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# The Implementation of Restorative Justice for the Criminal Action of Accident against Child Based On Regulation of the State Police of the Republic Of Indonesia Number 8 Year 2021

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### Abstract

The application of restorative justice emphasizes on restoring the situation and restoring the balance of society and involving the community in recovery efforts. The study aims to determine the restorative application of the crime of child sexual intercourse at the Langkat Police, and the recovery of victims of sexual intercourse with children..by using empirical normative legal research methods, namely the amalgamation of normative legal approaches with the addition of various empirical elements to study and examine the application of legal norms that should be in accordance with the rule of law, referring to the law and supported by field research at the Langkat Police to obtain data on restorative applications by emphasizing the recovery of victims due to criminal acts. The results of research on the crime of sexual intercourse with children, by strengthening religious knowledge, and the role of parents should pay more attention to their children and a good environment in order to shape the child's character better.

**Keywords:** Restorative Justice; Intercourse; Child

### A. Introduction

Children are the next generation of the ideals of the nation's struggle, so they need to get the widest opportunity to grow and develop optimally physically, mentally and socially and have noble character, so it is necessary to make efforts to protect the welfare of children by providing guarantees for the fulfillment of their rights. fair treatment without discrimination. In essence, children cannot protect themselves from various kinds of actions that can cause mental, physical, social disorders in various fields of life. Children must be assisted by others in protecting themselves from the threat of crime around them, especially in cases of protecting children who are victims of criminal acts. Protection of children's rights is expressly stated in the constitution, namely in Article 28 B Paragraph (2) of the Law The 1945 Constitution of the Republic of Indonesia, which is guaranteed by the state the right of every child to survival, growth and development, and the right to protection from violence and discrimination. Every effort must be made to protect the rights of the child so that the child does not get violence and discrimination and is involved in committing acts that violate the law

which will endanger the child.<sup>1</sup> Children who are victims of criminal acts, hereinafter referred to as child victims, are children who are not yet 18 (eighteen) years old who experience physical suffering, mental suffering, and/or economic loss caused by a crime. Children as victims can suffer physical and non-physical losses. Physical harm can be in the form of disability, injury or even death. Children who become elements of the nation in the future, must be given different treatment from adults. Children in this case need to get a legal umbrella in the form of legislation. Judging from the various positions that are obliged to protect the rights of children, namely: the state, and parents in particular. This is considering the obligation of parents to fulfill the child's right to live a decent life both before and after birth.<sup>2</sup>

The state ratified RI Law No.17/2016 regarding amendments to RI Law No.35/2014 regarding amendments to RI Law No.23/2002 regarding child protection. The changes are to emphasize the importance of weighting criminal sanctions and also fines for perpetrators of crimes against children to provide a deterrent effect, as well as encouraging concrete steps for physical, psychological and social recovery of children as victims and or children as perpetrators of crimes as an anticipatory step so that children become victims. or the perpetrator does not become the perpetrator of the same crime in the future. Handling cases of children in Indonesia is regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as Law No. SPPA). In Article 5 (1) of the SPPA Law, it is emphasized that in the criminal justice system, children must apply a restorative justice approach. In the event that investigations in the juvenile criminal justice system are carried out in accordance with the provisions of the Regulation of the.

## **B. Research Method**

The research method used in this study is a normative research method with an empirical approach which is a combination of a normative legal approach with the addition of various empirical elements. The empirical normative legal research method is a combination of normative legal approaches with the addition of various empirical elements to study and examine the application of legal norms that should be in accordance with the rule of law (dassolen).<sup>3</sup>

This research refers to the Law of the Republic of Indonesia No.17/2016 concerning amendments to the Law of the Republic of Indonesia No.35/2014 concerning amendments to the Law of the Republic of Indonesia No.23/2002 concerning Child Protection. And the application of the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice and supported by field research at the Langkat Police.

## **C. Discussion**

The Polri institution has three main functions, namely the protection function, service function and law enforcement function. In terms of implementing the law

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<sup>1</sup> Fifid Bramita & Irma Cahyaningtyas. (2018). Children Hearing System sebagai Ide Pembaharuan Sistem Peradilan Pidana Anak di Indonesia. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, Universitas Udayana, Vol. 7 No. 4, hlm. 530. doi: <https://doi.org/10.24843/JMHU.2018.v07.i04.p08>

<sup>2</sup> Achmad Alif Suhaimi, Analisis Yuridis Ketentuan Diversi Dalam Undang- Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak Dalam Rangka Perlindungan Hak-Hak Anak, Universitas Brawijaya, 2014.

<sup>3</sup> Mukti Fajar, *Dualisme Penelitian Hukum Normatif dan Empiris*, Pustaka Pelajar, Yogyakarta, 2015,

enforcement function, this institution is very bound by the procedural rules that have been set, both in the legislation, as well as in the generally accepted criminal procedural law as well as a strong attachment to the policies set by the head of the agency (decisions or guidelines or orders). Police chief).

In the law enforcement function, what is seen is the enforcement of laws and regulations. Therefore, they often forget the purpose of the law itself, namely justice, legal certainty, and benefit. The process of retributive law enforcement looks more at crimes that are violations of state law, not violations against individuals. Focus on punishing the perpetrator, as a result, forgetting to recover the victim of a crime.<sup>4</sup> This is what creates conditions for neglect of victims in the law enforcement process so far. The concept of restorative justice is part of an approach that focuses on the situation of creating justice and balance for both perpetrators who commit crimes and for the rights of victims. Procedures and procedures as well as criminal justice based on the principle of punishment are changed towards a process of peace and mediation until an agreement is reached. The settlement of criminal cases provides balanced justice for both victims and perpetrators of criminal acts.<sup>5</sup>

As a sub-criminal justice system, the police respond to restorative justice as a conflict resolution effort in the first stage. It is hoped that not many cases will be transferred to the prosecutor's office because they can be resolved through deliberation at the police level between perpetrators and victims as well as the community. This restorative justice arrangement is regulated in the Regulation of the Indonesian National Police Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice.

That the principle of restorative justice reflects justice as a form of human balance, so that deviant behavior from criminals is considered to be out of balance. The Perpol also views that restorative justice is an effort to restore this balance by imposing obligations on the perpetrators of the crime by: recognizing their mistakes, apologizing, and returning the damage and losses to the victim to their original state or at least resembling the original condition which can fulfill a sense of justice. victim. Looking at the restorative principles adopted by the Perpol, it can be seen that they want restorative justice as a model for resolving cases that can be carried out by the police. That is by restoring the balance that had previously been damaged by the perpetrator's behavior.

Restitution of losses can be in the form of compensation given to the victim. This restorative justice model is applied as part of law enforcement efforts carried out in the framework to deal with the emergence of various problems in the criminal law enforcement process at the Langkat Police. As a correctional institution with overcapacity, arrears in cases, an unbalanced number of law enforcers, court fees that do not support all of them have an impact on the public's view of law enforcers themselves.

However, the Perpol also states that the application of restorative principles in the concept of investigating criminal acts is carried out for the public interest and for the sense of community justice. However, it cannot be interpreted as a method for ending cases peacefully, but more broadly in fulfilling a sense of justice for all parties involved in criminal cases. This is done by involving victims, perpetrators and local communities as well as investigators as mediators. Regarding the settlement of cases,

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<sup>4</sup> Nashriana, *Perlindungan Hukum Pidana Bagi Anak di Indonesia*, PT. Raja Grafindo Persada, Jakarta, 2012.

<sup>5</sup> Zainuddin Ali, *Penelitian Hukum*, Sinar Grafika Cetak Ke-empat, Jakarta, 2013.

it can be done in the form of a peace agreement and the revocation of the right to demand from the victim. Namely by asking the judge through the public prosecutor to abort the authority to demand from the victim and the public prosecutor. The restorative principle adopted by the Perpol is in accordance with the definition of restorative, namely: stated by many experts. That is to restore balance, by involving victims, perpetrators, communities and intermediaries. However, this does not automatically prevent case accumulation and overcapacity. Because the real purpose of restorative justice is to improve relationships, not prevent punishment.

That restorative justice should not be interpreted as a peaceful cessation of cases, but when one of the recommended methods is a peace agreement, it has a double meaning in its implementation. In addition, peace must be requested from the judge through the public prosecutor to abort the right to demand from the victim. That would be ironic and ambiguity in law enforcement. Another thing, related to police investigators/investigators having a function as a mediator in the implementation of restorative justice.

According to Satjipto Rahardjo, the theory of legal protection is to provide protection for human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Natural law has shown that in fact the nature of truth and justice is a concept that includes many theories. Various assumptions and opinions of legal philosophers have emerged from time to time. In the 17th century, the substance of natural law has placed a universal principle which is commonly called Human Rights (HAM).<sup>6</sup>

### **1. Application of Restorative Justice for the Crime of Sexual Intercourse Against Children at the Langkat Police Station**

According to R. Soesilo in his book, the Criminal Code along with a complete commentary on the articles provides the view that intercourse can occur because of the union between the sex members. male and female genitalia so that they secrete semen. So in simple terms, intercourse can be said to be an intimate relationship which is usually carried out to get sexual satisfaction or a way to get offspring, intercourse is a human act so that intercourse is not a form of crime if this sexual activity is carried out not in accordance with the applicable legal rules then it is said to be an act. what is being done is a crime of sexuality.<sup>7</sup>

Basically the regulations regarding the crime of sexual intercourse to protect children from sexual crimes, intercourse occurs because of the threat of violence. The crime of sexual intercourse is a crime against decency, which is regulated in Chapter XIV book II of the Criminal Code (KUHP) Article 286, Article 287 and Article 288 of the Criminal Code. Sexual intercourse with minors has also been stipulated in the RI Law No. 17/2016 concerning amendments to the RI Law No. 35/2014 concerning amendments to the RI Law No. 23/2002 concerning the protection of children. the child by explaining the actions of the perpetrator who commits violence or by threats of violence by justifying the methods that can be used such as deception, a series of lies or by using a more severe punishment than the one stipulated in Article 287 of the Criminal Code.<sup>8</sup>

Restorative justice is a process in which all parties involved in a particular crime jointly issue a problem and create an obligation to make things better by involving

<sup>6</sup> Setya Wahyudi, *Implementasi Ide Diversi dalam Pembaharuan Sistem Peradilan Pidana Anak di Indonesia*, Genta Publishing, Yogyakarta, 2011

<sup>7</sup> M. Nasri Djamil, *Anak Bukan Untuk Dihukum*, Sinar Grafika, Jakarta, 2012.

<sup>8</sup> R. Wiyono, *Sistem Peradilan Pidana Anak di Indonesia*, Sinar Grafika, Jakarta, 2016.

victims, children, and the community in finding solutions to repair and reassure those who are not based on revenge.

In an effort to enforce the law in order to create and fulfill a sense of justice, in the case of sexual cases where the victims are children, it is not an easy job. Every time we often encounter various legal incidents of sexual intercourse against children, but in law enforcement it can be concluded that the community's sense of justice is because in law enforcement more procedural perspectives are used than substantial justice.<sup>9</sup> This also happened in several cases of child-to-child sexual intercourse for various reasons so that the act occurred, among others, because the act was carried out on a consensual basis until the end. The perpetrator and the victim's child married and later had children. Several similar cases occurred in Langkat Regency, especially the case that was resolved by the Langkat Police, one of which was sexual intercourse by a child against a minor, which is interesting to study, namely the case against: Initials of suspect NR (17 years) and initials of victim SK (17 Year) in the police report number: LP/449/VIII/SU/LKT dated August 4, 2021, where if traced at the beginning of around June 2021 in Ling. III Sei Tembo Kec. Kuala Kab. Langkat, the victim admitted to having been sexually assaulted by the suspect (her boyfriend) at home. The victim's family objected to the incident and reported the incident to the Langkat Police. However, in this case the Langkat Police carried out several legal considerations regarding the restorative justice approach in the decision of the case, the actions that have been taken:

- 1) To examine the complainant, the victim, the witnesses, the suspect;
- 2) Requesting the results of the post-mortem et revertum from the hospital;
- 3) Request assistance from the BAPAS Class I field for the suspect;
- 4) Request assistance from the Social Service of Langkat Regency for victims;
- 5) Receiving a letter of family peace agreement known to the kelurahan/local village apparatus;
- 6) Conducting mediation between the victim/suspect accompanied by another party (Social Service and BAPAS Medan);
- 7) Perform additional examination of the complainant (the victim's parents) in order to retract the report;
- 8) Carry out a case title to stop the investigation;
- 9) Investigation terminated (SP3) for the sake of law.

Peace reached through the village as a representative all elements of the local community by reconciling the two, it should be a picture of the response of the local village community. Kelurahan, community leaders, religious leaders are elements of society whose views can be accepted as voices that represent the voice of the local community.

If we look closely at all of the criminal elements contained in Article 81 paragraph (2) subs Article 82 paragraph (1) of the Republic of Indonesia Law No.17/2016 regarding amendments to RI Law No.35/2014 regarding amendments to RI Law No.23/2002 concerning child protection. which emphasizes the existence of elements of deception, a series of lies, coercion and persuading children to have intercourse with him or another person, in fact it is not contained in the actions of the defendant in the case where the defendant clearly commits sexual intercourse on the basis of

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<sup>9</sup> Lembaga Bantuan Hukum Jakarta. *Mengawal Perlindungan Anak Berhadapan Dengan Hukum*, Cetakan Kesatu. Jakarta: LBH Jakarta. 2012.

consensual, without coercion and through the courtship process especially long before the trial process, the defendant on the basis of love had legally married the victim.

The application of restorative justice in these cases can avoid the emergence of new victims, namely children and victims who are now the wife of the suspect. Thus the presence of the restorative concept has offered a working mechanism that is expected to provide justice for all conflicting parties. Using the principle of police restorative justice in its decision can prioritize the interests of the parties including the public interest.

## **2. Recovery of Victims of Sexual Intercourse with Children**

Relying on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which was adopted by the United Nations General Assembly through Resolution 60/147 dated 16 December 2005, -forms of recovery that can be enjoyed by victims, which include: a number of rights, which include: (1) restitution, (2) compensation, (3) rehabilitation, and (4) satisfaction, and (5) guarantees of non-repetition. Although it is recognized that in general it is not possible to return the victim to the initial situation, before the violation occurred, with a number of rights it is hoped that the victim can be restored to its original state, rests on the principle of *restitutio in integrum* (return to the original state).<sup>10</sup>

The importance of comprehensive recovery for victims of sexual intercourse, including in the long term. A comprehensive recovery is very effective in fulfilling the rights of victims, such as judicial recovery or through other efforts involving various state institutions, the private sector, professional organizations, and community organizations. In addition, effective recovery is an effort to restore the dignity and justice of the victims, so it must be appropriate and adequate, prompt or prompt, accessible, and comprehensive.<sup>11</sup>

Remedies must, as far as possible, remove all consequences of the action that rebuild the situation damaged by the act, as before the occurrence of an action. This is in accordance with one of the legal principles, that the law must always strive to maintain balances in society. Therefore, if an event occurs that causes shock in the community of a crime event, then the law must act immediately to restore the disturbed stability or balance. In legal theory, this legal principle is known as *restitutio in integrum*.

The principle of Restoration in the Original Condition is an effort that the victim of a crime must be returned to its original condition before the crime occurred, even though it is based on the fact that it is impossible for the victim to return to her original condition. This principle emphasizes that the form of recovery to the victim must be as complete as possible and cover various aspects arising from the crime that occurred.

With a very large impact, granting rights to victims is also a form of legal protection that has been stipulated by law. Victims' rights are the right to know, the right to justice, and the right to remedy. These rights are already contained in various applicable human rights instruments and are also contained in the jurisprudence of international human rights committees and regional human rights courts.

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<sup>10</sup> Supriyadi Widodo Eddyono & Ajeng Gandini Kamilah & Syahril Martanto Wiryawan, *Penanganan Anak Korban*, Diakses Pada tanggal 25 Oktober 2021, <http://icjr.or.id/wp-content/uploads/2017/02/Penanganan-Anak-Korban-Pemetaan-Layanan-Anak-Korban-di-Beberapa-Lembaga.pdf>

<sup>11</sup> Nashriana, *Perlindungan Hukum Pidana Bagi Anak di Indonesia*, PT. Raja Grafindo Persada, Jakarta, 2011.

In addition to imprisonment, there are also fines for perpetrators of crimes of sexual intercourse against children. The fines listed in the Child Protection Act are actually quite ironic, because the fines do not accommodate the interests of children as victims but only accommodate the interests of the state, namely as income to the state treasury which does not provide any benefits for children as victims of sexual crimes. . The provision of protection to children who are victims of sexual crimes, especially in the form of fulfilling compensation, either through the provision of compensation and/or restitution, should receive attention from policy makers. In relation to the rights of children as victims.

In terms of recovering cases of criminal acts of sexual intercourse with children, by strengthening religious knowledge, and the role of parents, they should pay more attention to their children and a good environment in order to form a better character.

#### D. Conclusion

1. Restorative Justice" is used as an umbrella to describe a variety of programs that can look at criminal acts and respond with a restorative perspective, the focus of Restorative Justice is to repair losses caused by crimes, involve victims, see perpetrators accountable, and prevent similar losses in the future. The mediation form of "restorative justice" does not always result in compensation, it can also be anything that is basically agreed upon by the victim and the perpetrator.
2. The rights and services that should be obtained by child victims are the right to compensation and restitution for child victims, guarantees for protection of the privacy of child victims in court, Mentoring, Legal Aid, Submission of testimony via tele talk using electronic means by audio-visual, and electronic recording of the child victim's information before investigators or public prosecutors, advocates or other legal aid providers and companions for child victims.

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