

The Settlement of Child Cases in Conflict with the Law in the Concept of Restorative Justice

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Article	Abstract.
Keywords: Children; Diversion; Justice; Restorative. Article History Received: 2022-08-26; Reviewed: 2022-12-03; Accepted: 2022-12-22; Published: 2022-12-23. DOI: 10.30659/jdh.v%vi%i.24357	<i>This study aims to know the application of the principle of Restorative Justice as an effort to resolve crimes committed by children even though formally and legally regulated clearly and explicitly in Act No. 11 of 2012, but formally problems also arise related to the time when the law was enforced which in Article 108. The approach used in this study is normative juridical. Factors that cause children to commit criminal acts, namely: Endogenous factors are factors that occur because of their own will, family factors, school environment factors and children's play areas, mass media factors, economic factors. Diversion as a step in diverting the settlement of child cases from the criminal justice process to processes outside the criminal justice by prioritizing the Restorative Justice approach which can be carried out by way of deliberation or mediation which emphasizes efforts to restore the family to its original state.</i>
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1. Introduction

Children are the future of the nation. They are entitled to humane treatment. The way we educate and treat children as the next generation will determine the quality of our future as a human being and a nation.¹ Children as part of the younger generation are the successors to the ideals of the nation's struggle and are human resources for future national development.² A child is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime) from the level of investigation, prosecution and trial as stipulated in laws and regulations.³

Child protection is an effort that supports the implementation of rights and obligations. A child who obtains and maintains the right to grow and develop in life in a balanced and positive manner means that he is treated fairly and is protected

¹ Irwanto, Fentiny Nugroho dkk, *Perdagangan Anak di Indonesia*, International Labour Office, Jakarta, 2001, p. 121.

² Ediwarman, *Peradilan Anak di Persimpangan Jalan dalam Perspektif Victimology (Belajar dari kasus Raju)*, Pekanbaru, *Jurnal Mahkamah*, Volume 18 No. 1 April, p. 8.

³ Yul Ernis, *Diversi Dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak Di Indonesia*, *JIKH* Vol. 10 No. 2 July 2016, p. 163 – 174.

from harmful threats. Efforts to protect children can be a legal action that has legal consequences, thereby preventing children from arbitrary parental actions.⁴

A child who commits a crime must be tried in a special juvenile court within the general court environment, with a special process and special officials who understand children's problems, starting from arrest, detention, trial and coaching. Meanwhile, from the perspective of the science of punishment, it is believed that the imposition of punishment on delinquent children tends to harm the development of the child's soul in the future. This detrimental tendency results from the effects of criminal imposition, especially imprisonment, which is in the form of a stigma (bad brand) against children who commit crimes. Prison can give an eternal stigma and label to a child so that the hope of returning the child's mental morale is difficult to achieve because this labeling will place the child's status in the community.⁵

Relations with criminal law enforcement, Restorative Justice is an approach in solving criminal problems involving victims, perpetrators, and elements of society for the sake of creating justice.⁶

With the promulgation of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is a replacement for Act No. 3 of 1997 concerning Juvenile Courts, which was carried out with the aim of realizing a judiciary that truly guarantees the best interests of children who are dealing with law as the successor of the nation.⁷

A thought or idea emerged for this by means of diversion or commonly called the idea of Diversion, because correctional institutions are not a way to solve children's problems and precisely in Correctional Institutions prone to violations of children's rights. This is what drives the idea of Diversion, especially through the concept of Restorative Justice, to become a very important consideration in resolving criminal cases committed by children, this concept has been regulated in Act No. 11 of 2012 concerning the Juvenile Criminal Justice System.⁸

Relations with criminal law enforcement, Restorative Justice is an approach in solving criminal problems involving victims, perpetrators, and elements of society for the sake of creating justice. In cases of criminal acts committed by children,

⁴ Moch. Faisal Salam, *Hukum Acara Peradilan Anak di Indonesia*, Cetakan I, Mandar Maju, Bandung, 2005, p.1

⁵ Hadi Supeno, *Kriminalisasi Anak Tawaran Gagasan Radikal Peradilan Anak Tanpa Pemidanaan*, Jakarta, PT.Gramedia Pustaka Utama, 2010, p. 186.

⁶ Pnadmin, *Pendekatan Restorative Justice Dalam Sistem Pidana Indonesia*, Mahkamah Agung Republik Indonesia, Pengadilan Negeri Sabang, 2021, [http // https://www.pn-sabang.go.id/?p=5457](http://https://www.pn-sabang.go.id/?p=5457)

⁷ Gunarto Widodo, Sistem Pemidanaan Anak Sebagai Pelaku Tindak Pidana Perspektif Undang-Undang No. 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak, *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan* Vol. 6 No.1, March 2016, p. 58-83

⁸ Nur Hidayati, Peradilan Pidana Anak dengan Pendekatan Keadilan Restoratif dan Kepentingan Terbaik bagi Anak, *Jurnal Pengembangan Humaniora* Vol. 13 No. 2, August 2013, p. 144-152

Restorative justice at least aims to repair or restore criminal acts committed by children with actions that are beneficial to children, victims and their environment which involve them directly in solving problems, and different from how other people handle them. mature.⁹

In Article 1 point (6) of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System it states, Restorative Justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a solution. justice by emphasizing restoration to the original state, and not retaliation.¹⁰

2. Research Methods

The approach used in this study is normative juridical or library law research or doctrinal legal research, namely legal research by examining library materials and secondary materials.¹¹ According to Peter Mahmud Marzuki, "normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced by".¹²

3. Results and Discussion

3.1. Factors Influencing Minors to Commit Crimes

Factors that cause or encourage children to commit these crimes are caused by several factors namely:¹³

- 1) Endogenous factors are factors that occur because of one's own will, so this factor is carried out on the basis of one's own will and without being influenced by anyone and there is an opportunity to commit a crime.
- 2) Family factors are the factor of disharmony in the family, which can cause children to commit crimes. Parents should educate their children to become a good generation of the nation and teach their children to obey the norms and rules that apply.
- 3) Factors School environment and children's play area are places where children socialize with their friends and those around them. The occurrence of crimes

⁹ Taufik Makarao, *Pengkajian Hukum Tentang Penerapan Restorative Justice Dalam Penyelesaian Tindak Pidana Yang Dilakukan Oleh Anak-Anak*, Badan Pembinaan Hukum Nasional Kementerian Hukum Dan Ham RI, Jakarta, 2013, p. vii

¹⁰ Bruce Anzward, Suko Widodo, *Kebijakan Penerapan Diversi Dalam Penyelesaian Perkara Tindak Pidana Yang Dilakukan Oleh Anak Melalui Pendekatan Restorative Justice*, *Jurnal De Facto* Vol. 7 No. 1 July 2020, p. 32-50

¹¹ Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, 2003, p. 13.

¹² Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada, Jakarta, 2010, p. 35.

¹³ Siti Qotimah, *Penegakan Pasal 365 Kitab Undang-Undang Hukum Pidana Tentang Tindak Pidana Pencurian Disertai Dengan Kekerasan Yang Dilakukan Oleh Anak Di Polsek Wonokromo*, *Jurnal Fakultas Ilmu Sosial dan Hukum*, Universitas Negeri Surabaya, Vol 8 No. 1, 2021, p. 1-9

committed by children is influenced by the environment, both the school environment and the environment where children play. When children commit theft accompanied by violence, some are influenced by their friends because they are wrong in getting along with their friends, this can cause children to commit crimes. If the environment is good then it will make the child in a good direction too, and vice versa if the environment is not good then it can cause the child to commit crimes. Children also sometimes in carrying out their actions, sometimes they are not alone, but they do it with their gang or groups such as communities that lead to a negative direction. If a child is not recognized for his existence both in the school and family environment, the child will look for friends outside of these two environments, so that the child feels acknowledged, even though the child does not see whether the alley is good or not, the most important thing for the child is that he is recognized in the alley.

4) The Mass Media factor is an influence that is no less important in child development. Most children today have used social media in any way, therefore mass media such as television broadcast shows that are not educational which can cause children to commit crimes and mobile phones which can make children bad because from there children will imitate bad things. on social media or mass media. Lots of children neglect their schooling and are lazy to study because they have been influenced by the mass media, they spend more time watching television and playing with their cell phones than studying. In today's mass media there are many shows that do not educate children and many things that teach children to do good, therefore children are easily influenced by things that are not good. So that from there the child will imitate the style in the television show to commit a crime. This can keep children away from the people around them and they will lose important life lessons, for example, how to interact with friends and do positive things.

5) Economic factors are factors that cause children to commit crimes. The child's desire to commit a crime arises due to lack of pocket money, poor family economy, so the child will commit the crime in order to meet the needs that the child wants.

3.2. The Concept of Restorative Justice for Children Who Commit Crimes

In resolving child cases, children must be given special protection and treatment. As in Article 17 paragraph (1) of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System. "Investigators, Public Prosecutors, and Judges are obliged to provide special protection for children who are being examined because of criminal acts they have committed in emergency situations." This is considering the nature and psyche of children in certain matters requiring special treatment, as well as special protection, especially in actions that can harm the child's mental and physical development.

To provide special protection for children in the judicial process, it is mandatory to seek Diversion with the Restorative Justice approach which has been regulated in Act No. 11 of 2012 concerning the Juvenile Criminal Justice System which aims to

prevent children from being deprived of liberty.¹⁴

Restorative Justice is a settlement of a crime by involving the perpetrator, victim, family of the perpetrator/victim and other related parties to jointly seek a fair (mediation) solution by emphasizing restoration to its original state and not retaliation. Diversion is a transfer of settlement of child cases from the criminal justice process to processes outside of criminal justice.

The mediation methods that can be carried out in the application of Restorative Justice are:

a. *Victim offender mediation (VOM) is a mediation forum between perpetrators and victims, namely a forum that encourages meetings between perpetrators and victims who are assisted by mediators as coordinators and facilitators in the meeting*

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b. *Family group conferencing (FGC) is a forum that is the same as VOM, but in this form there are differences, namely the involvement of the settlement does not only involve the perpetrator and the direct victim, but also indirect victims, such as the victim's family or close friends and the perpetrator's family and close friends. The reason for the involvement of these parties is because they may be directly or indirectly affected by the criminal acts that have occurred or they have a high concern and interest in the outcome of the deliberations and they can also participate in pursuing the success of the process and its ultimate goal.*¹⁶

c. *Circles are mediation processes that involve a wider range than the two previous forms, namely forums where not only victims, perpetrators, families or mediators but also members of the public who have an interest in the case.*¹⁷

d. *Reparative Board/Youth Panel, namely the mediation process that has the most extensive involvement compared to the three previous forms of mediation by involving perpetrators, victims, the community, mediators as well as judges, prosecutors and defenders jointly formulating appropriate forms of sanctions for perpetrators and compensation for victims or the community.*¹⁸

In the Practice of Investigating Children, Investigation is a series of investigative actions (officials of the Republic of Indonesia Police or certain civil servant officials) in matters and according to the manner regulated by law to seek and collect evidence with that evidence to shed light on the crime that occurred. and to find the suspect. Therefore at least the provisions used are related to regulating this Investigation, namely Act No. 8 of 1981 concerning the Criminal Procedure Code; Act No. 11 of 2012 concerning the Juvenile Criminal Justice System; Act No. 2 of 2002

¹⁴ Evariawati Sinaga, dkk, Pelaksanaan Diversi Dalam Sistem Peradilan Anak Dikaitkan Dengan Undang-Undang No. 11 Tahun 2012, *Jurnal Dialektika Hukum* Vol. 1 No. 1 Tahun 2019, p. 96-122

¹⁵ Marlina, *Peradilan Pidana Anak Di Indonesia. "Pengembangan Konsep Diversi dan Restorative Justice"*, PT. Refika Aditama, Bandung, 2009, p. 181

¹⁶ *Ibid.* P. 188

¹⁷ *Ibid.* P. 192

¹⁸ *Ibid.* P. 194

concerning the Indonesian National Police and Republic of Indonesia Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversion.

4. Conclusion

The concept of Restorative Justice for Children Who Commit Crimes regarding the obligation to seek Diversion with a Restorative Justice approach at every stage in the juvenile criminal justice process contained in Act No. 11 of 2012 concerning the Juvenile Criminal Justice System is a very good way of providing legal protection in the juvenile criminal justice process, providing protection in accordance with Article 17 of Act No. 11 of 2012 and Article 59 of Act No. 23 of 2002 concerning Child Protection. Diversion as a step in diverting the settlement of child cases from the criminal justice process to processes outside of criminal justice by prioritizing the Restorative Justice approach which can be carried out by way of deliberation or mediation which emphasizes efforts to restore the family to its original state.

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