

## Settlement of Cases of Theft by Children in Diversion in Achieving Restorative Justice

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**Abstract.** *The purpose of this study is to examine and analyze the settlement of cases of theft by children in diversion in achieving restorative justice and to study and analyze the obstacles to settlement of cases of theft by children in diversion in achieving restorative justice. This study uses a sociological juridical approach. The results of this study indicate that the mechanism for storing Narcotics Confiscated Objects is carried out with the Mechanism of implementing restorative justice only for minor types of crime which can still be resolved, meaning that in cases of theft committed by children who do not require follow-up, it is enough to get a warning, with a deliberative mediation process and consensus of both the victims and the perpetrators and the families of the victims and the families of the perpetrators. In the process of settling cases, the perpetrator in this case can be held responsible for his actions. And the main obstacle faced in carrying out a restorative justice approach through diversion at the pre-prosecution stage at the Cirebon District Attorney's Office, among others, is that the demands for compensation that the victim has received are too high so that the perpetrators cannot fulfill them, besides that there is a desire from the victim to continue the case until the trial process so that perpetrators have a deterrent effect.*

**Keywords:** *Crime; Diversion; Justice; Restorative.*

### 1. Introduction

The number of children who became perpetrators of crimes in 2011 reached 695 people. Meanwhile for 2018, the number of children who became perpetrators

of crimes increased dramatically to 1,434 people.<sup>1</sup> So far, in the implementation of the Juvenile Justice system, there have been many problems, one of which is child detention, a long judicial process starting from investigation, prosecution and court which ultimately places children in correctional institutions which in the end will only cause trauma and negative implications for children and give the impression that punishment is only retaliation.<sup>2</sup>

The future life of children requires special attention and treatment, including in the world of law. The birth of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System gives a different color related to the legal protection of children in Indonesia. This law presents the concept of diversion and restorative justice which aims to provide protection for perpetrators of crime, victims and society in general as a form of settlement of cases. The promulgation of Law of the Republic of Indonesia Number 11 of 2012 is a replacement for Law Number 3 of 1997 concerning Juvenile Courts, which was carried out with the aim that justice can be realized which truly guarantees the best interests of children who are in conflict with the law as the successor of the nation.<sup>3</sup>

*Diversio*nis the transfer of settlement of child cases from the criminal justice process to processes outside the criminal justice. while Restorative Justice is a conflict resolution process by involving parties with an interest in criminal acts that occur starting from victims, perpetrators, families of perpetrators and victims, the community and law enforcement officials or other elements deemed important in it to be involved in resolving conflicts. Restorative justice is a diversion process that aims for recovery not for retribution, but the retributive system is still very heavily used by law enforcement officials. The concept of diversion is an alternative form of criminal settlement that is directed to an informal settlement by involving all parties involved in the criminal act that occurred.<sup>4</sup> Diversion process is part of discretion which according to the Law Dictionary, discretion means the freedom to make decisions in every situation faced according to one's own opinion.<sup>5</sup>

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<sup>1</sup> Sindo Newspaper, "Children's Crime is Very Concerning", SINDOnews.com on Thursday, 14 March 2019, <https://nasional.sindonews.com/berita/1386542/13/tindak-kriminalitas-anak-very-memprihatinkan>

<sup>2</sup> Setyo Hartanto and Sri Endah Wahyuningsih, "The Process of Investigation and Prosecution of Criminal Acts of Theft Committed by Children in the Semarang Regency Region" in Khaira Ummah Law Journal of Law Vol. 12. No. September 3, 2018 p. 113-114 [url:https://jurnal.unissula.ac.id/index.php/jhku/article/view/1899/1443](https://jurnal.unissula.ac.id/index.php/jhku/article/view/1899/1443)

<sup>3</sup> Aryani Witasari and Muhammad Sholikul Arif, "Implementation of Diversification to Realize Restorative justice in the Juvenile Criminal Justice System" in Unissula Law Journal Vol.35 No.2 (2019) p. 165 [url:https://jurnal.unissula.ac.id/index.php/jurnal\\_Hukum/article/view/11052/4249](https://jurnal.unissula.ac.id/index.php/jurnal_Hukum/article/view/11052/4249)

<sup>4</sup> Marlina. 2012. Juvenile Criminal Justice in Indonesia. Bandung. PT. Refika Aditama. P. 16-17

<sup>5</sup> S. Prajudi Atmosudirjo. 1994. State Administrative Law. Jakarta. Gp.ia Indonesia. P. 82.

The authority of diversion remains limited on condition that the diversion process can only be carried out on crimes punishable by imprisonment under 7 (seven) years and is not a repetition of a crime (recidivist). The case of ordinary theft is one of the crimes that can be diverted because it is punishable by five years in prison in accordance with Article 362 of the Criminal Code. Diversion can only be carried out in criminal acts punishable by imprisonment under seven years, so only theft regulated in Article 362 and Article 364 of the Criminal Code can be attempted diversion. Cases of theft are very possible for diversion because a diversion agreement can occur if the parties, especially the perpetrator and the victim, have agreed to fulfill the conditions or fulfill the compensation desired by the victim.

The police as the gateway to the juvenile justice system and the authorities are the first to determine the position of a child in conflict with the law, leaving many places in the memory of children in conflict with the law.<sup>6</sup>

Based on the description above, regarding theft committed by children at the investigation stage, the Indonesian National Police, in this case the investigator, is required to seek diversion within a maximum period of 7 (seven) days after the investigation begins. The diversion process is carried out no later than 30 (thirty) days after the start of the diversion. If the diversion attempt during the investigation process fails, then the theft case can be increased and proceed to the prosecution stage. Submission of case files, suspect responsibilities, and evidence is delegated to the public prosecutor at the District Attorney's Office. The Public Prosecutor's Office, through the public prosecutor, is authorized to carry out a restorative justice approach through diversion in cases of theft by children, it is obligatory to seek a maximum of 7 (seven) days after receiving the case file from the investigator. The diversion process is carried out no later than 30 (thirty) days after the start of the diversion. The diversion attempt is carried out before the public prosecutor submits the dossier of the theft by the child to the court or pre-prosecution. The public prosecutor in carrying out diversion efforts against cases of theft committed by children is called a mediator prosecutor. In its implementation, the policy of using diversion and restorative justice is experiencing problems.

## **2. Research Methods**

This study uses a Juridical Sociological approach, the specifications in this research are analytical descriptive, the data used are primary data and secondary

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<sup>6</sup>Megah Novita Endriyanti, Nurini Aprilianda and Abdul Madjid, Limitations of Authority of Child Investigators Regarding the Implementation of Diversion in the Settlement Process of Child Crime Cases, In the *Cakrawala Hukum Journal*, Volume 9 No. 2 December 2018 url: <https://jurnal.unmer.ac.id/index.php/jch/article/view/2259/pdf>

data, using data collection by interviews and literature studies, qualitative data analysis, problems are analyzed by law enforcement and legal certainty theory.

### 3. Results and Discussion

The application of restorative justice emphasizes the pure will of the offender to repair the harm he has caused as a form of responsibility. Repairs to losses must be proportional to the rights and needs of victims. In order to produce an agreement between the parties, in this case the victim and the perpetrator, it is necessary to carry out informal dialogues such as mediation and deliberation. The active involvement of relevant and interested members of the community is very important in this section as an effort to re-accept the child in society. restorative justice offers the best solution in solving child crime cases by giving priority to the core problem of a crime.

The principles of implementing restorative justice are: Making the violator responsible for repairing the losses incurred to repair the losses caused by his mistakes; Provide opportunities for offenders to prove their capacity and quality in addition to overcoming their guilt; Involve victims, parents, families; Creating a forum to work together in solving problems; Establish a direct and real connection between mistakes and formal social reactions.<sup>7</sup>

The purpose of this diversion is the implementation of restorative justice which seeks to restore recovery to a problem, not a retaliation that has been known in criminal law so far.<sup>8</sup>The diversion process is useful for children who are in conflict with the law to avoid negative effects on the growth and development of children in the future so that the diversion process must pay attention to the following:<sup>9</sup>The interests of the victim; Child welfare and responsibility; Avoid negative stigma; Avoidance of retaliation; Community harmony; and Decency, decency, and public order.

Application of the principles of restorative justice to produce restorative justice, namely a process in which all parties involved in a particular crime together solve the problem of how to deal with the consequences in the future. Crimes committed by children are violations against humans and between humans. Crime creates an obligation to make things better by involving victims, perpetrators and society in finding solutions to improve and reassure. The principle of restorative justice is a process when all parties related to certain crimes sit together to solve problems and think about how to overcome the consequences in the future. justice for children, is how restorative justice is

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<sup>7</sup>Marlina. 2009. Juvenile Criminal Justice in Indonesia. PT Refika Aditama, Bandung, p. 206

<sup>8</sup> M. Nasir Djamil. 2013. Children Not To Be Punished. Jakarta. Sinar Graphic. P.. 138

<sup>9</sup> Wagiati Soetedjo and Melani. 2014. Children's Criminal Law. PT. Refika Aditama. P. 169-170.

applied in the presence of certain conditions that place restorative justice as the basic value used in responding to a criminal case. In this case, it requires a balanced focus of attention between the interests of the perpetrator and the victim and also takes into account the impact of the settlement of the criminal case on society.

To find out how far the approach to the principles of restorative justice is in resolving crimes committed by children in Cirebon Regency, in this case, it can be seen from how often police officers, especially in the field of protection of women and children (PPA), use the principles of restorative justice in child cases. So in this case the author uses a comparison between crimes committed by children in Cirebon Regency using the principles of restorative justice and not using the principles of restorative justice in the jurisdiction of the Cirebon City Police.

In applying the principles of restorative justice to resolve crimes committed by children in Cirebon Regency, namely the police as mediators and facilitators in the decision-making process, the role of the police is very dominant. The basic principle in dealing with children's problems is to achieve the best interests of the child. The stages of interviews and police investigations for criminal cases committed by children, against children suspected of criminal acts are carried out continuously between parents, witnesses related to the case. Children who are being examined at the time of the interview must be accompanied by a parent/guardian.

During interviews with children, the language used by the police in interviews is easily understood by both the children and for their assistance. This is so that the messages conveyed by the police can be truly understood by children. Restorative justice is an attempt to seek peaceful conflict resolution outside the court. Especially for children who commit criminal acts, restorative justice is important to apply because the child's psychological factors must be considered. In the process, restorative justice will involve the victim and his family, the perpetrator and his family. The parties jointly carry out deliberations on recovery with decisions that are as non-punitive as possible and prioritize solutions by taking into account the best interests of the child, victim and community.

The application of the principles of Restorative justice (PPA unit) of the Cirebon City Police to children as perpetrators of criminal acts was initially carried out by the process of resolving acts of law violations that occurred by children by bringing the victim and perpetrator (suspect) together to sit in a meeting to sit together one meeting to talk together. During the meeting the police, namely the policewomen in the PPA unit as mediators, provided the opportunity for the perpetrators to provide the clearest possible description of the actions they had taken. The perpetrator who made the presentation really hoped that the victim

would be able to accept and understand the conditions and reasons why the perpetrator committed a crime that caused harm to the victim. Furthermore, in the explanation the perpetrator also explained how he was responsible for the victim for the actions he had committed. As long as the perpetrator explains the actions he has taken and the reasons why the perpetrator took the action, the victim must listen carefully to the explanation of the perpetrator. Henceforth, the victim can provide a response to the explanation of the perpetrator.

The process of the restorative justice model is where the role of the police is as a mediator, facilitator, or supervisor. In this case the police show the articles and provisions of the juvenile justice legislation, then the community is welcome to find the best way out so that a process of repair, restoration of relations, conciliation and reconciliation occurs between the victim and the perpetrator, the victim's family and the perpetrator's family, with the community's acceptance back against the offender without any stigma against the offender.

Based on the results of the research the method used in the settlement carried out in restorative justice at the Cirebon City Police, especially in the PPA unit, is a mediation process in accordance with the habit of deliberating, in the application of the principles of restorative justice in Cirebon Regency which is carried out by the police, namely carried out through activities such as victim mediation with the perpetrator/ offender; family group meetings,

The objectives of mediation conducted by deliberation are as follows:

- to support the healing process for victims by providing opportunities to meet perpetrators, and participate in discussions about how violations should be resolved.
- to encourage perpetrators to take direct responsibility by asking them to listen to the effect their offense had on the victim, and by providing opportunities to participate in discussions about how the offense should be resolved.
- to facilitate and support a process that is empowering and emotionally satisfying to both parties.

The parties involved in restorative justice (deliberation) at the Cirebon City Police are:

- Victims and victims' families. The involvement of the victim and the victim's family in a restorative justice settlement is very important. In these deliberations it is important to hear the interests of the victim because it is part of the decision

to be taken, and the victim's family must be involved because in a conflict that occurs it will become a family problem so the victim's family can participate in the settlement of criminal cases and also determine the compensation that will be borne perpetrator and the perpetrator's family.

- The perpetrator and his family, the perpetrator is an absolute party to be involved, because the perpetrator's family is deemed necessary to be involved due to the immature age of the perpetrator (child). The involvement of the offender's family is also seen as very important in the process of resolving criminal cases because it is very likely to be part of the settlement agreement as is the case in paying compensation or implementing other compensation.

In implementing the principle of restorative justice, it provides a greater opportunity for victims to convey about the losses they have suffered as a result of criminal acts that have been committed by the perpetrators to them. This principle also provides an opportunity for the perpetrator to convey the causes and reasons why he committed a crime that caused harm to the victim and society. The focus of restorative justice is to repair social damage caused by perpetrators, develop recovery for victims and society, and return perpetrators to society. This effort requires the cooperation of law enforcement officials in the framework of protecting the rights of children who are in conflict with the law. The application of restorative justice is carried out directly against crimes that occurred before the perpetrator entered the criminal justice system and cases that entered the criminal justice system. This restorative justice is continuously in an effort to make improvements and developments in a better direction as well as developing processes based on principles and their application in practice.

Indicators in the application of the principles of restorative justice to children as perpetrators of crimes in Cirebon Regency carried out by the Cirebon City Police (PPA) are restorative children, which can be seen from the roles of: police (Polwan PPA), perpetrators, and victims. Each role as follows:

- Police (PPA): has a very dominant role, the police as a mediator, facilitator and supervisor. The police provide job opportunities for perpetrators as a form of reparative obligation, assisting victims and supporting fulfillment. The police are obliged to the perpetrators to show the articles and arguments for the provisions of the laws and regulations regarding juvenile justice and then the families of the victims and perpetrators are welcome to find the best way out so that a process of improvement occurs, restoration of conciliation relations and reconciliation between the victim and the perpetrator, the victim's family, the perpetrator's family with the acceptance of the community back against the offender without any stigma against the offender

- Actors: active actors to compensate victims and society. He must face the victim/victim's representative
- Victims: actively involved in all stages of the process and play an active role in mediation and participate in determining sanctions for perpetrators.

The restorative justice approach is an approach that focuses more on conditions for creating justice and balance for the perpetrators of crime and the victims themselves. Procedural and criminal justice mechanisms that focus on punishment are changed to dialogue and mediation processes to create an agreement on a more just and balanced settlement of criminal cases for victims and perpetrators.

Restorative justice is known for restitution or compensation for victims, including restoring the relationship between the victim and the perpetrator. Restoration of this relationship can be based on mutual agreement between the victim and the perpetrator. Victims can convey the losses they have suffered and perpetrators are also given the opportunity to make amends, through mechanisms of compensation, peace, social work, and other agreements, in this case victims and perpetrators to actively participate in solving their problems. Every indication of a criminal act all only boils down to a verdict of sentencing or punishment.

Restorative justice differs from ordinary criminal justice in several ways. First, looking at criminal acts comprehensively. Not only defines crime as a mere violation of the law, but understands that the perpetrator harms the victim, society and even himself. Second, restorative justice involves many parties in responding to crime, not only limited to the problems of the government and perpetrators of crimes, but also the problems of victims and society. Finally, restorative justice measures success in different ways, not only by how much punishment is imposed, but also by measuring how much harm can be recovered or prevented.

Remembering the basic principle in dealing with children's problems is to achieve the best interests of the child. So the restorative justice approach is an alternative that is considered good in achieving these interests. Restorative justice is an attempt to seek peaceful conflict resolution outside the court. specifically for children in conflict with the law, restorative justice is important to apply because the child's psychological factors must be considered. In the process, restorative justice will involve the victim and his family, the perpetrator and his family. The parties jointly carry out deliberations on recovery with decisions that are as non-punitive as possible and prioritize solutions by taking into account the best interests of the child, victim and community. There are four criteria for child cases related to the law that can be resolved using the



restorative justice model. First, this case does not sacrifice the public interest and is not a traffic violation. Second, this is the first time the child has committed delinquency and is not a recidivist. Third, the case was not one that resulted in loss of human life, serious injury, or lifelong disability, and fourth, the case was not a serious crime of decency involving honor. However, if a child is reported and arrested for a minor crime, for example for shoplifting/light theft, minor fights, there is no need to be jailed, just call their parents and be advised. Law enforcers such as the police, prosecutors and judges do not need to impose sentences.

In the process of restorative justice, for example, if there has been peace between the perpetrator and the victim, and the victim has forgiven the perpetrator, then this will not affect the authority of law enforcement to continue to forward the case to the realm of crime which will eventually lead to the conviction of the perpetrator. restorative justice offers a recovery process that involves the perpetrator and the victim directly in solving the problem.

So the goal of "restorative justice" is not only to the perpetrators, but also to the victims. In the view of Restorative Justice, the interests of the victims are very concerned. It is as important as efforts to make the perpetrator aware and not want to repeat his actions again. If these two conditions are met, it is hoped that the social life of the community can recover. The adherents of this understanding argue that because the law is based not only on the perpetrators, but also on the victims and society, this law enforcement is considered the fairest.

The implementation of restorative justice in the settlement of criminal acts committed by children found obstacles and their implementation. The obstacles experienced in the implementation of restorative justice carried out by children are that not all or there are several serious crimes or perpetrators who are underage, there are difficulties in building public trust in the implementation of restorative justice in serious cases. Besides that, the reason for recidivism by child offenders after undergoing a restorative justice process raises questions about whether the community has to repeat the process several times for the same offender. Obstacles or failure to apply restorative justice to children as perpetrators is due to the failure of the perpetrator to implement the restitution agreement.

Obstacles The implementation of restorative justice which is carried out with a lack of training in dealing with conflicts and facilitating mediation and its imperfect implementation will lead to a lack of success in its implementation, where victims are not invited to the restorative justice process besides, if they are not properly prepared regarding their respective rights and responsibilities - each party in mediation, the process will not find the results as expected. Apart from that, another obstacle in reaching mediation is if the victim does not

receive assistance, either by his guardian, it will create feelings of intimidation and victimization back to the victim, especially if the perpetrator is present and his family is eager to reach an agreement. Restorative justice cannot be carried out in the event that one or more of the main parties do not participate or do not participate, are ignored in the course of the process. Conversely, restorative justice will succeed if the victim conveys his aspirations properly, honestly without coercion and intimidation and the perpetrator is willing to take responsibility by carrying out the obligation to provide compensation to the victim and both parties are active in the negotiation process to formulate a settlement that is acceptable and correct for the victim. all parties.

In applying or implementing the concept of restorative justice, Polri investigators sometimes experience doubts in making decisions during the investigation process, especially if the perpetrators/their families and the victims/their families and the community apparently want peace in resolving cases or cases, this is due to the absence of rules or an umbrella. law as well as procedures and formal mechanisms to accommodate this so that this situation becomes a dilemma for Polri investigators in the field based on the following factors:

- Investigators are worried or afraid that they will be blamed by the investigator's leadership or superiors and blamed for supervision and examination by the National Police's internal supervisory and examiner institutions using formal procedural parameters.
- There are no provisions that regulate and become the basis for legitimacy in making decisions on the investigative process whether based on the concept of restorative justice
- the obstacle in implementing the concept of restorative justice is the absence of a formal procedure or mechanism to implement it.

The application of the principles of restorative justice to criminal acts other than the handling of children who commit crimes is still constrained by the absence of a legal basis or formal procedure/mechanism for its application, even though the victim/family and the perpetrator/family and the community sometimes want this. Obstacles in applying the principles of restorative justice experienced by police investigators are:

- Internal Barriers

Even though Restorative Justice and Diversion justice has started to be recognized as an alternative handling of children dealing with the law from criminal justice and is starting to get the support of many parties there are still

many obstacles faced by the juvenile justice system, namely:

- Increasing needs are not proportional to the resources (both personnel and facilities)
- Different understandings in the handling of children dealing with the law and victims among law enforcement officials
- Lack of cooperation between parties involved (law enforcement officials and child social workers)
- Ethical issues and bureaucratic obstacles in exchanging data and information between law enforcement officials
- There is no common perception between law enforcement officials regarding the handling of children in conflict with the law for the best interests of the child
- Limited facilities and infrastructure for handling children dealing with the law during court proceedings
- Lack of policy formulation to carry out the social rehabilitation process for delinquent children, in this case the Department of Social Affairs or social organizations engaged in education, coaching and job training so that they can be sent to social institutions to be specially fostered given mental and behavioral recovery
- Lack of protection for children who commit criminal acts, but this will is not easy to do because the provisions in the current juvenile detention system do not provide such an opportunity

- External Barriers

External Obstacles Whereas in implementing the Restorative Justice and Diversion system there are still many external obstacles that arise, namely:

- inconsistent application of regulations

The absence of a legal umbrella as a basis and guideline for all law enforcement agencies, the inconsistency of the application of regulations in the field in handling children dealing with the law, the simplest problem can be seen in the various limits that make up the minimum age of a child in the relevant regulations.

- Lack of support and cooperation between institutions

This problem is another obstacle that still occurs in upholding a legal provision, including the handling of children in conflict with the law. Many legal professionals still regard mediation as a method of seeking second-class justice which they have not succeeded in achieving justice at all, even though currently judges are one-on-one party that can mediate cases involving children in conflict with the law, unlike civil mediation, which allows non-judges to act as mediators in court.

- Society's view of criminal acts is still hindered by the view of society that tends to hold grudges and wants to take revenge on perpetrators of crime, including child offenders.

#### 4. Conclusion

Based on the research results from the discussion, it is concluded that kThe main obstacles faced in carrying out a restorative justice approach through diversion at the pre-prosecution stage at the Cirebon District Attorney's Office included that the demands for compensation that the victims claimed were too high so that the perpetrators were unable to fulfill them, besides that there was a desire from the victims to continue the case until the judicial process so that the perpetrators has a deterrent effect.

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