

A Restorative Justice Approach To Resolving Children's Cases With The Law

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ABSTRACT

The concept of Restorative Justice as an alternative settlement of juvenile criminal cases. Restorative justice is defined as a process in which all parties related to certain crimes sit together to solve problems and think about how to deal with victims and legal actors, continue to prioritize the principle of the best interests of children and the sentencing process is a last resort while not ignoring children's rights. If the legal process continues to the reporting process to the Police, then basically the implementation of the law is through diversion efforts carried out by the police using discretionary authority.

ABSTRAK

Konsep *Restorative Justice* sebagai alternative penyelesaian perkara pidana anak. *Restorative Justice* dimaknai sebagai suatu proses dimana semua pihak yang terkait dengan tindak pidana tertentu duduk bersama-sama untuk memecahkan masalah dan memikirkan bagaimana mengatasi terhadap pihak korban dan pelaku hukum, tetap mengedepankan prinsip kepentingan terbaik bagi anak serta proses penghukuman adalah jalan terakhir dengan tetap mengabaikan hak-hak anak. Apabila proses hukum berlanjut kepada proses pelaporan ke Kepolisian maka dasarnya pelaksanaan hukum melalui upaya diversifikasi yang dilakukan oleh pihak kepolisian dengan menggunakan otoritas diskresi.

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I. INTRODUCTION

Child protection is a legal action that has legal consequences. Therefore, there is a need for legal guarantees for child protection activities (Lubis, M., & Siregar, 2020). Legal certainty needs to be sought for the continuity of child protection activities and to prevent abuses that have undesirable negative consequences in the implementation of child protection activities. (Hermanda, Imam, 2013).

Children as one of the human resources and are the next generation of the nation should receive special attention from the government, in the context of fostering children to realize strong and quality human resources. In relation to child development, legal facilities and infrastructure are needed that anticipate all problems that arise. The facilities and infrastructure in question concern the interests of the child as well as those concerning deviations in attitudes and behavior that make the child forced to be brought before the court (A. Gratitude, Fatahillah, 2011).

Children as perpetrators of criminal acts are called delinquent children or in criminal law are said to be juvenile delinquency. Romli Atmasasmita argues that juvenile delinquency is any act or behavior of a child under the age of 18 and unmarried which is a violation of applicable legal norms and can endanger the child's personal development. (Atmasasmita, Romli, 2003).

For this reason, in dealing with and overcoming these various problems, it is necessary to consider the position of the child with all the characteristics and characteristics that are unique as perpetrators of criminal acts (Space, Saryono Hanadi, 2009). Not seeing whether the act was based on his thoughts, feelings and will, but must also look at various things that can influence the child to commit a crime. So it takes the role of parents and the surrounding community. The 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 the basis for finding an alternative solution how to prevent children from a formal criminal justice system, placing children in prison, and stigmatization. against the position of children as prisoners (Supramono, 2007).

One solution is to divert or place child offenders out of the criminal justice system (Aris Merdeka Sirait, 2012). This means that not all cases of naughty children must be resolved through formal justice channels, and provide an alternative for settlement with a justice approach in the best interests of the child and by considering justice for the victim, which is called the restorative justice approach. (Supramono, Gatot, 2014.)

Restorative justice is a method that is philosophically designed to be a resolution to the resolution of the ongoing conflict by improving the situation or losses caused by the conflict. The principle of restorative justice or restorative justice is an alternative for resolving criminal cases, which in the mechanism (criminal justice procedures) the focus of the crime is changed to a process of dialogue and mediation. (Umbreit, Mark S, 2009). The settlement of criminal cases committed by a child cannot only be resolved with detention to a child.

According to Law Number 11 of 2012, the settlement of juvenile criminal cases must prioritize a restorative justice approach, namely a settlement of criminal cases involving the perpetrator, the victim's family, the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing recovery. return to its original state, and not retaliation. By using the restorative method, the expected results are a reduction in the number of children arrested, detained and sentenced to prison, eradicating stigma and returning children to normal human beings so that they are expected to be useful in the future. (Agung Wahyono, Dan Siti Rahayu, 2003).

Based on the description above, the authors set the title of this research is: RESTORATIVE JUSTICE APPROACH IN SOLVING CASES OF CHILD DEALING WITH THE LAW. The formulation of the problem that is the subject of discussion in this paper is: How to implement a restorative justice approach in resolving cases of children in conflict with the law

II. RESEARCH METHODS

The research method used in this study is a normative juridical approach, which is a method that uses secondary data sources, namely laws and regulations, legal theories, and the opinions of leading legal scholars, which are then analyzed and drawn conclusions from problems that will be used to test and review the secondary data (Ronny Hanitijo Soemitro, 2008)

This approach method is used considering the problems studied revolve around the laws and regulations and their relation to implementation in practice. The approach method used is a normative juridical approach, meaning that law is conceptualized as a norm, rule, principle, or dogma. (Amiruddin & Zainal Asikin, 2012).

The approach method is a legal scientific logic research procedure, meaning a problem solving procedure which is data obtained from library observations which are then compiled, explained and analyzed by providing conclusions (Ibrahim, 2006).

III. RESULT DISCUSSION

1. Implementing a Restorative Justice Approach in Resolving Child Cases in Conflict with the Law

The concept of Restorative Justice as an alternative to solving juvenile criminal cases (Wahyudhi, Dheny. 2015). Restorative justice is defined as a process in which all parties related to certain crimes sit together to solve problems and think about how to deal with victims and legal actors, continue to prioritize the principle of the best interests of children and the sentencing process is a last resort while not ignoring children's rights (Revelations of Jontah and Wencislaus Sirjon Nansi, 2018). If the legal process continues to the reporting process to the Police, then basically the implementation of the law is through diversion efforts carried out by the police using discretionary authority. Discretion is a transfer from a formal criminal court process to a non-formal process to be resolved by deliberation (Dikdik M. Arief Mansur, Dan Elisatris Gultom. 2007.).

This approach can be applied to the resolution of cases of children in conflict with the law. This is based on Law No. 11 of 2011 concerning the Juvenile Criminal Justice System in lieu of Law No. 3 of 1997 concerning the Juvenile Court only protects children as victims and not for perpetrators, as perpetrators are categorized as minors, their position is not equal. with adult offenders (Dikdik M. Arief Mansur, Dan Elisatris Gultom. 2007)

In general, diversion is the transfer of handling cases of children suspected of having committed criminal acts from the formal process with or without conditions (Miznul Kirom, 2019). (Unicef, 204: 330), while discretion is the authority possessed by the Police to stop case investigations by releasing child suspects, or even diverting children with the aim of avoiding further legal proceedings.

The application of the diversion provisions is an important matter to consider, because with diversion children's human rights can be more guaranteed, and prevent children from being stigmatized as "bad children", because criminal acts that are suspected of involving a child as a perpetrator can be handled without the need to go through a legal process. (Purniati, Mamik Sri Supatmi, and Ni Made Martini Tinduk, 2003).

The objectives of the diversion are:

- a. To avoid detention;
- b. To avoid being labeled as criminals;
- c. To improve life skills for perpetrators;
- d. So that the perpetrator is responsible for his actions;
- e. To prevent the repetition of criminal acts;
- f. To promote necessary interventions for victims and perpetrators without having to go through a formal process;
- g. The diversion program will also prevent children from participating in the judicial system process;
- h. Furthermore, this program will keep children away from the negative effects and implications of the judicial process.

According to (Santi, Kusumaningrum, and Mamik Sri Supatmi., 2012), dealing with the law and the justice system has detrimental consequences for children and society, including:

1. Experience of violence and mistreatment during the judicial process (perpetrator, victim or witness)
2. Stigmatization

3. Action repetition

Based on the description above, it is necessary to have a new understanding that can be a way out for the problem of delinquency in Indonesian children. Restorative justice is expected to be an alternative for handling child delinquency problems (Santi, Kusumaningrum, and Mamik Sri Supatmi. 2012.)

According to (Hadisuprpto, 2006), restorative juvenile justice departs from the assumption that the response or reaction to child delinquency perpetrators will not be effective without the cooperation and involvement of victims, perpetrators and the community. The underlying principle is that justice is best served, if each party receives fair and balanced attention, is actively involved in the judicial process and benefits adequately from their interaction with the juvenile justice system (Paulus Hadisuprpto, 2007).

According to (Marshall, 1999) restorative justice is: “ Restorative Justice is a process whereby parties with a stake in a specific offense collectively resolve how to deal with the aftermath of the offense and its implications for the future”.

Restorative justice is a process in which all parties involved in a particular crime work together to solve the problem of how to deal with future consequences. Handling the problem of children in conflict with the law should be done with a family approach and as far as possible to avoid children from the judiciary. Courts for children who are in conflict with the law are the last resort after various efforts have been made with a family approach (A. Gratitude, Fatahillah, 2011). In general, the principles of restorative justice are:

- a) Make the violator responsible for repairing the damage caused by his mistake;
- b) Provide opportunities for violators to prove their capacity and quality while addressing their guilt constructively;
- c) Involve victims, parents, extended family, school, and peers;

Creating a forum for working together to solve problems; establishing a direct and real connection between mistakes and formal social reactions (A. Gratitude, Fatahillah, 2011). In restorative justice the method used is deliberation for recovery by involving victims and perpetrators and their respective families, plus community representatives who are expected to represent the environment where the crime with the child perpetrator occurred. (Marlina, 2012). With the support from the local environment to solve problems outside the juvenile justice system, it is hoped that it will produce decisions that are not punitive, but still prioritize the interests and responsibilities of children who commit crimes, victims and the community. (Supramono, 2007.).

The restorative justice process is basically an effort to divert from the criminal justice process to settlement by deliberation, which is basically the soul of the Indonesian nation, to resolve problems in a familial way to reach consensus. (Supramono. 2011).

IV. CONCLUSION

Restorative justice is a step to develop non-custodial and community-based measures for children in conflict with the law. The application of diversion and non-imprisonment is in line with justice for children as stated in international instruments, in the context of fulfilling human rights for children in conflict with the law. Restorative justice can explore positive values and practices that exist in society that are in line with the enforcement of human

rights.

Restorative justice (restorative justice) can be one of the efforts to resolve the problems of children who are dealing with the law, but in its implementation it is necessary to coordinate with law enforcement officials, families, school environments and community leaders besides that there is a need for socialization for law enforcers so that the implementation of restorative justice becomes effective. more effective.

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