they have a high concern for and interest in the outcome of the deliberations and they can also participate in pursuing the success of the process and its ultimate goal.

¹⁰Barda Nawawi Arief, *Penal Mediation Out of Court Case Settlement* (Semarang: Pustaka Magister, 2012). p. 4-5.

c. *Circles* namely a model of implementing restorative justice that involves the most extensively compared to the previous two forms, namely forums where not only victims, perpetrators, families or mediators but also members of the public who feel they have an interest in the case. The three basic models of the form of application of the restorative justice approach are basically forms that are variations of the dialogue model which is the implementation of deliberation and consensus forms. It is from this basic value that restorative justice as the implementation of the basic values that exist in Indonesian society has a strong foundation of values.¹¹

In positive law, the stages of the criminal justice process for children through restorative justice (diversion) are regulated in Article 52 of the Law on the Juvenile Criminal Justice System. For more details, here is the complete formula:

a. Paragraph (1) The head of the court must appoint a judge or panel of judges to handle a child's case no later than 3 (three) days after receiving the dossier from the public prosecutor.

b. Paragraph (2) The judge must seek diversion no later than 7 (seven) days after being appointed by the district court as a judge.

c. Paragraph (3) Diversion as referred to in paragraph (2) is carried out no later than 30 (thirty) days.

d. Paragraph (4) The Diversion Process can be carried out in the District Court mediation room.

e. Paragraph (5) In the event that the Diversion process succeeds in reaching an agreement, the Judge submits the minutes of the Diversion along with the Diversion agreement to the Head of the District Court for a decision to be made.

f. Paragraph (6) In the event that the Diversion is not carried out successfully, the case will proceed to the trial stage.

g. According to Article 1 number (7) of Act No. 11 of 2012, Diversion is the transfer of settlement of child cases from the criminal justice process to processes outside the criminal justice.

Of course, the stages or process described above will not run optimally if the settlement of juvenile criminal cases is oriented towards the interests of the child offender as the aim of the restorative justice approach, due to the lack of

¹¹DS Dewi and Fatahillah A. Gratitude, *Penal Mediation: Application of Restorative Justice in Indonesian Juvenile Courts* (Bandung: Indi Publishing, 2011). p. 9.

understanding and unification of the vision or goals of the restorative justice approach. Prioritizing or paying attention to the interests of children as perpetrators is even reaffirmed in the provisions of Article 10 paragraph (1) of the Covenant on Civil and Political Rights which guarantees that every person who is deprived of his liberty must be treated humanely with respect for the dignity inherent in him. Restorative justice is an attempt to treat children in conflict with the law according to their dignity.

The process of criminal justice is carried out by law enforcement officials if the child perpetrator is proven guilty, ideally and should be sentenced to action returned to the parents. Efforts to implement statutory orders so that the imposition of imprisonment on children is a last resort (*ultimum remedium*) should also be in line with the understanding that the best decision is an action to return child offenders to their parents to be properly educated and nurtured.

The juvenile justice system itself is already good, but a good system must be accompanied by an attitude imbued with a will to see and believe that this world is always getting better. A true view is broader and farther than what people argue about.¹² In addition, the principle of the best interest of the children should always be prioritized when dealing with children who are in conflict with the law.

4. Conclusion

The restorative justice in the juvenile justice system is part of the implementation of diversion. Diversion and restorative justice arrangements have been formulated in the Law on the Juvenile Criminal Justice System. Ideally, restorative justice involves three stakeholders, namely, victims, perpetrators, and civil society or society in determining the settlement of child cases. Through restorative justice, there are efforts to bring together victims and perpetrators with the aim of seeking recovery for victims. On the other hand, child perpetrators, even though their status is perpetrators, children who become perpetrators are also victims who have the right to receive recovery and even socialize the child perpetrators, not by retaliating. In addition, the handling of juvenile criminal cases through restorative justice will be carried out optimally. if the completeness of restorative justice is properly available in a judicial institution. Authorities should also have a strong will and ability to handle cases involving children in accordance with the principle of the best interest of the children. Thus, restorative justice is truly carried out in the best interests of the child.

¹²Roeslan Saleh, A Reorientation in Criminal Law (Jakarta: Aksara Baru, 1983).p. 21.

5. References

Archipelago, Abdul Hakim Garuda. "Prospects for Child Protection." in *Law and Children's Rights*, ed. Mulyana W. Kusumah. Jakarta: Rajawali and the Indonesian Legal Aid Foundation, 1986.

Arief, Barda Nawawi. *Mediation Penal Settlement of Cases Out of Court*. Semarang: Masters Library, 2012.

Atmasasmita, Romli. *Juvenile Justice in Indonesia*. Bandung: Mandar Maju, 1997.

Atmasasmita, Romli. *The Problem of Juvenile Delinquency*. Bandung: Armico, 1983.

Dewi, DS, and Fatahillah A. *Gratitude. Penal Mediation: Application of Restorative Justice in Indonesian Juvenile Court*. Bandung: Indi Publishing, 2011.

Hartono, Sunar Jati. *Legal Politics Towards One National Legal System*. Bandung: Alumni, 1991.

Pradityo, Randy. "Straight Line Diversion As A Non-Penal Approach." *Journal of RechtsVinding Online*. Jakarta, 2016.

Saleh, Roselan. *A Reorientation In Criminal Law*. Jakarta: New Script, 1983.

Sisworahardjo, Suwantji. "Children's Rights in the Criminal Justice Process." in *Law and Children's Rights*, ed. Mulyana W. Kusumah. Rajawali and the Indonesian Legal Aid Foundation, 1986.

Soedarto. *Capita Selecta Criminal Law*. Bandung: Alumni, 2010. Indonesia, Act No. 11 of 2012 concerning the Indonesian Juvenile Criminal Justice System, the Beijing Criminal Code Rules Covenant on Civil and Political Rights