

Law Enforcement Against Criminal Acts with A Restorative Justice Approach in Case of Charity Box Theft

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Abstract.

The purpose of this study was to determine and analyze law enforcement against child crimes with a restorative justice approach in the case of theft of charity boxes. To find out and analyze the application of restorative justice in cases of theft of charity boxes. This study uses an empirical juridical approach, with descriptive analysis research specifications. The data used in this study is secondary data which is then analyzed qualitatively. The results of this study are Law Enforcement Against Child Crime with a Restorative Justice Approach in the Charity Box Theft case that in the application of restorative justice, it is always carried out for children who are perpetrators of criminal acts. In some cases, the restorative justice efforts can obtain an agreement by each party, so that the case is not continued to the prosecution level. The application of restorative justice is only for minor crimes, with a mediation process by deliberation. Application of Restorative justice in the Charity Box Theft Case carried out based on consensus deliberation between the victims, perpetrators, and community leaders, where the parties are asked to compromise to reach an agreement. Each individual is asked to give in and put the interests of the community above personal interests in order to maintain mutual harmony. The concept of deliberation has proven to be effective in resolving disputes in society amidst the failure of the role of the state and courts in providing justice. With the application of restorative justice, the case stops until the investigation stage or is not forwarded to court. Keywords: Charity; Children; Crime; Enforcement; Restorative.

1. Introduction

The 1945 Constitution of the Republic of Indonesia, in Article 28D (1) states that: "Everyone has the right to recognition, security, protection, and legal certainty as well as equal treatment before the law". However, the implementation and regulations issued by the legislators in this case the Government and Parliament of the Republic of Indonesia (DPR RI) are not in line with the words of Article 28D (1).¹

As a manifestation of the commitment of the State 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 the rights of children, the Government of the Republic of Indonesia has ratified the Convention on the Rights of the Republic of Indonesia. The Rights of the Child (Convention on the Rights of the Child) by Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child (Convention on the Rights of the Child).

¹Endang Kusnandar, Anis Mashdurohatun, Siti Rodhiyah Dwi Istinah, (2020), Protection Analysis of Children Rights That Was Born From The Rape Causing (Study in State Court (PN) in Ex-Residency Cirebon Jurisdiction), *Jurnal Daulat Hukum* Volume 3 Issue 1, ISSN: 2614-560X, p. 15, <http://jurnal.unissula.ac.id/index.php/RH/article/download/8395/3927>

Children are an inseparable part of human survival and the sustainability of a nation and state. Children need to be protected from the negative impacts of rapid development, globalization in the field of communication and information, advances in science and technology, as well as changes in the style and way of life of some parents which have brought about fundamental social changes in people's lives that greatly affect the value of children and behavior of children.

Prior to the enactment of Act No. 23 of 2002 concerning Child Protection, basically children with problems were categorized in terms of child delinquency, which refers to Act No. 3 of 1997 concerning Juvenile Court. What is meant by juvenile delinquency is regulated in Article 1 point 2 of Act No. 3 of 1997 concerning Juvenile Court, namely children who commit criminal acts and children who commit acts that are declared prohibited for children, both according to legislation and according to other living laws and applies in the community concerned.

Law in Indonesia is basically created to regulate and direct human behavior or society in a good direction, it reduces in law, written or unwritten. The law has punishment consequences that must be accepted for violators of the law itself, ranging from social sanctions, sanctions and even criminal sanctions to imprisonment for violators of the rules.²

The national policy is Pancasila which is the core philosophy of the nation. As the nation's core philosophy, Pancasila is a source of value for the existence of a legal system in Indonesia. Pancasila in the fourth precept teaches that in an event to determine a decision, consensus deliberation with family values is a good way, so that if you take it back the meaning of the deliberation contains five principles as follows: First conferencing (meeting to hear and express desire); Second, search solutions (find common ground for the problems at hand); Third, reconciliation (to make peace and take responsibility for each); Fourth, repair (improve the consequences that arise); Fifth, circles (support each other). These principles are a key word about the formulation of the restorative justice paradigm, so that in the constitutional aspect, the value of restorative justice finds the basis of the foothold in the Pancasila philosophy of the 4th precept. The foundation of the philosophy of the 4th precept, if examined further, its implementation leads to a pattern of resolving criminal cases using a principle called VOC (Victem Offender Conferencing) whose research target is the realization of VOM (Victim Offender Mediation) which is an opportunity for peace that mutually agrees on improvements in both parties. The aim is to resolve conflict issues between people who are directly affected, not direct conflicts between the State and the accused. The rules of deliberation in the fourth precept reflect agreement and benefit with family values that contain the essence of Exspeilencing Justice.³

Law and justice are two things that cannot be separated. When we talk about legal issues, clearly or vaguely, we will dive right into the issue of justice. That means, law is not enough to be discussed in its context as a mere formal building,

²M. Gargarin Friyandi and Aryani Witasari, (2019), Restorative Justice In Application For Crime Investigation of Abuse in Middle Semarang Police, *Jurnal Daulat Hukum* Volume 2 Issue 1, ISSN: 2614-560X, p. 39 <http://jurnal.unissula.ac.id/index.php/RH/article/view/4204/2910>

³[http://pukapaku.com/konsep-restorative-justice-dalam-peradilan-di-indonesia-perspektif filosofisp Pancasila-sila-ke-4-dan-ke-5/](http://pukapaku.com/konsep-restorative-justice-dalam-peradilan-di-indonesia-perspektif-filosofisp Pancasila-sila-ke-4-dan-ke-5/)

but as part of the expression of the ideals of society.⁴The purpose of law is not merely seen as formal legality to ensure regularity and consistency in the implementation of a legal regulation, but substantively which underlies the recognition of the supremacy of one's personality values, and as an institution that provides a framework for expressing justice in its entirety.

Law exists not solely for itself, but for social purposes and meanings that go beyond legal logic. Even in a state of law, not everything has to be done totally by and through the law. Surrendering the dynamics and processes in society completely to the law can be fatal. Productive processes in society, including justice, can be stalled or at least disrupted.⁵

The concept of restorative justice as regulated in Act No. 11 of 2012 concerning the juvenile justice system is to provide space for protection and respect and interests between victims and perpetrators. The concept of restorative justice places an increased relationship between victims and perpetrators. With this concept, it is hoped that it can provide justice for victims and perpetrators of crimes committed by children. Children have received proper protection and guidance, but in reality there are still many children who are detained, punished, tried.⁶

The purpose of this study is as follows to determine and analyze law enforcement against child crimes with a restorative justice approach in the case of theft of charity boxes. To find out and analyze the application of restorative justice in cases of theft of charity boxes.

2. Research Methods

Judging from the point of view of the method used, this research can be classified in the type of empirical juridical research, what is meant by the empirical approach is an attempt to approach the problem under study with a real legal nature in accordance with the reality that exists in society. The specifications in this study are descriptive analysis, namely providing detailed, systematic and comprehensive explanations by classifying, connecting, comparing and giving meaning to legal aspects. The data used in this study is secondary data which is then analyzed qualitatively.

3. Result and Discussion

3.1. Law Enforcement Against Child Crime With a Restorative Justice Approach in the Charity Box Theft Case

The law that develops in society has a goal to be realized. The law is expected to be useful for social life, so that people get justice, can be protected and safe. One

⁴Satjipto Rahardjo in Mahmutarom, (2016), *Rekonstruksi Konsep Keadilan*, Semarang: Badan Penerbit Universitas Diponegoro.p. 1

⁵Satjipto Rahardjo, (2009), *Hukum Progresif Sebuah Sintesa Hukum Indonesia*, Yogyakarta: Genta Publishing. p. 51.

⁶Iwa Mashadi and Gunarto, (2018), *Application of Restorative Justice Against Crime Committed by Children in Polres Cirebon*, *Jurnal Daulat Hukum* Volume 1 Issue 3 ISSN: 2614-560X, p. 743-744, <http://jurnal.unissula.ac.id/index.php/RH/article/download/3386/2504>

manifestation of the law is in the Criminal Code (KUHP), one of which is regulated in the Criminal Code concerning the crime of theft. The crime of theft is one of the forms of crime listed in the second book of the Criminal Code which is specifically regulated in Chapter XXII Articles 362 to Article 367 of the Criminal Code. Theft is generally formulated in Article 362 of the Criminal Code which reads: "Anyone who takes something, wholly or partly belonging to another person, with the intention of being owned against the law, is threatened with theft,

From the regulation of the sound of the article above, it is clearly stated that theft in general is in Article 362 of the Criminal Code. Along with the times, the crime of theft that occurs is certainly not only done by adults, but in fact a child still has the potential to commit the crime of theft. Every child needs to get the widest opportunity to be able to grow and develop optimally, both physically, mentally and socially, because in essence children have not been able to protect themselves from various kinds of actions and influences that will cause harm to children loss.⁷ For it is necessary to protect and resolve criminal acts with children as perpetrators, this is in order to realize the welfare of children, namely by providing guarantees for the fulfillment of their rights without discriminatory treatment, this is in accordance with the general explanation of the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendment to Act No. 23 of 2002 concerning Child Protection.

In addition to being protected in the law, the form of legal protection for children dealing with the law is realized through the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System. Child protection is a non-discriminatory principle, namely prioritizing the best interests of children and the right to life, development, and survival, as stated in Article 1 Number 7 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, a transfer process for the settlement of children's cases is needed from the criminal justice process to the process outside of criminal justice or what can be called diversion.

In Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, it has been regulated regarding diversion, diversion functions so that children who are in conflict with the law are not stigmatized due to the judicial process they undergo.⁸ The use of the diversion mechanism is given to the researchers. It is illegal to deal with lawbreakers involving children without using the formal justice system, the application of this diversion is intended to reduce the negative impact of children's involvement in a judicial process so that it is fair for children for their future and growth, rather than involving children in the formal justice system. ⁹ So that in the end the child can return to the social environment naturally.

The purpose of juvenile criminal justice is to provide the best for children without sacrificing the interests of society and the establishment of justice. The achievement of justice by focusing on the conditions for creating justice and balance

⁷ Gultom, Maidin. (2014). *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia*. Bandung: Refika Aditama. p. 2

⁸ Wahyudi, Setya. (2011). *Implementasi Ide Diversi Dalam Pembaruan Sistem Pidana Anak Di Indonesia*. Yogyakarta: Genta Publishing. p. 14

⁹ Djamil, Muhammad Nasir. (2013). *Anak Bukan Untuk Dihukum Catatan Pembahasan Undang-Undang Sistem Peradilan Pidana Anak (UU SPPA)*. Jakarta: Sinar Grafika. p. 11

for the perpetrators of criminal acts and their victims, thus enforcement criminal law in Indonesia applies restorative justice which in the process must prioritize the welfare of the child and must pay attention to the interests of the victim,¹⁰ in this particular case of settlement of the crime of theft.

The process of investigating and resolving criminal cases committed by children has a special way, namely through the process of transferring the settlement of children's cases from the criminal justice process to processes outside criminal justice or what can be called diversion. Diversion is the application of Restorative justice which emphasizes restoration back to its original state by focusing on the conditions for creating justice and balance for children and their victims which have important meaning and aims to avoid stigmatization of children in conflict with the law,¹¹ namely through the implementation of diversion which is motivated by the desire to avoid the negative impact on the soul and development of children by their involvement with the criminal justice system.

According to the author, criminal law is a law that includes all legal rules that contain criminal threats. Criminal is a consequence given to someone who has caused the cause or the crime itself. Causes come from various ways that cause harm to some people, then it is the authorities who can cause the cause to accept the consequences that have been done (punishment).

The concept of a restorative justice approach is an approach that focuses more on the conditions for creating justice and balance for the perpetrators of crimes and the victims themselves.¹² Procedures and criminal justice mechanisms that focus on punishment are transformed into a process of dialogue and mediation to create an agreement on a more just and balanced settlement of criminal cases for the victims and perpetrators. Restoration includes restoring the relationship between the victim and the perpetrator. Restoration of this relationship can be based on a mutual agreement between the victim and the perpetrator.¹³ The victim can convey about the loss suffered and the perpetrator is given the opportunity to make amends, through compensation mechanisms, peace, social work, or other agreements.¹⁴ Efforts to resolve problems outside the court carried out by perpetrators of criminal acts (his family) and victims of criminal acts (his family) are later expected to be the basis for consideration in the process of examining criminals in court in imposing criminal sanctions by judges/assessments of judges. Justice is a consideration in the criminal law implementation system and is included in the new Criminal Law Legislation (KUHP), especially for complaint criminal offenses (Klacht delict) so that

¹⁰ Atalim. (2013). "Keadilan Restoratif Sebagai Kritik Inheren Terhadap Pengadilan Legal-Konvensional". Jurnal Rechts Vinding. Volume 2, Nomor. Jakarta: FH Universitas Tarumanegara. p. 147

¹¹ Harefa, Beniharmoni. (2015). "Diversi Sebagai Perlindungan Hukum Terhadap Hak Asasi Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia". Jurnal. Pascasarjana Program Doktor FH UGM Yogyakarta. Yogyakarta, p. 15.

¹² Kristin Reimer. (2011), *An Exploration Of The Implementation Of Restorative Justice In An Ontario Public School. Canadian Journal of Educational Administration and Policy, Issue #119, March 11, by CJEP and the author(s)*, p. 4

¹³ UNODC, (2006), *Handbook on Restorative Justice Programmes. Criminal Justice Handbook Series*, Vienna: UN New York, p. 5

¹⁴ Kristin Reimer, *Op.cit*, p. 6

it focuses on the conditions for creating justice and balancing legal treatment for perpetrators of criminal acts and victims of criminal acts can be achieved properly, without always having to use criminal sanctions (imprisonment) in the final settlement. Due to the deterrent effect as the ultimate goal of sentencing (imprisonment) the perpetrators of criminal acts are currently no longer achieving their targets as expected. There needs to be a breakthrough in the implementation of the criminal system in Indonesia, not only through imprisonment but also through the application of restorative justice.¹⁵

The ultimate goal of this restorative justice concept is to eliminate stigma and return criminals to normal human beings, criminals can realize their mistakes, so they don't repeat their actions, do not cause revenge because the perpetrator has been forgiven by the victim, victims get compensation quickly, empower the community in overcoming crime and, reintegration of criminals into society.¹⁶

Law Enforcement Against Child Crime With a Restorative Justice Approach in the Charity Box Theft case in the jurisdiction of the Brebes Resort Police that in the application of restorative justice, it is always carried out for children who are perpetrators of criminal acts. In some cases, the restorative justice efforts can obtain an agreement by each party, so that the case is not continued to the prosecution level. The application of restorative justice is only for minor crimes, with a mediation process by deliberation.

3.2. Application of Restorative justice in the Charity Box Theft Case

The application of restorative justice emphasizes the pure willingness of the perpetrators to repair the losses they have caused as a form of responsibility. Repair of losses must be proportional to the rights and needs of victims. To produce an agreement between the parties, in this case the victim and the perpetrator, it is necessary to conduct informal dialogues such as mediation and deliberation. Active involvement of relevant and interested community members is very important in this part of the effort to re-accept the child into society. Restorative justice offers the best solution in solving child crime cases, namely by giving priority to the core problem of a crime.

Some of the principles that apply universally are inherent in the concept of a restorative approach in resolving criminal acts, including:¹⁷

- Fair Settlement Principle (Due Process)
- Equal protection
- Victim's Rights
- Presumption of innocence

¹⁵Annis Nurwianti, Gunarto, Sri Endah Wahyuningsih, *Implementasi Restoratif / Restorative Justice Dalam Penyelesaian Tindak Pidana Kecelakaan Lalu Lintas Yang Dilakukan Oleh Anak Di Polres Rembang* Jurnal Hukum Khaira Ummah Khaira Ummah Law Journal Vol. 12. No. December 4, 2017

¹⁶Ibnu Suka, Gunarto, Umar Ma'ruf, *Peran Dan Tanggung Jawab Polri Sebagai Penegak Hukum Dalam Melaksanakan Restorative Justice Untuk Keadilan Dan Kemanfaatan Masyarakat*, Jurnal Hukum Khaira Ummah Vol. 13. No. March 1 2018

¹⁷Rufinus Hotmaulana Hutauruk, (2012), *Penanggulangan Kejahatan Korporasi Melalui Pendekatan Restoratif Suatu Terobosan Hukum*, Jakarta: Sinar Grafika. p. 126-128.

- Right to Consultation or Legal Advisory Assistance

Whereas another area of concern is where the victim or the complainant wants the goods or losses suffered by the violator to be returned or reported to have occurred, making the victim or the complainant consider the case to be over. It is different from the process or stages in the investigation where the police do not remove the 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 achieving justice for the plaintiffs / disputes.¹⁸

There are three basic principles that make up restorative justice, namely:

- Remedy for those who have suffered losses due to crime;
- Perpetrators have the opportunity to be involved in the restoration of the state; and
- Courts act to maintain public order and society acts to keep peace fair.

From these three basic principles, it is known that restorative justice will provide feedback for perpetrators, victims and people involved in it. The restorative justice also allows imprisonment if the sanctions are the demands of the victims and it is true that they consider that by carrying out these sanctions the perpetrators are considered accountable for their actions.¹⁹

However, once a suspect chooses to participate in a restorative process, he should act and speak for himself. Their positions of allowing lawyers to represent participants at all stages of the restorative process would undermine many of the expected benefits of “encounter”, such as direct communication and expression of feelings, and proactive collective decision making. Lawyers can also be very helpful in advising their clients on the most likely and expected outcomes.

Application of Restorative justice in the Charity Box Theft Case carried out based on consensus deliberation between the victims, perpetrators, and community leaders, where the parties are asked to compromise to reach an agreement. Each individual is asked to give in and put the interests of the community above personal interests in order to maintain mutual harmony. The concept of deliberation has proven to be effective in resolving disputes in society amidst the failure of the role of the state and courts in providing justice. With the application of restorative justice, the case stops until the investigation stage or is not forwarded to court.

4. Conclusion

Law Enforcement Against Child Crime With a Restorative Justice Approach in the Charity Box Theft case that in the application of restorative justice, it is always carried out for children who are perpetrators of criminal acts. In some cases, the restorative justice efforts can obtain an agreement by each party, so that the case is not continued to the prosecution level. The application of restorative justice is only

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

¹⁹Yudi Hendarto and Umar Ma'ruf, *Diversion In Children Criminal Justice System Through Restorative Justice*, *Jurnal Daulat Hukum* Volume 1 Issue 2, June 2018 ISSN: 2614-560X

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