

Implementation of Restorative Justice Towards Criminal Acts Committed by a Child (Case Study of Abuse Committed by a Minor in Palembang City in 2017)

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ABSTRACT

Restorative Justice is seeking a fair resolution through peace involving both parties. The aim of this research is to find out how restorative justice is implemented for criminal acts committed by children. This research uses normative procedures. This research is described descriptively using analysis of data sources. In this research, the data collection carried out is primary data, where the data collected comes from various collections of books and journals. The results of the research show that the regulation of criminal acts committed by children is still not specifically regulated in a law and legal protection for children who commit criminal acts experiences several obstacles, so to date it has not been implemented properly and is at the urgency stage.

Keywords:
Restorative Justice,
Implementation,
Criminal Law

INTRODUCTION

The definition of a child when viewed further in terms of chronological age according to law varies depending on place, time and needs. This affects the limits used to determine a child's age. Differences in the definition of a child can be seen in every legal regulation that exists to date. For example, the definition of a child in Law Number 4 of 1979 concerning Child Welfare states that a child is someone who has not reached the age of 21 and has never been married. Law Number 39 of 1999 concerning Human Rights explains that a child is every human being under 18 (eighteen) years of age and unmarried, including children who are still in the womb if this is in their interests. In Constitutional Law, the right to vote in elections means that a person is capable of taking responsibility for legal actions if they have reached the age of 17 (seventeen) years. Seeing this, it can be concluded that determining the age limit for children is relative, depending on their interests.

Problems regarding children do not only cover the national scope, but have reached the international realm. This was marked by the birth of a convention on children which essentially emphasized the rights that a child should have. The Convention on the Rights of the Child (CRC) was first initiated by Eglantyne Jebb in 1923 and then ratified by the General Assembly of the United Nations (UN) on 20 November 1989. The Convention requires States to ratify to guarantee the rights of children in that country, then the Indonesian Government ratified the convention in Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child (Convention on Rights of the Child). Child). In the period before Law no. 3 of 1997 concerning Children's Courts, children who commit criminal acts are those who carry out acts that give rise to criminal sanctions before they are 16 (sixteen) years old. efforts to bring children who have committed criminal acts to justice are only a last resort (*utimum remidium*).

Entering the post-UU no. 3 of 1997 concerning Children's Courts in Indonesia has special regulations governing law enforcement for children in conflict with the law. With this new arrangement, the article regarding juvenile court is declared no longer

valid as regulated in Article 67 of the Criminal Procedure Code. Currently in Indonesia the regulations regarding Children's Courts are regulated in Law no. 3 of 1997. Considering that children cannot be equated with adults, special treatment is needed so that children as perpetrators of criminal acts are not harmed physically or mentally. Handling criminal cases for children is of course different from handling adult cases. Handling of children is special, therefore it is regulated in separate regulations. There may not be many people in the community who understand the process of handling children's cases, so in fact it gives rise to various assessments among the community itself.

Law no. 3 of 1997 concerning Children's Courts is a special provision for children who commit criminal acts. This law explains that juvenile offenders aged up to 18 years require their own court procedures which are not the same as adult justice. This difference aims to provide protection for the psychological development of children who have a long future. So as to avoid the assumption that his case is as scary as adult criminal cases. Children in conflict with the law are not limited to children who are in conflict with the law or children who are perpetrators of criminal acts, but also include children who are victims and children who are witnesses to a criminal act. To provide protection for children in conflict with the law, the government has issued a restorative justice policy. In this case, the relevant parties sit together to find a fair solution for the victim and perpetrator.

Since 2022, child crime cases in Indonesia will reach around 9,266 cases. However, there are still many unrecorded cases around us. They decided to resolve the case through mediation so that it did not become known to the public. This is because for some people criminal acts against children are a disgrace to the family and protect the child's mental health from gossip from people around him. The restorative justice policy regarding children who commit criminal acts in Indonesia is currently at an urgent stage. The government does not provide socialization to the community that children who commit criminal acts as perpetrators also need to pay attention and consider their existence, but what is not always considered is the child's position as a victim or witness. However, a child's psychology must be considered and given direction so that the same incident does not happen again in the future. Children as perpetrators of criminal acts must also receive protection from special institutions to handle their cases so that the child remains comfortable and does not fall mentally while undergoing the ongoing legal process.

METHOD

This research uses normative juridical research and the nature of this thesis research. The method used is descriptive analysis, namely research that describes, studies, explains and analyzes a legal regulation, in this case relating to the implementation of restorative justice for criminal acts committed by a child. Sources of legal materials used in this research are secondary data, namely data obtained from interviews, official documents, books or any form of research related to the research object and research results in the form of reports, journals, theses, dissertations and statutory regulations. . The data analysis technique used is qualitative data analysis, namely a research procedure that produces descriptive data analysis, namely by collecting materials and data as well as applicable regulations and laws and regulations which are then analyzed using logical legal thinking.

RESULTS AND DISCUSSION

Results

Some cases of children in conflict with the law can be resolved using restorative justice, but there are also those that are continued until they receive a final decision. Cases that can be resolved using restorative justice relate to abuse, theft and beatings. Except that cases of sexual intercourse cannot be resolved with restorative justice. Restorative justice must meet material requirements such as not causing unrest or rejection from the community as well as formal requirements, which means peace must exist from both parties. For this reason, children must receive protection from parents, guardians or any other party responsible for caring for children so that they can grow and develop in the opposite way, this is as mandated in Article 13 paragraph (1) of the Child Protection Law. In article 2 paragraph (3) of the Child Welfare Law, children also have the right to care and protection, both while in the womb and after birth. Due to several factors such as poverty, broken homes, in their growth and development children do not always get the best things which causes them to commit criminal acts. Handling children's cases through the legal process often ends in prison. This can of course damage and destroy the child's future because it creates a negative stigma in society.

Due to the problem of children in conflict with the law, Law Number 11 of 2012 regarding the Juvenile Criminal Justice System was issued which regulates diversion based on restorative justice. Settlement of children's cases through diversion must meet the requirements, namely (1) the criminal offense carries a sentence of less than 7 (seven) years, (2) it is not a repetition of the criminal act. Apart from that, there must be an agreement with the victim or his family. Handling cases of children who are in conflict with the law through diversion is carried out using a restorative justice approach, namely by bringing together the child and his family, the victim and his family, community leaders, community counselors, social services/social workers, and other parties to find the best solution with the aim of restoring relationships that will improve again and not retaliation.

Settlement of children's cases through diversion must be agreed upon by the perpetrator or his family with the victim or the victim's family. If the victim or his family does not agree, then the child's case is processed through the Juvenile Criminal Justice System. The justice that has been taking place in the criminal justice system in Indonesia is retributive justice. Meanwhile, what is hoped for is restorative justice, namely justice is a process where all parties involved in a particular criminal act jointly solve the problem of how to deal with the consequences in the future. Restorative justice is a model for resolving criminal cases that prioritizes restoration of victims, perpetrators and society. The main principle of restoral justice is the participation of victims and perpetrators, participation of citizens as facilitators in resolving cases, so that there is a guarantee that children or perpetrators will no longer disturb the harmony that has been created in society.

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through diversion is carried out with short-term restorative justice, namely by preventing the child from his family, victims in his family, community figures, community mentors, social services/social workers, in order for traffic parties to look for reverse solutions by reversing reversing cases in reversing in bulk reversing

The concept of restorative is a mechanism of criminal justice which is transformed into a process of dialogue between parties (victims in the perpetrators) in the ultimate mediation of creating peace and resolution of criminal proceedings. Restorative Justice focuses on the death to of Malah and the perpetrators of the death, meaning that the perpetrators were met at the death to in order to counteract the act of death that was being carried out by the perpetrators of the death toll. The concept of restoral justice is basically simply, where accountability by the perpetrator towards the victim in terms of the completeness of the problem is no longer based on retribution just as in from the victim to the perpetrator (physical, psychological or punitive), but arose by giving support to the victim and calling for the to survive the answer, with the help of the family in the community if necessary

Restorative justice is a crime that has the potential to reverse positive changes in the Indonesian criminal justice system. In this way, the justice of bulk restoratives is just about eliminating the legal problem, but the legality is about resolving the physical damage which is more just and legal. According to, the implementation of legal protection for children who commit criminal acts has not been implemented as well as it should be, because several regulations for the protection of children who commit criminal acts are still regulated universally and the procedures of law enforcement officials/legal institutions themselves are still inadequate in the process of legal protection for children who commit criminal acts.

Discussion

The protection of the law is a matter of the national government which is protected by the Constitution of the Indonesian Republic. This Hall is stated in Article 28D which states "Every person has recognition, guarantee, protection, before the law fairly as well as equal treatment before the law". Protection in this legal law applies also to minors. authority to implement agency in the name of the Indonesian Child Protection Commission (KPAI). In Indonesia, there are a lot of accidents that occur in the area, especially in large cities, in the rural areas of the city, there are a lot of edulkalsi in the country, which is also a problem that prevents the death of the city due to this problem, which is on the other hand. However, I still underestimate this formula too much. In order to prevent traffic accidents, the KPAI government is providing traffic accidents in every regional area to protect all of Indonesia's regional traffic accidents that occur in rural areas. Due to this, the government has issued Law Number 23 of 2002 concerning the Protection of Children, the most effective because in the past 12 months. year, then the government revised it with a new Law, namely Law Number 35 of 2014.

Based on the concept of parents patriale, namely the state provides caution in the protection of children as parents should to their children, then the handling of children which are haldalpaln with hulkulm julgal halruls carried out for the sake of the interests of children and also based on Pancasila values. In the explanation of Law Number 35 of 2014 Concerning the Protection of Children, called the bahwa of this law is formed on the basis of the consideration that of child protection in all its aspects is Part in the legal activities of legal and legal nationalism in general in promoting legal

and legal existence. These laws address various matters in the legal obligations as well as the implementation of legal protections

There will be criminal action through legal processes just like adults but with different handling, namely with treatment, approach, and special protection. The first stage was in the criminal process and then the investigation was carried out. Investigations often occur in cases of criminal activity. Investigators search for and collect large amounts of material which often turns up clues about criminal actions which have occurred in uncovering cases of crime. Frequent investigative actions include summons in traffic accidents, criminal investigations, bulk searches, searches as well as summons in traffic inspections, anti-palms, and criminal penalties. During the process of investigating legal matters that are carried out in the Undang-Undang Criminal Justice System, the Alnak must be carried out in the legal process by the Investigator.

Based on the certainty of Article 76E of the Child Protection Law calculates about every person who is carried out by someone who is being carried out by someone who is doing something wrong, always doing something wrong, always making a mistake, always making a mistake to carry out or to carry out monthly obscenity. In Article 82, the maximum fine is IDR 5,000,000,000.00 (five billion rupiah).

CONCLUSION

The implementation of Restorative Justice towards children who commit criminal acts in cases of abuse of minors has not yet been implemented as well as it should be because several regulations for the protection of children who commit criminal acts are still regulated universally and have not been specifically stated in one regulation. The application of Restorative Justice with the current regulations in resolving cases of criminal acts of abuse of minors is in accordance with conditions in society. Efforts made in implementing restorative justice for child crimes in resolving cases of abuse of minors include providing protection and assistance at every level of examination starting from prosecution investigations to examinations at court hearings..

Reference

- Elvira Fitriyani Pakpahan, Et.al, *Process of Confiscation of Assets Proceeding from Crime of Selling Narcotics Carried Out by the National Narcotics Agency of Aceh Province*, Justices Journal Of Law, Vol 3 No 1, 2024, 12
- Erlyta Azizka Septiana. "*Hambatan Pelaksanaan Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana Pencabulan Di Polres Karanganyar*", Universitas Sebelas Maret, Vol. 10 No. 3, 2021, 184
- Erny Herlin Setyorini¹, Sumiati², Pinto Utomo. "*Konsep Keadilan Restorative Bagi Anak Yang Berkonflik Dengan Hukum Dalam Sistem Peradilan Pidana Anak*", *Dih Jurnal Ilmu Hukum*, Vol. 16 No. 2, 2020, 149
- Feny Windiyastuti. "*Konsep Restorative Justice Dalam Perkara Anak Ditinjau Dari Perspektif Kemanfaatan Hukum*", IBLAM School Of Law, 2021, 21.
- Guntarto Widodo. "*Sistem Pemidanaan Anak Sebagai Pelaku Tindak Pidana Perprektif Undang-Undang No. 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak*". *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan*. Vol, 6 No, 1. (2016). 64.

- Kartina Pakpahan, Et.al, Upaya Penanggulangan Kekerasan Seksual Terhadap Anak Di SD Kota Medan, *Jurnal Interpretasi Hukum*, Vol 4 No 2, 300-307
- Nanda Nurul Faida. *“Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual Di Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak (P2TP2A) Kota Bogor Tahun 2017-2019”*. UINSHJ. 2020. 102
- Nopiana Mozin, Yasmirah Mandasari Saragih, *Peran Unit PPA Dalam Menerapkan Teori Restorative Justice Pada Tindak Pidana Pencurian Terhadap Pelaku Anak Di Kota Gorontalo*, Vol 7 No 2, 2021, 133
- O.K Isnainul, Et.al, *Analysis of Decision No 61/Pid. Sus Anak/2021/Pn Mdn On the Case of a Child as A Violator of The Crime of Abuse*, *Journal Equity of Law and Governance*, Vol 4 No 2, 2024, 129
- Rikson, Et.al, *Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana*, *Innovative: Journal Of Social Science Research*, Vol 3 No 4, 2023, 437
- Tama Suhendra, Joko Susanto, *Perlindungan Hukum Terhadap Anak sebagai Pelaku Tindak Pidana dengan Kekerasan*, *Jurnal Hukum dan Pembangunan*, Vol 2 No 1, 2019, 106
- Yory Fernando. *“Sejarah Sistem Peradilan Anak Di Indonesia”*. *Jurnal Ilmu Sosial dan Pendidikan*. Vol, 4 No, 4. (2020). 28