

Effectiveness of Terminating Prosecution of Children in Conference with Restorative Justice Based on Law

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Abstract. *The prosecutor's office is an institution that is under executive power. Meanwhile, when viewed from the perspective of the prosecutor's authority in carrying out prosecutions, it means that the prosecutor's office exercises judicial power. This legal research uses an empirical legal research approach. Empirical juridical research, namely legal research using legal principles and principles in reviewing, viewing and analyzing problems in research, in addition to reviewing the implementation of law in practice. At the Prosecution Level, as has been refined by the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, as an effort to realize the most basic substance in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely the regulation of diversion and restorative justice which aims to avoid and distance children from the justice process so that children as perpetrators of criminal acts are free from stigmatization and it is hoped that children can return to society naturally. Obstacles originating from internal factors include: Prosecutors as law enforcers, there is still a lack of understanding in applying the criteria for terminating prosecution based on restorative justice, time limits for implementing restorative justice, efforts to carry out restorative justice deliberations by law enforcers, in this case the Prosecutor's Office as prosecutor in general, there are still problems with the time limit for carrying out restorative justice deliberations.*

Keywords: Justice; Prosecutor; Restorative; Termination.

1. Introduction

Indonesia is a legal country where one of the laws, namely criminal law, which regulates crimes and violations as well as punishment for them, is included in the

Criminal Code.¹Law is something complex and technical, so we often encounter people who face the law impatiently or cynically. However, the law is one of the most fundamental concerns of civilized humanity everywhere, because it can offer protection against tyranny on the one hand and against anarchy on the other.²

Children are a trust and gift from the Almighty God in whom the honor and dignity of being a complete human being is inherent and are also the heirs and shapers of the nation's future. Every child has dignity that should be held and every child born must receive their rights without the child asking.

Children's rights are part of human rights which are guaranteed and protected by international and national law,³which has been universally regulated, namely in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The difference between the treatment of children's human rights and the rights of adults is regulated in special international conventions. As stated in the Declaration of the Rights of the Child: "...the child, by reasons of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth..." The Vienna Declaration was held in 1993, which was produced by the World Conference on Human Rights (HAM), again emphasizing the principle of "First Call for Children", which emphasizes the importance of national and international efforts to advance children's rights "survival protection, Development and participation."⁴

Legal problems are so complex and form a continuous and unbreakable chain, which ultimately gives birth to a tragic story about the fate of children, which could be caused by various pressures in life, both due to factors within the family closest to the child, the environment and even from outside, so that children are often trapped into doing things that violate the norms or laws that exist in society. Children who receive little or no attention physically, mentally or socially often behave and act anti-socially which is detrimental to themselves, their families and society, so that quite a few children become perpetrators of criminal acts.⁵

¹Danu Anindhito, Ira Alia Maerani, Legal Policy Against Traffic Violations by Children in the East Java Regional Police Area, *Khaira Ummah Journal*, Vol 17 No. 1, 2022, page 46-55

²Kadri Husin, Buddi Rizki Husin, *Criminal Justice System in Indonesia*, Sinar Grafika Publisher, Jakarta, 2012, Page 1

³Yudith Ridzka, Legal Protection for Children in South Sudan Against Human Rights Violations (Ham) Based on International Law, *Proceedings of the 3rd National Seminar Series*, Vol 1 No 1, 2021, page 657-675

⁴Harkristuti Harkrisnowo, *Challenges and Agenda of Children's Rights*, National Law Commission Newsletter, February Edition, Jakarta, 2002, page. 4.

⁵Purba, JFS, & Zarzani, *TR Legal Protection for Child Prisoners in Lubuk Pakam Penitentiary*. *Innovative: Journal Of Social Science Research*, Vol 3 No. 5, 2023, 42–56.

Based on the regulations above, every child in conflict with the law has the right to receive physical, mental, spiritual and social protection. Law enforcement officers and related agencies in carrying out their duties need to pay attention to the Convention on the Rights of the Child and the Child Protection Law, namely the principles of non-discrimination, the best interests of the child, the right to life, and the continued right to development for the child.

Child protection aspects⁶In juvenile justice, it is viewed from a psychological perspective, with the aim of ensuring that children are protected from violence, neglect, abuse, depression, inadequate treatment, anxiety and so on. Children must receive guidance from an early age and children need to have the widest possible opportunities to grow and develop physically, mentally and psychologically.

A child, according to his nature, still has insufficient reasoning power to distinguish between good and bad.⁷Criminal acts committed by children are generally a process of imitating or being influenced by the behavior or seduction of adults. The formal criminal justice system which ultimately places children in convict status certainly has quite large consequences in influencing children's growth and development. The punishment process given to children through the formal criminal justice system by sending children to prison has apparently failed to deter children and become better individuals. Prison often makes children more professional in committing crimes and has a negative impact on children's psychology.

In essence, the Children's Public Prosecutor is appointed based on a Decree of the Attorney General or another officially appointed by the Attorney General who first fulfills the requirements of having experience as a Public Prosecutor for criminal acts committed by adults and having interest, attention, dedication and understanding of children's problems later in life. certain matters and deemed necessary, the task of prosecution can be assigned to the Public Prosecutor who is carried out by an adult.⁸

2. Research Methods

This legal research uses an empirical legal research approach. Empirical juridical research, namely legal research using legal principles and principles in reviewing, viewing and analyzing problems in research, in addition to reviewing the implementation of law in practice.⁹ The empirical research method is a

⁶Agung Wahyuno and Siti Rahayu, *Review of Juvenile Justice in Indonesia*, Sinar Grafika, Jakarta, 1993, page, 10.

⁷Karina Fairuza Gustiani, *Criminal Law and Its Relation to Children's Rights*, *Journal of Social Sciences and Education (JISIP)* Vol. 6 No. 4 November 2022, page 2815-2823

⁸Abintoro Prakoso, *Reform of the Juvenile Criminal Justice System*, Yogyakarta, Laksbang Grafika, 2013, page 234.

⁹Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurimetrics*, Ghalia Indonesia, Jakarta, 1990, page. 33.

combination of doctrinal legal research methods and empirical legal research methods, so what the researcher carried out was a document study accompanied by field studies. The document study in this research is literature using statutory regulations.

3. Results and Discussion

3.1. Effectiveness of Terminating Prosecution of Children in Conflict with the Law Based on Restorative Justice

The Prosecutor's Office of the Republic of Indonesia is a law enforcement agency in Indonesia which has a role in the implementation of the juvenile criminal justice system. The role of the prosecutor is very important considering that one of the prosecutor's duties is to process and enforce the law, but still pay attention to the condition of the child, remembering that children are certainly different from adults.¹⁰As a result, this diversion formula shifts the perspective of our law enforcers from being positivist and rigid to being progressive and compromising, this can be seen from the collaborative efforts between law enforcement agencies (the Police of the Republic of Indonesia, the Attorney General's Office of the Republic of Indonesia, and the Supreme Court of the Republic of Indonesia) which is outlined in the joint memorandum of understanding B-3523/E/EJP/2012 relating to the implementation of restorative justice.

Related to the problem in this research is the role of the public prosecutor in prosecuting children who commit criminal acts. The authority of prosecutors in the criminal field is generally regulated in Article 30 Paragraph 1 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, as most recently amended by Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, namely; Carrying out prosecution; Carry out judge's determinations and court decisions that have obtained permanent legal force; Supervise the implementation of conditional criminal decisions, supervised criminal decisions, and conditional release decisions; Carrying out investigations into certain criminal acts based on law; Completing certain case files and for this reason can carry out additional examinations before being handed over to court, the implementation of which is coordinated with investigators.

A prosecutor is a functional position that is given the authority to carry out prosecutions in an effort to resolve criminal cases, whether the perpetrator in the case is an adult or a child. Regarding the handling of cases where the perpetrator is still a child, the action (prosecution) is different from that of an adult, the appointment of a public prosecutor must not be arbitrary. As intended in Article 41 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile

¹⁰Mufrohim, O., & Herawati, R. Independence of the Prosecutor's Office as a Legal Structure in the Criminal Justice System in Indonesia. *Journal of Indonesian Legal Development*, 2(3), 2020, pages 373-386.

Criminal Justice System, states; Prosecution of children's cases is carried out by the Public Prosecutor appointed based on the Attorney General's Decree or another officially appointed by the Attorney General.

The Public Prosecutor is obliged to seek diversion in handling children's cases, no later than 7 (seven) days after receiving the case file from the investigator, which is carried out no later than 30 (thirty) days and if the diversion process is successful in reaching an agreement, the Public Prosecutor submits the diversion minutes along with the agreement. diversion to the Chairman of the District Court for a determination to be made. However, if the diversion process fails, the Public Prosecutor is obliged to submit a diversion report and submit the case to court by attaching a research report to the public.

Based on the above, the researcher is of the view that; This is in accordance with the response of the Prosecutor's Office of the Republic of Indonesia as a law enforcement agency which, in the process of resolving criminal cases involving children in conflict with the law, responds to the presence of the juvenile justice system law very progressively. With the issuance of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the authority of the Public Prosecutor was expanded by the existence of this regulation, namely; The Public Prosecutor has the right to close the case for legal purposes if there has been a resolution of the case outside the court (afdoening buiten proces). Criminal cases (including child cases) can be closed by law and the prosecution terminated based on Restorative Justice if the following conditions are met; The suspect has committed a crime for the first time; Criminal offenses are only punishable by a fine or punishable by imprisonment for no more than 5 (five) years; and The criminal act is committed with the value of the evidence or the value of the loss incurred as a result of the criminal act not exceeding Rp. 2,500,000.00 (two million five hundred thousand rupiah).

3.2. Obstacles/Constraints and Solutions Faced by Prosecutors in Terminating the Prosecution of Children in Conflict with the Law Based on Restorative Justice

Settlement before going to court which is stopped at the prosecution stage is the termination of the prosecution by the Public Prosecutor (JPU) in accordance with the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (hereinafter abbreviated to Perja No.15/2020), the termination of this prosecution as The efforts of the Prosecutor's Office in the law enforcement process at the Prosecutor's Office are more focused on conditions for creating a balance of protecting interests, both state interests, community interests, and individual interests, including the interests of criminal perpetrators and crime victims, so of course the Prosecutor's Office needs to carry out efforts to terminate prosecutions based on restorative justice first. before filing a lawsuit in court. In

its implementation, it is undeniable that there are obstacles in implementing the suspension of prosecution by the prosecutor's office, the obstacles faced by the prosecutor's office in each region will of course be different.

An obstacle is something that prevents the implementation of a program, which basically arises from internal and external factors.¹¹In the implementation of terminating the prosecution of criminal cases as the authority of the prosecutor's office, the internal factors are in the law enforcers themselves, namely the prosecutor's office. As for external factors, these are factors that originate outside the internal factors.

When facing obstacles that arise in efforts to resolve cases of children in conflict with the law through restorative justice, the public prosecutor must be able to find solutions that must be resolved in order to overcome these obstacles. However, this also comes back to whether the parties want to resolve the case through restorative justice or not.

These obstacles can be overcome by taking a legal approach to society and implementing a pattern of appeals regarding good values and morals in order to eliminate opportunity factors that encourage criminal acts committed by children, thereby creating a conducive atmosphere in the community environment.

The public prosecutor can provide explanations to the litigants and offer separate peace efforts in order to help the process of implementing restorative justice.

Coordination of socialization by the central Indonesian Attorney General's Office between law enforcement officials and other related government officials to increase efficiency in preventing children from committing these crimes can be addressed by the need for central and regional governments.

Socialization to the community, by providing awareness that children are the main responsibility of the family, real education starts from the family first. Involving the role of certain agencies or community figures so that the resolution of criminal cases through restorative justice can be achieved.

4. Conclusion

The Attorney General's Office of the Republic of Indonesia issued Regulation of the Attorney General of the Republic of Indonesia Number: Per-006-/A/JA/04/2015 concerning Guidelines for Implementing Diversion at the Prosecution Level as has been refined by the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, as efforts to realize the most basic substance in Law Number 11 of 2012 concerning the The Juvenile Criminal Justice System is the regulation of diversion and restorative justice which aims to avoid and distance children

¹¹MP Tampubolon, Change Management Change Management: Individual, Organizational Work Team. Bogor: Mitra Wacana Media, 2020, page. 3-5

from the justice process so that children as perpetrators of criminal acts are free from stigmatization and it is hoped that children can return to society in a natural way. Prosecutors as law enforcers who implement Perja No.15/2020, there is still a lack of understanding in implementing the criteria for terminating prosecution based on restorative justice, time limits for implementing restorative justice, efforts to carry out restorative justice deliberations by law enforcers, in this case the Prosecutor's Office as public prosecutor, is still hampered by the time limit for carrying out restorative justice deliberations.

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