

An Application of Restorative Justice against Children In Conflict With the Law

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Abstract. *The aim of the research is to examine and analyze the application of Restorative Justice to children dealing with the law. The research method used is normative juridical, research is conducted by examining literature or secondary data. The results of the study show that the application of Restorative Justice to children dealing with the law is carried out by imposing actions on children in the form of returning actions to parents and the child's obligation to attend to Package A Formal Education at the Mitra Sari Correctional Foundation Community Learning Center in Saring Sungai Bubu Village, Kusan Tengah District, Regency Tanah Bumbu for 1 (one) year.*

Keywords: Application; Children; Justice; Restorative.

1. Introduction

Children are one of the national development assets in a country. The need for guidance and direction for children to grow and develop properly so that they become quality generations in the future. In accordance Article 28B paragraph (2) The 1945 Constitution of the Republic of Indonesia states that "every child has the right to survival, growth and development and is entitled to protection from violence and discrimination." up to mProviding protection for children will never stop throughout life.

Children are the nation's next generation who are prepared as objects of implementing sustainable development as well as controlling the future of a country.¹So that in the future they are able to be responsible, children need to get the widest possible opportunity to grow and develop optimally, both physically, mentally and socially. For this reason, it is necessary to carry out

¹Nasriana, 2011, Criminal Law Protection for Children in Indonesia, Raja Grafindo, Jakarta, p.12

protection efforts to realize children's welfare by providing guarantees for the fulfillment of their rights without discriminatory treatment.²

The problem of crimes against children arises because the prison sentences given to perpetrators do not make people afraid to do this, in fact more and more perpetrators of crimes are being committed against children. Even though there have been many laws that threaten perpetrators of crimes against children, criminal acts committed by children still occur.³

The existence of protection for children is a basic right that must be obtained by every child, because every citizen along with a position in law and the government is obliged to uphold the law and government with no exceptions.⁴ That way child protection can be said that: "An effort to protect children so that they can carry out their rights and obligations. The protection of children's rights is in essence directly related to the regulation in the law."⁵

Provision of child protection directly or indirectly. Directly shown to children who are the target of problem solving, in the form of educating, fostering, accompanying children in various ways, so that children do not feel pressured by crimes.⁶ While protecting children indirectly by means of activities aimed at children, involving people who carry out activities in the effort to protect children.⁷

Violence perpetrated by minors causing the victim to be injured must be enforced in accordance with applicable law. Because the existence of a crime, whether committed intentionally or unintentionally, cannot be justified by

² Lailatul Nur Hasanah and Sri Endah Wahyuningsih. The Application Of Justice Principles Of Rapid Simple Fee In Criminal Justice System In The State Court (Case Study in State court of Pati). *Journal of Sovereign Law* Volume 2 Issue 4, December (2019). url :<http://jurnal.unissula.ac.id/index.php/RH/article/view/8353/3910> accessed 2 January 2023.

³ Sri Endah Wahyuningsih. Legal Protection for Children as Victims of Decency Crimes in Current Positive Criminal Law. *Journal of Legal Reform* Vol 3, No 2 (2016). url :<http://jurnal.unissula.ac.id/index.php/PH/article/view/1407/1080> accessed 2 January 2023.

⁴ Roswati Devi, Sri Endah Wahyuningsih and Umar Ma'ruf. Law Enforcement Of Giving Restitution For Victims Of Trafficking In The State Court Of Central Jakarta. *Journal of Sovereign Law* Volume 2 Issue 4, December (2019). Url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8363/3896> accessed 2 January 2023.

⁵ Maidin Gultom, 2014, Legal Protection of Children (In the Indonesian Child Criminal Justice System), Refika Aditama, Bandung, p.42

⁶ Sri Endah Wahyuningsih. "Legal Protection of Children as Victims of Decency Crimes in Current Positive Criminal Law". *Unissula Law Renewal Journal* Volume III No. 2 May-August 2016, p.6

⁷ Maidin Gultom, 2008, Legal Protection of Children, PT Refika Aditama, Bandung, p.2

law.⁸In this study the aim is to examine and analyze the application of Restorative Justice to children dealing with the law.

2. Research Methods

The approach method uses normative juridical, focusing on positive law inventory, legal principles and doctrine, legal discovery in concreto, legal systematics, level of legal synchronization, legal comparisons and legal history.⁹ Soerjono Soekanto's opinion is normative legal research which is carried out by examining literature or secondary data.¹⁰

The specifications used are analytical descriptive, provide systematic, logical explanations, analyze them in order to review literature, legislation, applicable legal norms and analyze them to draw conclusions.¹¹ The data source used by secondary data consists of primary legal materials in the form of legislation relating to legal research conducted.

The data collection method with the main activities carried out is library research, reviewing, studying and processing literature, laws and regulations, judges' decisions and articles or writings related to the issues to be studied. The method of data analysis was carried out qualitatively with data analysis methods by grouping and selecting data obtained from library research (library research).

3. Results and Discussion

3.1. The implementation of Restorative Justice for children is in conflict with the law at the Tanah Bumbu District Attorney in South Kalimantan.

Everyone has the right to recognition, guarantees, protection and fair legal certainty, as well as equal treatment before the law.¹² Everyone has the right to protection for himself/herself, family, honor, dignity and property under his control, and has the right to feel safe and protected from threats of fear to do or not do something which is a human right. From the explanation it can be understood that the State guarantees protection for every citizen in the form of protection for themselves, their families, honor, dignity and property. Legal

⁸Sri Endah Wahyuningsih. "*Model for the Development of Criminal Law Principles in the Criminal Code Based on the Values of Belief in the One and Only God*". Journal of Sovereign Law Vol 2, No 2, 2018, h. 3

⁹Muhammad, Abdulkadir, 2004, Law and Legal Research, PT. Citra Aditya Bakti, Bandung, p.52

¹⁰Soerjono Soekanto and Sri Mamudji, 2003, Normative Legal Research; A Brief Overview, Seventh Edition, Raja Grafindo Persada, Jakarta, p.13

¹¹ Amirudin and Zainal Asikin, 2004, Introduction to Legal Research Methods, Raja Grafindo Persada, Jakarta, p.118

¹²Pas long as 28 d paragraph (1) of the 1945 Constitution of the Republic of Indonesia

protection is protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions of arbitrariness.¹³

Definition of Child is someone who is born from a marriage between a woman and a man with no concern that someone who is born to a woman even though she has never been married is still said to be a child. But in general we know Children's understanding develops in a variety of ways. In the General Indonesian Dictionary it is stated that the definition of a child is as a human being who is still small.¹⁴In other sources it is explained that children are normal human beings who are still young and are determining their identity and are very unstable mentally, so they are very easily influenced by their environment.

According to Article 330 of the Indonesian Civil Code, the definition of a child or immature person is someone who has not reached the age of 21 (twenty one) years and has not married before. If a person who has not reached the age of 21 (twenty one) years has been married, and the marriage is dissolved before the age of 21 (twenty one) years, then he will not return to the status of a minor. A person who is not yet an adult and is not under guardianship on the basis and in the manner stipulated in the third, fourth, fifth and sixth chapters before coming of age and guardianship.

Article 45 of the Criminal Code, a person who is underage or categorized as immature is if he is not yet 16 (sixteen) years old, but this Article has been revoked by Article 67 of Act No. 3 of 1997. Article 283 of the Criminal Code determines the limit of maturity when he has reached 17 (seventeen) years. Meanwhile, according to Article 287 of the Criminal Code, the legal age limit for a woman is 15 (fifteen) years.

Act No. 35 of 2014 concerning Child Protection, what is meant by a child is: a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. While the definition of a child dealing with the law based on the provisions in Article 1 point 3 of Act No. 11 of 2012 concerning the Juvenile Justice System states that a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years who are suspected of committing a crime, so for the imposition of a crime on a child who commits a crime is limited to the age of 12 (twelve) to 18 (eighteen) years. If more than 18 (eighteen) years of age has entered into the adult category.

The definition of a child dealing with the law is appropriate Article 1 paragraph (2) of Act No. 11 of 2012 Concerning the Juvenile Criminal Justice System, what is

¹³ Abdul Wahid and Muhammad Irfan. Op.Cit, p.67

¹⁴ WJS Poerwadar Minta, 2003, Indonesian General Dictionary, Balai Pustaka, Jakarta, p.35

meant by a child who is in conflict with the law is a child in conflict with law, children who are victims of criminal acts, and witnesses of acts criminal. The child's problem is a backflow that is not taken into account of the process and development of nation-building have high aspirations and a bright future meet and replace the leaders of the nation Indonesia. Related to this, the development paradigm must be pro-child.¹⁵

Children who are dealing with the law or children who are in conflict with the law are those who are directly related to criminal acts, both as victims and witnesses in a crime. There are also differences in the behavior or unlawful acts of children and adults which cannot be equated, where an act committed by a child may be an unlawful act, but for an adult it is not an unlawful act, or vice versa. There are several differences between children who are in conflict with the law and adult offenders who are clearly different in terms of punishment.

According to Article 71 paragraph (1) of the Law on the Juvenile Criminal Justice System regarding the principal crimes for children in conflict with the law, namely:

- a. Warning sentence
- b. Punishment with the following conditions:
 - 1) coaching outside the institution
 - 2) society service; or
 - 3) supervision; work training; training in institutions and prisons.

Unlike the Criminal Code, the principal crimes mentioned in Article 10 of the Criminal Code are:

- a) capital punishment,
- b) imprisonment,
- c) cover sentence
- d) confinement, and
- e) fine

¹⁵ Muhammad Joni and Zulchaina Z Tanamas, 1999, Aspects of Child Protection in Perspective *Convention on the Rights of the Child*, PT Citra Aditya Bakti, Bandung, p.83

Violence perpetrated by minors causing the victim to be injured must be enforced in accordance with applicable law. Because the existence of a crime, whether committed intentionally or unintentionally, cannot be justified by law.¹⁶ So that legal protection for children is one side of the approach to protecting children, where problems cannot only be approached in a juridical manner but also need a broader approach, namely economic, social and cultural.¹⁷

Law enforcement is a form of upholding human rights inherent in victims and providing sanctions for perpetrators who have lost victims' rights. Sanctions imposed on children in law are determined based on age differences, namely children aged 8 to 12 years are only subject to action, for children who are over 12 to 18 years old can be subject to criminal sanctions.¹⁸

Arrangements regarding criminal acts committed by minors have laws to protect children in the legal context of perpetrators who commit crimes. The arrangements are regulated in Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection, emphasizing the need for increasing criminal sanctions and fines for perpetrators of crimes against children.

As for the elucidation of Article 1 of Act No. 35 of 2014 concerning Child Protection, it states that:

(1) Child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.

(2) Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and values, and receive protection from violence and discrimination.

Punishment in Indonesian law is a way or process to impose sanctions or punishments for someone who has committed a crime or violation. The state in imposing punishment must guarantee individual independence and maintain respect for the human person. Therefore, punishment must have goals and functions that can maintain a balance between individuals and the interests of

¹⁶Sri Endah Wahyuningsih, "Model for the Development of Criminal Law Principles in the Criminal Code Based on the Values of Belief in the One and Only God". Journal of Sovereign Law Vol 2, No 2, 2018, h. 3

¹⁷Bismar Siregar et al, 2007, Law and Children's Rights, Rajawali, Jakarta, p.22

¹⁸Sutedjo wagiati, Melani, 2013, Child Criminal Law, PT Refika Aditama, Bandung, p.4.

society to achieve common prosperity. The series of acts of children who commit crimes with a chronology of events:

On Tuesday 12 October 2021 around 00.13 WITA located in the Mess/Employee House of Toko Sejahtera Almunium in Bersujud Village, Simpang Empat District Regency Tanah Bumbu, Province of South Kalimantan, at the time of the victim was asleep. Around 02.30 WITA children M. AN Bin H. HAS come, then MH Alias D's son opened the fence and door, then the child gave 2 (two) pieces of Korean glue to MH Alias D's child to use to glue the victim's (MH Alias D's husband) mouth.

MH Alias D's son returned to lie beside the victim meanwhile Child MH Alias D standing near the gallon observing MH Alias D's son who was with the victim. Not long after, MH Alias D's son gave the code to Child MH Alias D with his finger, then opened the victim's eyes and dripped Korean glue into the victim's witness' right eye, so that the victim witness woke up because he felt heat in his eyes, then the victim witness pushed MH Alias D's child so that he fell off the bed, then Child M. AN Bin H. HAS approached immediately victim by bringing 1 (one) kitchen knife that has been prepared, then from behind the victim, Child of M. AN Bin H. HAS hitting 1 (one) paving block which had previously been prepared by child MH Alias D towards the victim's head 1 (one) time, then Child M. AN Bin H. HAS straight stabbed the right side of the neck the victim 1 (once) used a kitchen knife and swung the knife towards the victim witness' face, so that it hit the victim's right upper forehead, middle forehead and right eye brow of the victim witness until blood came out. The victim resisted by kicking child of M. AN Bin H. HAS while screaming for help, then child of M. AN Bin H. HAS along with MH Alias D's son immediately ran away leaving the victim.¹⁹

The public prosecutor was charged with Article 340 of the Criminal Code in conjunction with Article 53 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph (1) of the Criminal Code by participating in the attempted premeditated murder. In general problem solving or this dispute can be reached with two path, namely by using the litigation route and non-litigation routes. Basically second this path aims to create a justice for society in general, especially for children, and justice for the parties. Use of one of the paths settlement of litigation and non-litigation cases Such litigation will be largely determined by the concept and purpose of settling the case what the parties want to achieve and what they don't less important is the good faith of the parties to settle the matter.

The application of the law of the panel of judges in the trial process at the Batulicin Court was based on the facts revealed against elements of a crime

¹⁹Verdict Number: 12/Pid.Sus-Children/2021/PN Bln

charged by the public prosecutor with Article 340 of the Criminal Code in conjunction with Article 53 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph (1) of the Criminal Code 1 of the Criminal Code attempted premeditated murder.

Declare MH Alias D's child legally and convincingly proven guilty of committing the crime of "Participating in an Attempted Murder" as stated in the first primary alternative indictment. By dropping Actions on Children in the form of returning to parents and the obligation of Children to attend Package A Formal Education at the Mitra Sari Penitentiary Foundation Community Learning Center in Saring Sungai Bubu Village, Kusan Tengah District, Tanah Bumbu Regency for 1 (one) year.

Establish evidence in the form of: 1 (one) blade of a sharp kitchen knife with a green handle, 2 (two) empty bottles of Korean glue, 1 (one) paving block brick, 1 (one) color Oppo F7 cellphone black, 1 (one) Vivo Y20s cellphone in purist blue color.

From the description above, it can be concluded that the purpose of law to uphold justice, order and public peace can be realized by the existence of clear legal rules. One example is the existence of a judge's decision that contains a sense of justice to be obeyed by the community, when there is a case regarding a crime committed against a child.²⁰ There are efforts in law enforcement, for the actions of children.

The penal system is a system of integration in society that has the goal of overcoming the problem of crime in the sense of controlling crime so that it is within the limits of social tolerance. In the context of the juvenile justice system, Sudarto argued that in juvenile justice there are activities of examining and deciding cases involving the interests of children, namely all activities carried out by the police, prosecutors, judges and other officials, must be based on a principle that is for the welfare and children's interests.²¹

The application of criminal sanctions against children who are in conflict with the law in Act No. 11 of 2012 concerning the Juvenile Criminal Justice System recognizes the existence of restorative justice. Restorative justice is the settlement of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other parties who related to jointly seek a fair settlement with emphasizes restoration to its original state, and not retribution.

²⁰ Abdul Wahid and Muhammad Irfan, 2001, Protection of Sexual Violence, Advocacy for Women's Human Rights, PT Refika Aditama, Bandung, p.67

²¹ Dewa Putu Gede Anom Danujaya, "Model Formulation of the Juvenile Criminal System in Indonesia, Journal of Daulat Hukum Vol 1, No.1 March, 2018, p.13

It must be understood together that it is actually restorative *justice* is not a principle but philosophy, namely philosophy in process justice and the philosophy of justice.²²

Restorative justice is an approach to justice that focuses on the needs of victims, perpetrators, and the communities involved, not satisfy legal principles or punish perpetrators. The victim takes an active role in the process, while the perpetrator is encouraged to take responsibility for their actions, "to improve things that harm them, done by way of apologizing, returning stolen money, or community service." Justice Restorative, involves both parties namely victims and perpetrators and focuses on their personal needs. In addition, also provide some form of assistance for the offender to avoid future offences. Justice restorative seeks to build partnerships to rebuild shared responsibility for constructive responses correcting mistakes within the community itself.

The United Nations (UN) Juvenile Court defines restorative justice as a process whereby all parties related to certain crimes sit together to solve problems and think about how to overcome the consequences in the future. Unlike the principle of retributive justice which emphasizes justice through retaliation, restorative justice focuses on reintegration and restoration of the situation between the perpetrator and the victim by involving community members. This principle sees that criminal acts that occur in society will disrupt the three-dimensional relationship between victims, society, and perpetrators. Thus, peace to restore the situation is not only directed to the warring parties, but also to the general public where criminal acts have occurred.

4. Conclusion

Implementation of the Implementation of Restorative Justice for children dealing with the law at the Tanah Bumbu District Attorney in South Kalimantan in the Criminal Justice Process at the Batulicin District Court with child perpetrators according to charges by the public prosecutor with Article 340 of the Criminal Code in conjunction with Article 53 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code. Declare the child MH Alias D proven legally and convincingly guilty of committing a crime by dropping the child in the form of returning the child to the parents and the obligation for the child to attend Package A Formal Education at the Mitra Sari Correctional Foundation Community Learning Center in Saring Sungai Bubu Village, Kusan Tengah District, Regency Tanah Bumbu for 1 (one) year.

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