



The Restorative Justice in the Criminal Justice System of Children

Restorative Justice in Juvenile Justice System

Putri Ayu Elvina; Pujiyono

Master of Law, Faculty of Law, Diponegoro University, Indonesia

E-mail: putriayuelvina276@gmail.com

<http://dx.doi.org/10.47814/ijssrr.v6i4.1198>

Abstract

Children as the nation's next generation is already deserve special attention. It aims in order to develop the child to realize the quality of human resources. Therefore, it is also necessary legal infrastructure to anticipate any problems that arise. The legal means to anticipate stigma or stamp evil inflicted when the child against the law, as well as restoring and re-socialize the child. One solution is to divert or placing the offender children out of the criminal justice system as well as providing an alternative to the settlement with justice approach in the best interests of the child, who was then known as restorative justice approach. Restorative justice which is the implementation of the concept of diversion has been formulated in the juvenile justice system, but a good system must be accompanied by an attitude which is imbued with the will to perceive and believe that this world is always getting better. In addition, should the principle of the best interest of the children always come first when dealing with children in conflict with the law.”

Keywords: *Restorative Justice; Diversion; Criminal Justice System; Children*

Introduction

It has been recognized together that the child is the successor of the nation because it rests on the shoulders of a nation that has not been accomplished by previous generations.¹ Perhaps at this moment for some, the child means nothing. But in the future, the child will play a key role in determining where this nation and country will go.

Children as one of the human resources and the next generation of the nation deserve special attention, both from parents, society and the government. This is aimed at educating children in order to

¹Lebih jelasnya lihat Sunarjati Hartono, *Politik Hukum Menuju Satu Sistem Hukum Nasional* (Bandung: Alumni, 1991), hlm. 154

realize solid, qualified human resources. Furthermore, the interests of the child should be the guiding principle for those responsible for the education and guidance of the child, and of course the primary holder of that responsibility is the parent.²

Proper compassion, protection, coaching and direction are the most basic psychic needs in a child's life and life that a child actually relies on a parent's conscience. In reality, many parents are unaware of this, which influences the development of a child's life. Children raised in a sense of conflict tend to have internal anxiety that can foster negative actions, which are categorized as juvenile delinquency. The resulting delinquency may even become illegal.

When it comes to the development and development of a child's life, legal tools and infrastructure are needed that will anticipate any problems. The means and infrastructure involved both the interests of the child and the deviation of attitudes and behaviors that led to coercion and judicial action. Moreover, this legal tool aims to anticipate the evil and delinquent stigma or stamp that is inflicted when a child commits a criminal or is exposed to the law, while at the same time rehabilitating and promoting the child.

The child as a criminal is called the child delikuen or in the criminal law is said to be a juvenile delinquency. Romli Atmasasmita argues that juvenile delinquency is every act or conduct of a child under the age of 18 and is a violation of valid and potentially harmful legal norms.³

Dealing with and overcoming these issues takes into account the position of the child with all the characteristics and characteristics of a criminal. Not seeing whether the act is based on his thinking, feeling and will but also seeing ways that can influence a child to commit criminal ACTS. Therefore, it requires the role of the parent and the society around him.

In treating children as criminals, law-enforcement authorities have always had to take note of the child's different condition from that of adults. The child's basic unchangeable personality, the child's future asa national asset, and the position of children in communities that still need protection can provide the basis for an alternative solution to how to prevent the child from a formal criminal justice system, the placement of children in prison, and the stigmatization of the child's position as an inmate.

One solution is to divert or put the perpetrators of child crime out of the criminal justice system. Which means that not all child-related problems must be solved through formal judicial channels, and provide an alternative to settlement with a justice approach to best interest the child and consider justice for the victim known as the restorative justice approach.

Handling this approach is also done on the grounds that an opportunity is made for good offenders to return through nonformal channels by involving community resources, as well as by trying to bring justice to the case of a child who has already committed a crime to law enforcement agencies.

Formulation of the Problem

According to the above background, the question is still under consideration of how to apply restorative justice in the child's criminal justice system?

² Lihat tulisan Abdul Hakim Garuda Nusantara, "Prospek Perlindungan Anak," dalam *Hukum Dan Hak-Hak Anak*, ed. Mulyana W. Kusumah (Jakarta: Rajawali dan Yayasan Lembaga Bantuan Hukum Indonesia, 1986). hlm. 19.

³ Romli Atmasasmita, *Problema Kenakalan Anak-Anak Remaja* (Bandung: Armico, 1983).Hlm. 40.

Research Methods

Based on the problems researchers study, the research approach will be a sociological or socio-legal research approach, one that deals with the perceptions and behaviors of people (humans and corporations) that take place in the field.

Then on this occasion researcher use a descriptive qualitative approach. According to moleong qualitative approaches produce descriptive data of written or spoken words from informants and observable behaviors that are not assigned in variables or hypotheses.⁴ Similarly, according to soerjono soekanto the qualitative method isa research ordinance that results in descriptive or oral data, of what the informant stated in writing or speech as well as his apparent behavior, which is examined and studied as a whole.⁵

A. Children's Judicial Discourse

When viewed from a sociological standpoint, justice is a public institution or a social institution that processes justice. Justice has also been called a social institution that is an assembly of codes of all levels that revolve around a basic need in people's lives. These included hierarchical, hierarchical regulations that played a role in meeting the basic needs of society's life, the need for order and tranquillity.

According to the sudiksumo as quoted by romli atmasasmita, justice is a law enforcement of consensual claim, the function of which is governed by an independent and held by the state and free from any influence or influence by way of enforcing and preventing eigenrichting (premanism).⁶

The use of the word child in the terminology of a child at law indicates the limit to what was being handled, that is, only child matters. Child courts include any activity of inspection and termination of a matter for the interests of the child, so the process of rendering justice into a series of actions committed by the body or institution of justice must also be tailored to the needs of the child.⁷

As noted earlier, the judiciary of a child having distinct characteristics and differences in many respects, especially treating a child when dealing with the law (both as a victim, perpetrator and witness), is certainly viewed as a high priest of the judicial system. Such statements are supported by a set of qualifications for the same types of criminal crimes as the adults listed on the penal code (criminal law), but the judicial and sanctioned proceedings obtained are of course different.

Suwantji sisworahardjo brings up the same, that children who commit delinquency should be treated differently than adults who commit criminal ACTS.⁶ It is also included in the 2012 law on the criminal justice system of children. Thus, in a systemic way the contents of a child's judicial authority would not and should not, as follows:⁸

⁴ Sabian Utsman, *Dasar-dasar Sosiologi Hukum: Dilengkapi Proposal Penelitian Hukum (legal Research)*, Yogyakarta: Pustaka Belajar, 2013, Cet. 3, h. 310

⁵ Ibid.

⁶ Romli Atmasasmita, *Peradilan Anak Di Indonesia* (Bandung: Mandar Maju, 1997). Hlm. 51.

⁷ Lihat Ceramah Soedarto dengan judul Pengertian dan Ruang Lingkup Peradilan Anak pada Lokakarya tentang Peradilan Anak yang diselenggarakan oleh Badan Pembinaan Hukum Nasional bekerja sama dengan Fakultas Hukum Universitas Diponegoro, tanggal 8-10 Agustus 1977 di Semarang, yang kemudian disunting dan diterbitkan dalam bentuk buku. Lihat Soedarto, *Kapita Selekta Hukum Pidana* (Bandung: Alumni, 2010). Hlm. 129.

⁸ Lihat tulisan Suwantji Sisworahardjo, "Hak-Hak Anak Dalam Proses Peradilan Pidana," dalam *Hukum Dan Hak-Hak Anak*, Op. Cit. Hlm.

- 1) Beyond absolute competency of the general court;
- 2) Examining, prosecuting and cutting off things that have become absolute competence of the environment of other judicial bodies, such as the judicial body of a religion

In the criminal justice system of children, there are several elements that constitute one entity: child investigator, child prosecutor, child judge and officers of the child correctional institution. A fair boy's justice will provide protection against the rights of the child, both as a suspect, as a defendant, or as a convict. Thus, in the regulations governing the court of the child, the rights of the child are the basis for the establishment of the regulation.

B. Restorative Justice and the Criminal Justice System of Children

The handling of a child dealing with the law goes beyond the rights of the child. More than that, it requires the application of restorative justice. The restorative justice in the criminal justice system of children is part of the implementation of the diversion. The principal principle of the implementation of the concept of version is the persuasive or non-penal approach and of giving people the opportunity to correct errors. The new formulation is even regulated clearly in Indonesia's positive laws, specifically article 1 figure 7 of the 2012 law on child criminal justice system, which reads as follows:

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

The civil and political rights treaty of chapter 24 (1) states that every child has the right to protective custody measures, since his status as a minor should be used as a legal basis for a judge to stop child abuse. The law of application of restorative justice is basic. Such a ruling is valid because the judge has indeed been given the freedom within to dig up, to follow and understand the values of the law and the sense of justice that live in the community.

These are in line with the Beijing rules of article 11.1 which stipulates that a transfer of formal legal proceedings to a nonformal settlement through application of a restorative justice model in handling child matters can be done by the judge. Restorative justice can be referral for the judge to settle child matters. Beijing rules provides maximum protection for the child's future because it contains principles:

- a) Best Interest For The Child Is Priority.
- b) Criminal Justice May Be Avoided As Much As Possible.
- c) Everything Is As Minimal As Possible For Intervention.
- d) Police D. Police, Prosecutors, Judges And Other Law Enforcement Agencies Use Whatever Policies/Discretionary In Child Dealing.
- e) Criminalization And Child Punishment Should Be Avoided Unless There Is Serious Damage To Children Or Others.
- f) Legal Aid Should Be Provided Promptly At No Cost.

Basically, the restorative justice involves three stakeholders: victims, perpetrators, and civil society or society in determining child settlement. Through restorative justice, there has been an effort to bring together both the victim and the perpetrator with the goal of seeking recovery for the victim. On the other hand, child abusers, though the status of the perpetrator, also include those who are entitled to recovery, also promote recovery, not by retaliating. According to chapter 1, the law of the child justice system, which regulates the restorative justice, follows its full formula:⁹

⁹ In child cases, child abusers are also victims. The victims weren't meant only for child victims. But pinned on the child molester as well. Those who are referred to as victims may be victims of parental neglect, or even poverty imposed on them by the state, resulting in the child's control and development of a child to lose control and commit a crime or crime.

"Restorative justice is the solution of criminal proceedings by involving the perpetrator, the victim, the family of the perpetrator, and the others involved in jointly seeking a fair settlement by emphasizing restoration to the original state, and not vengeance."

The restorative justice can be defined as a consideration that responds to the development of the criminal justice system by specifying the need for public involvement and other marginalized victims by the mechanisms employed in the current criminal justice system. Moreover, restorative justice can provide a framework of thought that can be used in response to a crime to law enforcement.

In the various principles and models of restorative justice, the process of dialogue between the perpetrator and the victim represents basic capital and an essential part of the exercise of this justice. Direct dialogue between the perpetrator and the victim makes it possible to express what he feels, expressing the hope of fulfilling the rights and desires of a criminal settlement. It is also expected that through dialogue the perpetrator is moved by heart to correct himself, recognize his mistake and accept responsibility as a consequence of a deliberate criminal act. From this process of dialogue, people can participate in implementing the agreement and monitoring the implementation. Therefore, it has been essentially a simple justice restoration has been known as the posthumation of penal settlements.

Penal proceedings have a noble purpose on the completion of penal proceedings in society. Conceptually, notes by Stefanie Trankle on *barada nawawi arief*, the penal mediation developed has been posited from the following ideas and principles:

- 1) Conflict handover (conflict): the job of the mediator is to get parties to forget the legal framework and encourage them to engage in the communication process. It's based on the idea that crime has resulted in interpersonal conflict. That conflict is the focus of the mediation process.
- 2) Thoughtful process (*prozessesentierung*): penal mediation has been more on the quality of the process than on the results: consciousness of the perpetrator of his or her mistake, conflict needs resolved, peace of victims of fear, etc.
- 3) Informal proceedings/informalitat: penal proceedings/informalitat has been an informal, unbureaucratic process, evading strict legal procedures.
- 4) There is active and autonomous participation (*active and autonomous participation/ parteiautonomie/subjetivierung*): the parties (the perpetrators and victims) are not viewed as objects of criminal law procedures, but rather as subjects that have personal responsibility and the ability to do so. They are expected to do of their own accord.¹⁰

Therefore, on penal mediation and in restorative justice have advanced the concept of mediation process known as the medium of communication medium which is the principal capital in the management of the mediation society. That is the whole process that can be found in the restorative justice setup model, as the ds put it. Goddess and fatfatlah a. gratitude, following:

- a) Facilitator mediation (*vom: mediation between the perpetrator and the victim*) is a forum that encourages a meeting between the perpetrator and the victim that the mediator assisted as its coordinator and facilitator in the meeting.
- b) Conferencing is the same forum as a *vom*, but in this form there is a difference: the completion involves not only exclusion of perpetrators and direct victims (primary victims) but also indirect victims (secondary victims), as with the victim's family or personal friends and the perpetrator's close friends. As for the reason that the party's involvement is because they may be affected directly or indirectly by criminal ACTS or they have high concern and interest in the results of

¹⁰ Barda Nawawi Arief, *Mediasi Penal Penyelesaian Perkara Di Luar Pengadilan* (Semarang: Pustaka Magister, 2012). Hlm. 4-5.

deliberation and they can also participate in the successful process and final goal.

- c) Circles is a model of the restoration of justice which is most widespread in relation to the two previous forms, a forum that is not only the victim, the perpetrator, family or mediator but also.¹¹

A legally positive sequential of child criminal justice proceedings through restorative justice (diversion) is regulated in article 52 of the child's criminal justice system. To be clear, here's a full formula:

- a) Scripture (1) a presiding officer was obliged to assign a judge or judge panel to handle the child's affairs most 3 (three) days after receiving a case file from the prosecutor.
- b) Verses (2) judges were obliged to apply for a maximum recording of 7 (seven) days after being appointed by the state court as judge
- c) Verses (3) as referred to in the verse (2) are carried out most 30 (thirty) days.
- d) Verse (4) the reversion process can take place in the civil court mediation room.
- e) Section (5) when the process of version was completed, the judge presented a version of the program and the agreement to the chairman of the state court for the establishment.
- f) Verse (6) when the version was unsuccessful, the trial continued.
- g) According to article 1 figure (7) act 11 years 2012, diversion is the transfer of child settlement from criminal justice to a process outside criminal justice.

Of course, it would be hard for the rupiah to strengthen to rp9,100 per dollar, he said. Priority or concern for the interests of the child as the perpetrator is even reiterated under a clause 10 (1) the civil and political rights guarantee that each individual deprived of freedom is subject to human treatment by honoring the dignity inherent to him. Restorative justice is an attempt to treat a child who conflicts with the law according to his dignity.

A process at criminal justice carried out by law enforcement authorities when a child is found guilty, ideally and should be subject to action returned to the parents. Attempts to carry out the injunction of the law that the sentencing of the prison criminal against the child is the final effort (ultimum remedium) should be consistent with the understanding that the best rule is the act of bringing the child back to its parents for eventual education and edification.

The judicial system itself is a good one, but a good system must be accompanied by a spirit imprinted with a will to view and believe that this world has always been a better one. An actual view is wider and farther horizontally than others have debated. Furthermore, it should be the best interest of the children that comes first in dealing with children who are dealing with the law.¹²

Conclusion

The restorative justice in the criminal justice system of children is part of the implementation of the diversion. The arrangement of non-version and restorative justice has already been formulated into laws on the criminal justice system of children. Ideally, the restorative justice involves three stakeholders: victims, perpetrators, and civil society or society in determining child settlement. Through restorative justice, there has been an effort to bring together both the victim and the perpetrator with the goal of seeking recovery for the victim. On the other hand, child abusers, though the status of the perpetrator, also include those who are entitled to recovery, also promote recovery, not by taking vengeance. Moreover, the handling of child crime through restorative justice will be optimally implemented, as the value of the

¹¹ D.S. Dewi dan Fatahillah A. Syukur, *Mediasi Penal: Penerapan Restorative Justice Di Pengadilan Anak Indonesia* (Bandung: Indi Publishing, 2011). Hlm. 9.

¹² Roeslan Saleh, *Suatu Reorientasi Dalam Hukum Pidana* (Jakarta: Aksara Baru, 1983).hlm. 21.

restorative justice is well available in a judicial institution. Even authorities should have both the will and the ability to handle cases involving children in accordance with the principles of the best interest of the children. Thus, restorative justice is really being served in the best interest of the child.

References

- Arief, Barda Nawawi. *Mediasi Penal Penyelesaian Perkara Di Luar Pengadilan*. Semarang: Pustaka Magister, 2012.
- Atmasasmita, Romli. *Peradilan Anak Di Indonesia*. Bandung: Mandar Maju, 1997.
- . *Problema Kenakalan Anak-Anak Remaja*. Bandung: Armico, 1983.
- Dewi, D.S., and Fatahillah A. Syukur. *Mediasi Penal: Penerapan Restorative Justice Di Pengadilan Anak Indonesia*. Bandung: Indi Publishing, 2011.
- Hartono, Sunarjati. *Politik Hukum Menuju Satu Sistem Hukum Nasional*. Bandung: Alumni, 1991.
- Nusantara, Abdul Hakim Garuda. “Prospek Perlindungan Anak.” dalam *Hukum Dan Hak-Hak Anak*, ed. Mulyana W. Kusumah. Jakarta: Rajawali dan Yayasan Lembaga Bantuan Hukum Indonesia, 1986.
- Pradityo, Randy. “Garis Lurus Diversi Sebagai Pendekatan Non-Penal.” *Jurnal RechtsVinding Online*. Jakarta, 2016.
- Saleh, Roeslan. *Suatu Reorientasi Dalam Hukum Pidana*. Jakarta: Aksara Baru, 1983.
- Sisworahardjo, Suwantji. “Hak-Hak Anak Dalam Proses Peradilan Pidana.” dalam *Hukum Dan Hak-Hak Anak*, ed. Mulyana W. Kusumah. Rajawali dan Yayasan Lembaga Bantuan Hukum Indonesia, 1986.
- Soedarto. *Kapita Selekta Hukum Pidana*. Bandung: Alumni, 2010.
- Indonesia, Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak Indonesia, Kitab Undang-undang Hukum Pidana.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).