

Legal Analysis of the Settlement of Child Criminal Cases from a Restorative Justice Perspective

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Abstract. *The purpose of this research is to analyze and describe the settlement of child criminal cases in the perspective of restorative justice. To analyze and describe the practice of resolving child criminal cases in the perspective of restorative justice by investigators. The method used by the researcher is normative legal. And the specifications in this study include descriptive analysis. The sources and types of data in this study are secondary data obtained from literature studies. The data is analyzed qualitatively using the theory of law enforcement and the theory of justice. Based on the results of the research that the settlement of juvenile criminal cases in the perspective of restorative justice is a mediation process in accordance with the habit of deliberation. The application of the principle of restorative justice carried out by the police is carried out through activities such as Mediation of victims with perpetrators/offenders; family group deliberations, which are restorative for both victims and perpetrators where involvement in the settlement process is the victim and perpetrator and a third party (the police) who act as mediators and facilitators to bridge both parties to reach an agreement and the goal to be achieved through the deliberation process is to restore all losses and injuries that have been caused by the juvenile delinquency incident. The practice of resolving juvenile criminal cases in the perspective of restorative justice by investigators can be carried out through the Litigation process: Settlement of cases through the trial process. Non-litigation: Settlement of cases outside the criminal justice process, such as mediation or restorative justice.*

Keywords: Children; Criminal; Justice.

1. Introduction

Children are creatures created by God Almighty and social creatures. Since in the womb, children have the right to life and independence and receive good

protection from parents, family, community, nation and state.¹Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination.²

As a manifestation of the commitment of the Republic of Indonesia as stipulated in the 1945 Constitution of the Republic of Indonesia, which is formulated in Article 28 B paragraph (2), in terms of providing protection for children and upholding children's rights, the Government of the Republic of Indonesia has ratified the Convention on the Rights of the Child with Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child.

Children are national assets and as part of the young generation, children play a very strategic role as the successors of a nation. In the context of Indonesia, children are the successors of the ideals of the nation's struggle. This strategic role has been recognized by the international community to give birth to a convention that essentially emphasizes the position of children as humans who must be protected and receive protection for the rights they have.³

Furthermore, children as the hope of parents, the hope of the nation and state who will continue the baton of development and have a strategic role, have special characteristics or traits that will guarantee the continuity and existence of the nation and state in the future. Therefore, every child must receive guidance from an early age, children need to get the widest possible opportunity to be able to grow and develop optimally, both physically, mentally and socially. Moreover, childhood is a period of sowing seeds, erecting stakes, making the foundation of life which can be called the formation of character, personality and character of a person so that they will later have strength and ability and stand firm in living life.⁴

Seeing the urgency of the child's position, it is the obligation of every society to provide protection in order to serve the best interests of the child. Basically, children cannot protect themselves from various actions that cause physical or psychological harm. So children need help from various parties to protect themselves, considering the situation and conditions, especially in the juvenile justice process. The preamble to Law Number 17 of 2016, the second amendment to Law Number 23 of 2002 concerning Child Protection (UU PA) states that children need protection from misapplication of laws and regulations that apply to them.

The term Juvenile Delinquent is no longer used after the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, so the term

¹Abdussalam, 2007, *Child Protection Law*, Restu Agung, Jakarta, p. 1

²Consideration of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

³Ruben Achmad, 2005, *Efforts to Resolve Problems of Children in Conflict with the Law*, Simbur Cahaya Journal, Number 27, p. 24

⁴Maidin Gultom, 2008, *Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia*, Reflika Aditama, Bandung, p. 1

changed from Juvenile Delinquent to Juvenile in Conflict with the Law (ABH). Currently, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System uses the term for Juveniles who commit crimes as Juveniles in Conflict with the Law. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System replaces Law Number 3 of 1997 concerning Juvenile Courts which is no longer in accordance with the development and legal needs of society because it has not comprehensively provided protection to children in conflict with the law.

The most fundamental substance regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is the explicit regulation regarding Restorative Justice and Diversion. The recovery process according to the concept of Restorative Justice is through Diversion, namely the transfer or transfer from the judicial process to an alternative process for resolving criminal cases, namely through recovery deliberation or mediation. The diversion step is made to prevent children from further legal action and for community support, in addition, the diversion aims to prevent the negative influence of subsequent legal actions that can cause stigmatization.⁵

Based on the problems above, the objectives of this study are as follows: to analyze and describe the settlement of child criminal cases from a restorative justice perspective. To analyze and describe the practice of resolving child criminal cases from a restorative justice perspective by investigators.

2. Research methods

This research method uses the approach method is the juridical-normative approach method. This juridical normative approach method is carried out by reviewing books, journals, papers related to the object being studied.⁶The research specification in this thesis used is descriptive analysis. Data analysis obtained by qualitative analysis.

3. Results and Discussion

3.1. Settlement of Criminal Cases of Children from the Perspective of Restorative Justice

The term punishment derived from the word straf and the term “punished” derived from the word wordt gestraft, are conventional terms. Moeljatno disagrees with these terms and uses unconventional terms, namely “criminal” to replace the word wordt gestraft. If straf is interpreted as “punishment” then strafrecht should be interpreted as punishments. Furthermore, Moeljatno said that “punished” means “treated with punishment” both in criminal law and civil law. Punishment is the result or consequence of the application of the law, which has a broader meaning than criminal, because it also includes the judge's decision in the field of civil law.⁷

⁵Wagiati Soetedjo and Melani, 2017, Criminal Law for Children, Refika Aditama, Bandung, p. 135

⁶Soerjono Soekanto, 1990, Normative Legal Research (A Brief Review), Rajawali, Jakarta, p.36.

⁷Moeljatno, 2005, Principles of Criminal Law, Bina Aksara, Jakarta, p. 22.

The implementation of the presidential system in Indonesia which grew in the civil law system also has the influence of common law. Proven by the adoption of parliamentary principles. There are efforts to purify the presidential system, but it is necessary to improve, especially in the political infrastructure and the arrangement of several laws (UU) in the political field. Meanwhile, the presidential system of government in the United States has been integrated into its constitutional practice, because the United States is the birthplace of the presidential system and is an ideal example because it meets almost all the criteria in the presidential system of government. There are several advantages and disadvantages in each presidential system of government between Indonesia and the United States. This is due to several influences that support the effectiveness of the implementation of the system, including the underlying legal system, party system, political system and the development of democracy that colors the implementation of its constitutional system.⁸

The codification era, then all laws have been formed in laws (written laws) and each country makes national laws with national languages and laws already reflect the aspirations of the culture and needs of the people of the country concerned. At this time, studying the laws of a country that have been codified for legal experts of other countries, is studying foreign law. In this era, comparative law is studied as a special branch of legal science.⁹

The juvenile criminal justice system contains elements of the criminal justice system and elements of children. The word "child" in the words "juvenile criminal justice system" must be included, because it is to distinguish it from the adult criminal justice system, so that the juvenile criminal justice system is a criminal justice system for children. Children in the juvenile criminal justice system are children who are in conflict with the law.¹⁰The juvenile criminal justice system is a translation of the term The juvenile system, which is a term used to define a number of institutions that are part of the court, including prosecutors, public prosecutors, legal advisors, supervisory institutions, child detention centers, and child development facilities.¹¹

The function of the Juvenile Court is generally no different from other courts, namely receiving, examining, and trying and resolving cases submitted to it, but for the Juvenile Court, cases handled specifically concern child cases. Providing special treatment in order to guarantee the physical and mental growth of

⁸ Dwi Istinah, Siti Rodhiyah, 2015, Comparison of Government Systems in the Common Law System with the Civil Law System (Study of the Indonesian Presidential Government System with the United States Presidential Government System), Vol 31, No 1, Unissula Law Journal

⁹Sri Endah Wahyuningsih, 2013, Comparative Criminal Law from the Perspective of Religious Law System, Unissula Pers, Semarang, p. 3

¹⁰Setya Wahyudi, 2011, Implementation of the Idea of Diversion in the Reform of the Juvenile Criminal Justice System in Indonesia, Genta Publishing, Yogyakarta, p. 35

¹¹M. Nasir Djamil, 2013, Children Are Not to be Punished, Second Edition, Sinar Grafika, Jakarta, p. 43.

children as the next generation whose future must be considered, where in this case to provide justice, the judge takes various actions by first examining the truth of the events submitted to him. The judge in trying tries to re-enforce the law that has been violated, therefore it is usually said that the judge or court is a law enforcer.

The court in adjudicating must be based on applicable law including written law and unwritten law. Based on this, in its implementation, this function is carried out by special officials of the Juvenile Court. In other words, this function will not be achieved without the role holders, namely judicial officials. Based on this, the purpose of the Juvenile Court is not merely to prioritize the criminal as the main element, but protection for the future of the child is the target to be achieved by the Juvenile Court.

The process of handling children in conflict with the law is closely related to law enforcement itself, where in the Juvenile Justice System. According to Barda Nawawi Arief, the Criminal Justice System is essentially a "system of power to enforce criminal law" which is manifested in 4 (four) subsystems, namely:¹²

1. Investigative Powers (by Investigative Agency/Institution);
2. Prosecutorial Power (by the Public Prosecutor's Agency/Institution);
3. Power to Judge and Impose Verdicts/Criminal Sentences (by the Court);
4. "Power of Execution of Criminal Decisions" (by the Executing Agency/Apparatus).

The four pillar institutions of the juvenile criminal justice system have been regulated in separate laws and regulations as a legal basis for law enforcement officers in exercising their authority. This authority is complemented by material criminal law regulated in the Criminal Code and formal criminal law regulated in the Criminal Procedure Code.

Regarding legal protection efforts for children, especially those in trouble with the law, the SPPA Law has specifically regulated diversion and restorative justice in resolving children's cases, which of course aims to ensure that children's rights in this case who are in trouble with the law are better protected and guaranteed. Where in this Law it is stipulated that at the level of investigation, prosecution, and examination of children's cases in the district court, Diversion must be attempted. Diversion is a step of joint deliberation in this case from the perpetrator and the victim, but still in each stage of the judicial process.

The four pillar institutions of the juvenile criminal justice system have been regulated in separate laws and regulations as a legal basis for law enforcement officers in exercising their authority. This authority is complemented by material criminal law regulated in the Criminal Code and formal criminal law regulated in

¹²Barda Nawawi Arief, 2006, Selected Chapters of Criminal Law on the Integrated Criminal Justice System, Diponegoro University Publishing Agency, Semarang, p. 20.

the Criminal Procedure Code. The latest development with the enactment of Law No. 18 of 2003 concerning Advocates in Article 5 paragraph (1), advocates have legitimacy as law enforcement officers and can be included as one of the components of the criminal justice system.¹³

Legal protection for children in the judicial process is carried out starting from the level of investigation, inquiry, prosecution, examination in court until the implementation of the court's decision. During the judicial process, the rights of children must be protected by applicable law and therefore must be carried out consistently by the parties related to the resolution of the child's problems.

Settlement of Criminal Cases of Children in the Perspective of Restorative Justice is a mediation process in accordance with the habit of deliberation. The application of the principle of restorative justice carried out by the police is carried out through activities such as Mediation of victims with perpetrators/offenders; family group deliberations, which are restorative for both victims and perpetrators where involvement in the settlement process is the victim and perpetrator as well as a third party (the police) who act as mediators and facilitators to bridge both parties to reach an agreement and the goal to be achieved through the deliberation process is to restore all losses and injuries that have been caused by the child's delinquency.

3.2. Practice of Settlement of Child Criminal Cases from a Restorative Justice Perspective by Investigators.

The implementation of law in everyday life of society has a very important meaning because what is the purpose of law lies in the implementation of the law. Order and peace can only be realized in reality if the law is implemented. Consequently, the law is made to be implemented, otherwise the legal regulations are only a series of words that have no meaning in the life of society.

One of the functions of law is as a means of social integration, which is in the form of resolving conflicts of interest in social relations in community life. In relation to this, if law is an integral part of humans, it means that the legal system must refer to respect and protection for the dignity of humans.¹⁴The existence of law as social integration is realized by the court institution that functions to integrate and resolve the conflict, so that social life in society is comfortable and peaceful again. The nature and certainty of law in determining the existence of a government initiative is to ensure that in the action there is a principle of legal legality.¹⁵

¹³Mahmud Mulyadi, 2008, *Criminal Policy: Integral Penal Policy and Non-Penal Policy Approaches in Combating Violent Crime*, Pustaka Bangsa Press, Medan, p. 23

¹⁴Kuswardani, Handrawan, and Widhia Kusuma Wardhani, 2019, "Women's Reproductive Rights and Criminal Law," *Halu Oleo Law Review* Vol. 3, No. 2, <http://ojs.uho.ac.id/index.php/holrev/article/view/8744>.

¹⁵Oheo K Haris, 2015, "Good Governance in the Granting of Permits by Regional Governments in the Mining Sector," *Yuridika* Vol. 20, No. 1

Criminal acts must consist of external elements (facts) by the act of behavior and the consequences caused by it. These two things are behavior and consequences.¹⁶Steps to anticipate criminal acts from occurring in society, the government has an obligation to prohibit criminal acts in the form of a legal order that will later be used as a norm that binds and controls the entire community. Legal rules prohibit every individual in a community group from committing criminal acts. Legal rules can be realized in the form of laws and regulations or other rules that have become general principles in a legal system.¹⁷

Another problematic area is where the victim or reporter wants the goods or losses suffered by the violator to be returned or reported to have occurred, making the victim or reporter consider the case closed. This is different from the process or stages in the investigation where the police do not remove compensation for the crime. Therefore, the application of Restorative Justice in the investigation process is very necessary in accelerating the resolution of problems / disputes and the most important thing is to achieve justice for the plaintiff / dispute.¹⁸

The development process can lead to progress in the life of society when order and security are guaranteed, but development can also occur if the social conditions of society have negative social impacts, especially if the law is not appropriate, which of course can disturb society is criminal law. The failure of the law will have a very negative impact on public order, one of which is criminal law. Criminal law not only regulates but can also provide sanctions, as is the case with the crime of indecency.

The crime of indecency is a crime that is contrary to and violates the decency and morality of a person, all of which are in the realm of sexual lust, for example a man touching a woman's genitals. The crime of indecency is regulated in the Criminal Code (KUHP) in Chapter XIV Book II, namely starting from Articles 289-296 of the Criminal Code, which are then categorized as crimes against morality.

The Criminal Code states that indecent acts are contained in Article 289 of the Criminal Code, which states that:

"Anyone who by force or by threat of force forces or allows someone to do something to him shall be punished for committing an act violating decency by imprisonment for a maximum of nine years."

¹⁶Muhammad Sidrat, Sabrina Hidayat, and Herman Herman, 2019, "Diversion Requirements for Children in Conflict with the Law in the Concept of Criminalization," *Halu Oleo Legal Research* Vol. 1, No. 2. Pg. 277, <http://ojs.uho.ac.id/index.php/holresch/article/view/6569>.

¹⁷Herman, 2018, "Non-Penal Efforts in Combating Corruption," *Halu Oleo Law Review* Vol. 2, No. 1, p. 307, <https://ojs.uho.ac.id/index.php/holrev/article/view/4192>.

¹⁸Ragil Tri Wibowo and Akhmad Khisni, 2018, Restorative Justice in Application for Crime Investigation on Property, *Jurnal Daulat Hukum* Volume 1 No. 2 ISSN: 2614-560X [10.30659/jdh.1.2.565 - 570](https://doi.org/10.30659/jdh.1.2.565-570)

In addition to the provisions stipulated in the Criminal Code, it is also stipulated in Article 76E in conjunction with Article 82 of Law Number 35 of 2014 concerning Child Protection. Article 76E of the Child Protection Law reads, "Everyone is prohibited from committing violence or threats of violence, forcing, committing trickery, committing a series of lies, or persuading children to commit or allow obscene acts to be committed." The crime of child molestation as stipulated in Article 76E in conjunction with Article 82 of the Child Protection Law is categorized as an ordinary crime, not a complaint crime.

The Criminal Justice System has now become a guide line that shows the working mechanism in overcoming crime using a system approach. According to Mardjono as quoted by Romli Atmasasmita, what is meant by the criminal justice system is a crime control system consisting of the Police, Prosecutor's Office, Courts and Corrections.¹⁹

Restorative justice does not simply apply decisions about who wins and who loses in an adversarial criminal justice system, the restorative justice process seeks to facilitate dialogue between all parties affected by the crime including victims, perpetrators, their supporters, and society as a whole. It involves a process where all parties at risk in a particular crime come together to collectively resolve how to deal with the aftermath of the crime and its implications for the future.²⁰

The practice of resolving child criminal cases from a restorative justice perspective by investigators can be done through the Litigation process: Settlement of cases through the court process. Non-litigation: Settlement of cases outside the criminal justice process, such as mediation or restorative justice. In the investigation process, investigators need to pay attention to several things, such as:

- a. Ask for advice from a community advisor
- b. Provide sufficient space to alleviate the suffering of the victim.
- c. Conduct psychological therapy if the victim experiences trauma
- d. Providing protection for victims
- e. Ensuring children's physical, spiritual and social needs are met
- f. Carrying out examinations of children's cases in closed court

4. Conclusion

Based on the results of the research and discussion, the following conclusions and suggestions can be drawn: the settlement of child criminal cases in the perspective of Restorative Justice is a mediation process in accordance with the habit of deliberation. The application of the principle of restorative justice carried out by

¹⁹Barunggam Siregar, 2019, "The Value of Truth in the Statement of a 'Mitigating' Witness to Become an Incriminating Witness (Criminal Case Analysis Number: 696/Pid.B/2015/PN.PLG)," *Lex LATA* Vol. 1, No. 3, p. 232.

²⁰Afthonul Afif, *Forgiveness, 2015, Reconciliation and Restorative Justice: Discourse on Past Violations and Efforts to Transcend Them*, Pustaka Pelajar, Yogyakarta, p. 341.

the police is carried out through activities such as Mediation of victims with perpetrators/offenders; family group deliberations, which are restorative for both victims and perpetrators where involvement in the settlement process is the victim and perpetrator as well as a third party (the police) who act as mediators and facilitators to bridge both parties to reach an agreement and the goal to be achieved through the deliberation process is to restore all losses and injuries that have been caused by the child's delinquency. The practice of resolving child criminal cases in the perspective of restorative justice by investigators can be carried out through the Litigation process: Settlement of cases through the trial process. Non-litigation: Settlement of cases outside the criminal justice process, such as mediation or restorative justice. The suggestion from this research is that law enforcers are expected to be able to implement restorative justice in accordance with applicable regulations and be fair in resolving criminal cases. For parents, guiding children must continue to be improved so that children do not commit crimes and are not exploited by certain parties to gain benefits.

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