

## Legal Analysis of Child Criminal Case Settlement from a Restorative Justice Perspective (Case Study at Cirebon City Police Office)

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**Abstract.** *The most fundamental substance regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is the explicit regulation regarding Restorative Justice and Diversion. In handling children in conflict with the law, the government has not prepared a special court and a special prison for children in the form of a rehabilitation center. Juvenile courts here should be held with the basic principle not to punish children, but to provide the best interests of children. The purpose of this study is to analyze and describe the settlement of juvenile criminal cases from a restorative justice perspective at the Cirebon City Police Resort. To analyze and describe the practice of resolving juvenile criminal cases from a restorative justice perspective by investigators at the Cirebon City Police Resort. The method used by the researcher is empirical juridical and the specifications in this study are descriptive analytical. The sources and types of data in this study are primary data obtained through interviews and secondary data obtained from literature studies. The data are analyzed qualitatively using the theory of law enforcement and the theory of justice. Based on the results of the study, the settlement of child criminal cases in the perspective of restorative justice at the Cirebon City Police Resort is a mediation process in accordance with the habit of deliberation. The application of the principle of restorative justice at the Cirebon City Police Resort carried out by the police is carried out through activities such as Mediation of victims with perpetrators/offenders; family group deliberations, which are restorative for both victims and perpetrators where involvement in the settlement process is the victim and perpetrator as well as a third party (the police) who act as mediators and facilitators to bridge both parties to reach an agreement and the goal to be achieved through the deliberation process is to restore all losses and injuries that have been caused by the child's delinquency incident. The practice of resolving child criminal cases in the perspective of restorative justice by Investigators at*

*the Cirebon City Police Resort can be done through the Litigation process: Settlement of cases through the trial process. Non-litigation: Settlement of cases outside the criminal justice process, such as mediation or restorative justice.*

**Keywords:** *Children; Completion; Criminal; Restorative.*

## 1. Introduction

Children are creatures created by God Almighty and social creatures. Since in the womb, children have the right to life and independence and receive good protection from parents, family, community, nation and state.<sup>1</sup> Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination.<sup>2</sup>

As a manifestation of the commitment of the Republic 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 children's rights, the Government of the Republic of Indonesia has ratified the Convention on the Rights of the Child with Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child.

Children are the nation's assets and as part of the young generation, children play a very strategic role as the successors of a nation. In the context of Indonesia, children are the successors of the nation's struggle ideals. This strategic role has been recognized by the international community to give birth to a convention which essentially emphasizes the position of children as human beings who must be protected and receive protection for the rights they have

Furthermore, children as the hope of parents, the hope of the nation and state who will continue the baton of development and have a strategic role, have special characteristics or traits that will guarantee the continuity and existence of the nation and state in the future. Therefore, every child must receive guidance from an early age, children need to get the widest possible opportunity to be able to grow and develop optimally, both physically, mentally and socially. Moreover, childhood is a period of sowing seeds, erecting stakes, making the foundation of life which can be called the formation of character, personality and character of a person so that they will later have strength and ability and stand firm in living life.

Seeing the urgency of the child's position, it is the obligation of every society to provide protection in order to serve the best interests of the child. Basically, children cannot protect themselves from various actions that cause physical or psychological harm. So children need help from various parties to protect themselves, considering the situation and conditions, especially in the juvenile

justice process. Preamble to Law Number 17 of 2016, second amendment Law Number 23 of 2002 concerning Child Protection (UU PA) states that children need protection from misapplication of laws and regulations that apply to them.

However, the process of resolving these cases apparently does not only use the applicable positive legal regulations, but also the provisions of Diversion because the perpetrators are minors. This has provided space for the implementation of diversion widely. Changes in general justice towards justice that prioritizes child protection and diversion at this time. This illustrates the change in criminal justice policy aimed at protecting children who commit crimes. With the application of the concept of diversion, the existing formal justice system has prioritized efforts to provide protection for children from imprisonment. In addition, it can be seen that child protection with diversion policies can be carried out at all levels of justice starting from the community before the crime occurs by taking preventive measures. After that, if a child commits a violation, it does not need to be processed by the police.

Seeing the bad impact of resolving children in conflict with the law experienced by children so far, that Diversion is the best solution to resolving cases of children in conflict with the law, this is the background to writing this thesis. The author is interested in presenting a writing and research that discusses the bad impact of resolving problems of children in conflict with the law and the use of discretionary authority by law enforcers in diverting children's cases.

## **2. Research Methods**

This research method uses an empirical legal approach method. The legal approach (law is seen as a norm or *das sollen*), because in discussing the problems of this research using legal materials (both primary legal materials and secondary legal materials). The empirical approach (law as a social, cultural reality or *das sein*), because in this study used primary data obtained from the field. So, the empirical legal approach in this study means that in analyzing the problem is done by combining legal materials which are secondary data with primary data obtained in the field. The research specifications used in this thesis are analytical descriptive, namely describing the applicable legal regulations in relation to legal theories. This research includes primary and secondary data research, which is related to legal analysis.

## **3. Results and Discussion**

### **3.1. Settlement of Criminal Cases of Children from the Perspective of Restorative Justice at the Cirebon City Police Resort**

The term punishment derived from the word *straf* and the term "punished" derived from the word *wordt gestraft*, are conventional terms. Moeljatno disagrees with these terms and uses unconventional terms, namely "criminal" to

replace the word *wordt gestraft*. If *straf* is interpreted as “punishment” then *strafrecht* should be interpreted as punishments. Furthermore, Moeljatno said that “punished” means “treated with punishment” both in criminal law and civil law. Punishment is the result or consequence of the application of the law, which has a broader meaning than criminal, because it also includes the judge's decision in the field of civil law.

The implementation of the presidential system in Indonesia which grew in the civil law system also has the influence of common law. Proven by the adoption of parliamentary principles. There are efforts to purify the presidential system, but it is necessary to improve especially in the political infrastructure and the arrangement of several laws (UU) in the political field. Meanwhile, the presidential system of government in the United States has been integrated into its constitutional practice, because the United States is the birthplace of presidential system and is an ideal example because it meets almost all the criteria in the presidential system of government. There are several advantages and disadvantages in each presidential system of government between Indonesia and the United States. This is due to several influences that support the effectiveness of the implementation of the system, including the underlying legal system, party system, political system and the development of democracy that colors the implementation of the constitutional system.

The codification era, then all laws have been formed in laws (written laws) and each country makes national laws with national languages and laws already reflect the aspirations of the culture and needs of the people of the country concerned. At this time, studying the laws of a country that have been codified for legal experts of other countries, is studying foreign law. In this era, comparative law is studied as a special branch of legal science.

The juvenile criminal justice system contains elements of the criminal justice system and elements of children. The word "child" in the words "juvenile criminal justice system" must be included, because it is to distinguish it from the adult criminal justice system, so that the juvenile criminal justice system is a criminal justice system for children. Children in the juvenile criminal justice system are children who in conflict with the law. The juvenile criminal justice system is a translation of the term The juvenile system, which is a term used to define a number of institutions that are part of the court, including prosecutors, public prosecutors, legal advisors, supervisory institutions, child detention centers, and child development facilities.

The function of the Juvenile Court is generally no different from other courts, namely receiving, examining, and trying and resolving cases submitted to it, but for the Juvenile Court, cases handled specifically concern child cases. Providing special treatment in order to guarantee the physical and mental growth of children as the next generation whose future must be considered, where in this

case to provide justice, the judge takes various actions by first examining the truth of the events submitted to him. The judge in trying tries to re-enforce the law that has been violated, therefore it is usually said that the judge or court is a law enforcer.

The court in adjudicating must be based on applicable law including written law and unwritten law. Based on this, in its implementation, this function is carried out by special officials of the Juvenile Court. In other words, this function will not be achieved without the role holders, namely judicial officials. Based on this, the aim of Juvenile Justice is not merely to prioritize punishment as the main element, but rather protection for the future of children is the target to be achieved by Juvenile Justice.

The reason for detention must be stated explicitly in the detention order. The detention of children must be separate from the detention of adults and during the child's detention, the child's physical, spiritual and social needs must be met.

Furthermore, in the SPPA Law, detention of children is regulated in Articles 32, 33, 34, 35 which read as follows:

#### Article 32

(1) Detention of a child may not be carried out if the child receives a guarantee from the parent/guardian and/or institution that the child will not run away, will not remove or damage evidence, and/or will not repeat the crime.

(2) Detention of a child may only be carried out under the following conditions:  
a. The child is 14 (fourteen) years of age or older; and b. Suspected of committing a crime with a sentence of 7 (seven) years or more.

(3) The conditions of detention as referred to in paragraph (2) must be stated expressly in the detention order.

(4) While the child is detained, the child's physical, spiritual and social needs must continue to be met.

(5) To protect children's safety, children can be placed in Social Welfare Institutions (LPKS).

#### Article 33

(1) Detention as referred to in Article 32 for the purposes of investigation shall be carried out for a maximum of 7 (seven) days.

(2) The detention period as referred to in paragraph (1) may be extended by the public prosecutor for a maximum of 8 (eight) days at the request of the investigator.

(3) If the time period as referred to in paragraph (2) has expired, the child must be removed by law.

(4) Detention of children is carried out in prisons

(5) In the event that there is no prison, detention can be carried out at the local Social Welfare Institution.

#### Article 34

(1) In cases where detention is carried out for the purposes of prosecution, the public prosecutor may carry out detention for a maximum of 5 (five) days. (2) The period of detention as referred to in paragraph

(1) at the request of the public prosecutor, it can be extended by the district court judge for a maximum of 5 (five) days.

(2) If the time period as referred to in paragraph (2) has expired, the child must be removed by law.

#### Article 35

(1) In cases where detention is carried out for the purposes of examination in court, the judge may carry out detention for a maximum of 10 (ten) days.

(2) The time period as referred to in paragraph (1) may be extended by the head of the district court for a maximum of 15 (fifteen) days at the request of the judge.

(3) If the time period as referred to in paragraph (2) has expired and the judge has not issued a decision, the child must be removed.

1. In the Prosecution Process According to Article 1 point 7 of the Criminal Procedure Code,

"Prosecution is an action by the public prosecutor to refer a criminal case to the competent district court in the case and according to the method regulated in this law with a request that it be examined and decided by a judge in court."

The authority to prosecute children suspected of committing a crime lies with the Public Prosecutor, who is appointed based on the Decree of the Attorney General. If the Public Prosecutor is of the opinion that from the results of the investigation conducted by the police, it turns out that a crime was committed by children, then the prosecutor as the public prosecutor must immediately make an indictment in accordance with the Criminal Code (Law No. 8 1981 concerning the Criminal Procedure Code), then referred the case to the Court.

2. Trial Process

Children who are in conflict with the law when faced in the trial process, then in this case the protection of children has been carried out when the determination of the judge handling the child's case is carried out. The child judge is appointed based on the Decree of the Chief Justice of the Supreme Court upon the recommendation of the Chief Justice of the relevant District Court through the Chief Justice of the High Court in accordance with Article 43 of the SPPA Law as follows:

(1) Examination in court of cases involving children is carried out by a judge appointed based on a decision by the Chief Justice of the Supreme Court or another official appointed by the Chief Justice of the Supreme Court upon the recommendation of the Chief Justice of the relevant district court through the Chief Justice of the District Court.

The concept of the restorative justice approach is an approach that places more emphasis on creating conditions for justice and balance for perpetrators of criminal acts and their victims. The mechanism of criminal procedure and justice that focuses on punishment is changed to a process of dialogue and mediation to create an agreement on a more just and balanced settlement of criminal cases for victims and perpetrators. Restoration includes restoring the relationship between the victim and the perpetrator. This restoration of the relationship can be based on a mutual agreement between the victim and the perpetrator.<sup>59</sup> The victim can report the losses they have suffered and the perpetrator is given the opportunity to make amends, through compensation mechanisms, peace, social work or other agreements. Efforts to resolve problems outside the court carried out by the perpetrator of the crime (his/her family) and the victim of the crime (his/her family) are expected to become the basis for consideration in the process of examining the perpetrator of the crime in court in imposing criminal sanctions by the judge/panel of judges. Justice is a consideration in the criminal law implementation system and is included in the Regulations.

The new Criminal Code (KUHP), especially for criminal offenses of complaints (Klacht delict) to focus on the conditions for creating justice and balance in legal treatment for perpetrators of criminal acts and victims of criminal acts can be achieved properly, without always having to use criminal sanctions (prison sentences) in the final resolution. Because the deterrent effect as the ultimate goal of punishment (prison sentences) for perpetrators of criminal acts is now no longer achieving its target as expected. There needs to be a breakthrough in the implementation of the criminal system in Indonesia, not only through prison sentences alone but also through the application of Restorative justice. In the case of criminal intercourse or molestation at the Cirebon City Police Resort, the following facts were found:

1. Summons:

In this case, no summons was issued.

2. Arrest:

In this case no arrests were made.

3. Detention:

In this case no detention was carried out.

4. Foreclosure:

Confiscation Order Number: xxx, dated June 19, 2023. Confiscated from Witness Ms. SUPRIYATIN binti AMAN:

- a. 1 (one) pair of black shorts (shot).
- b. 1 (one) white miniset with purple stripes.
- c. 1 (one) pair of pink panties.
- d. 1 (one) cream colored headscarf.
- e. 1 (one) piece of long-sleeved pink and white shirt.
- f. 1 (one) pair of green long culottes.

5. Checking the Condition of the Victim.:

- a. Visa Request Letter Number: xxx, dated February 10, 2023.
- b. Results of Visum Et Repertum Number: xxx, dated February 25, 2023. with Conclusion From the results of the examination of the external genitalia, no abnormalities were seen. Examination of the internal genitalia, the hymen showed old tears in the direction of the clockwise direction at one o'clock, three o'clock, five o'clock, seven o'clock, nine o'clock, and eleven o'clock, the tear reached the base, no signs of inflammation were seen. The impression of the hymen was not intact and there were no signs of new trauma.

Based on the analytical discussion of the case above, there are indications of the criminal act of sexual intercourse and/or molestation of underage girls, as referred to in Article 81 paragraph (2) and/or Article 82 paragraph (1) of Law of the Republic of Indonesia No. 17 of 2016 concerning the stipulation of government regulations in lieu of Law Number 1 of 2016 concerning the second amendment to Law of the Republic of Indonesia No. 23 of 2002, concerning Child Protection, becoming Law in conjunction with Article 76D and/or Article 76E of Law of the Republic of Indonesia.

Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

concerning Child Protection, the formulation of the articles of which is as follows: Article 76D of Law of the Republic of Indonesia No. 35 of 2014 concerning Child Protection Every person is prohibited from committing violence or threatening violence to force a child to have sexual intercourse with him or another person.

Article 76E of Law of the Republic of Indonesia No. 35 of 2014 concerning Child Protection

Everyone is prohibited from using violence or threats of violence, forcing, using trickery, telling a series of lies, or persuading a child to do or allow indecent acts to be done.

Article 81 of Law No. 17 of 2016 concerning Child Protection.

(1) Any person who violates the provisions as referred to in Article 76D shall be subject to a minimum prison sentence of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00,- (five billion rupiah).

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(2) The criminal provisions as referred to in paragraph (1) also apply to anyone who intentionally commits deception, a series of lies, or persuades a child to have sexual intercourse with him or another person.

Article 82 of Law No. 17 of 2016 concerning Child Protection.

Any person who violates the provisions as referred to in Article 76E shall be punished with imprisonment of at least 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00,- (five billion rupiah).

#### Case Analysis

##### a. Element of whoever

Facts that can be revealed on behalf of the CHILD.

MR, aged 16 years and 7 months, K's biological mother, all witnesses confirmed this statement.

##### b. Regarding the child, the victim is

SR, Age 16 Years and 3 Months, biological mother's name is S, confirmed by Family Card and Birth Certificate.

##### c. Intentionally committing deception, a series of lies, or persuading a Child to have sexual intercourse with him or another person:

The problem of criminal acts committed by children in the current era is indeed common in all regions, including those in the jurisdiction of the Cirebon City Police. However, the problem of criminal acts committed by children is a shared

responsibility so that it can reduce the crime that occurs.

The restorative justice approach in resolving criminal acts committed by children at the Cirebon City Police Resort, the legal settlement process is carried out by bringing the victim and the perpetrator (suspect) together to sit in one meeting to discuss the restorative justice model process together. In this case, the role of the police is as a mediator, facilitator, or supervisor. The police show the articles and provisions of the juvenile justice legislation, then the parties are invited to find the best way out so that there is a process of improvement, restoration of relations, conciliation and reconciliation between the victim and the perpetrator, the victim's family and the perpetrator's family, with the community accepting the perpetrator again without any stigmatization of the perpetrator.

Investigators from the Cirebon City Police have conducted an investigation process into cases where the perpetrators are minors, in accordance with Law Number 11 of 2012 concerning the juvenile criminal justice system, namely by conducting restorative justice efforts through diversion for children involved in criminal cases.

### **3.2. Practice of Settlement of Child Criminal Cases from a Restorative Justice Perspective by Investigators at the Cirebon City Police Resort.**

The implementation of law in everyday life of society has a very important meaning because what is the purpose of law lies in the implementation of the law. Order and peace can only be realized in reality if the law is implemented. Consequently, the law is made to be implemented, otherwise the legal regulations are only a series of words that have no meaning in the life of society.

One of the functions of law is as a means of social integration, which is in the form of resolving conflicts of interest in social relations in community life. In relation to this, if law is an integral part of humans, it means that the legal system must refer to respect and protection for the dignity of humans..<sup>65</sup> The existence of law as social integration is realized by a court institution that functions to integrate and resolve the conflict, so that social life in society can return to being comfortable and peaceful. The essence and certainty of law in determining the existence of a government initiative is to ensure that in the action there is a principle of legal legality.

Criminal acts must consist of external elements (facts) by the act of behavior and the consequences caused by it. These two things are behavior and consequences..<sup>67</sup>Steps to anticipate criminal acts from occurring in society, the government has an obligation to prohibit criminal acts in the form of a legal order that will later be used as a norm that binds and controls the entire community. Legal rules prohibit every individual in a community group from committing criminal acts. Legal rules can be realized in the form of laws and regulations or other rules that have become general principles in a legal system.

Another problematic area is where the victim or reporter wants the goods or losses suffered by the offender to be returned or reported to have occurred, making the victim or reporter consider the case closed. This is different from the process or stages in an investigation where the police do not remove compensation for the crime. Therefore, the application *Restorative justice* In the investigation process, it is very necessary to accelerate the resolution of problems/disputes and the most important thing is to achieve justice for the plaintiff/disputing party.

The development process can lead to progress in the life of society when order and security are guaranteed, but development can also occur if the social conditions of society have negative social impacts, especially if the law is not appropriate, which of course can disturb society is criminal law. The failure of the law will have a very negative impact on public order, one of which is criminal law. Criminal law not only regulates but can also provide sanctions, as is the case with the crime of indecency.

The crime of indecent assault is a crime that is contrary to and violates the decency and morality of a person, all of which are in the realm of sexual lust, for example a man touching a woman's genitals. The crime of indecent assault is regulated in the Criminal Code (KUHP) in Chapter XIV Book II, namely starting from Articles 289-296 of the Criminal Code, which are then categorized as crimes against morality.

The Criminal Code states that indecent acts are contained in Article 289 of the Criminal Code, which states that:

"Anyone who by force or by threat of force forces or allows someone to do something to him shall be punished for committing an act violating decency by imprisonment for a maximum of nine years."

In addition to the provisions stipulated in the Criminal Code, it is also stipulated in Article 76E in conjunction with Article 82 of Law Number 35 of 2014 concerning Child Protection. Article 76E of the Child Protection Law reads, "Everyone is prohibited from committing violence or threats of violence, forcing, committing trickery, committing a series of lies, or persuading children to commit or allow obscene acts to be committed." The crime of child molestation as stipulated in Article 76E in conjunction with Article 82 of the Child Protection Law is categorized as an ordinary crime, not a complaint crime.

In criminal law practice, efforts to resolve criminal cases such as sexual abuse are often resolved through customary law mechanisms or restorative justice efforts. The concept of restorative justice has basically emerged more than twenty years ago as an alternative to resolving juvenile criminal cases. The United Nations (UN) Working Group on Juvenile Justice defines restorative justice as a process of all parties related to a particular crime sitting together to solve problems and

think about how to overcome the consequences in the future. This process is basically carried out through discretion (policy) and diversion, namely the transfer of the criminal court process outside the formal process to be resolved through deliberation.

Settlement through deliberation is actually not new to Indonesia, even customary law in Indonesia does not distinguish between the settlement of criminal and civil cases, all cases can be resolved through deliberation with the aim of achieving balance or restoring the situation. Settlement of criminal cases with a restorative justice approach offers a different solution and approach in dealing with a crime.

*Restorative justice* requires cooperative efforts from the parties concerned and the government in creating conditions where perpetrators and victims can resolve their conflicts with justice. Restorative justice also focuses on human rights and the need to recognize the impact of social injustice and simple mechanisms to restore them. Restorative justice also seeks to restore the victim's security, personal respect, dignity, and more importantly a sense of control. The primary function of criminal law is to combat crime, while the secondary function of criminal law is to ensure that the government in combating crime carries out its duties and obligations in accordance with criminal regulations.

Currently, the rules and policies in the application of the concept of restorative justice have been issued by the criminal justice subsystem in Indonesia, both in the Police at the investigation stage, the Prosecutor's Office at the prosecution stage and in the Supreme Court at the trial level in the form of Regulations or Decisions, however, the rules and policies issued by the criminal justice subsystem have differences and dissimilarities in their application which will be described as follows:

In the Police through the Circular Letter of the Chief of Police Number: SE/8/VII/2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases. This circular letter of the Chief of Police concerning restorative justice is then used as the legal basis and guideline for Police Investigators and Investigators who carry out investigations/investigations, including as a guarantee of legal protection and supervision of control, in the application of the concept of restorative justice in the investigation and investigation of criminal acts in order to realize the public interest and sense of justice in society, so that it can realize uniformity in understanding and implementation of restorative justice in the Police Environment.<sup>73</sup>In addition, at the investigation level, the legal provisions for restorative justice are stated in the Regulation of the Chief of the Republic of Indonesia National Police Number 6 of 2019 concerning Criminal Investigation, which in Article 12 regulates:

settlement of criminal cases with a restorative justice approach. In addition referring to the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice.

Guidelines for handling case resolution using a case resolution approach *restorative justice* in the Police are as follows:

1. Fulfilled material requirements, namely:
  - a. Does not cause public unrest and there is no public rejection;
  - b. Does not result in social conflict;
  - c. There is a statement from all parties involved that they do not object and waive their right to sue before the law;
  - d. Limiting principle:
    - 1) For the perpetrator: The perpetrator's crime is relatively not serious, namely a mistake (*schuld*) or *mensrea* in the form of intent (*dolus* or *opzet*) especially intent as an intention or goal (*opzet als oogmerk*); and the perpetrator is not a recidivist;
    - 2) In criminal acts in the process: Investigation; and Investigation before the SPDP is sent to the Public Prosecutor.
2. Fulfilled formal requirements, namely:
  - a. Letter of request for peace from both parties (complainant and complainant);
  - b. Letter Statement Peace (deed *dading*) And settlement disputes between the parties to the case (the complainant and/or family) the reporter, the reported party and/or the reported party's family, and representatives of community leaders) are known to the investigator;
  - c. Minutes of additional examination of the parties to the case after the case has been settled through restorative justice;
  - d. Recommendation of a special case title that approves restorative justice settlement;
  - e. The perpetrator does not object to responsibility, compensation, or does it voluntarily.;
  - f. All criminal acts can be subject to restorative justice for general crimes that do not result in human casualties.

The resolution of a criminal case in an effort of restorative justice, in line with the

legal objectives of the implementation of the criminal justice system put forward by Burt Galaway and Joe Hudson, namely The aim of the criminal justice process should be to create peace in communities by reconciling the parties and repairing the injuries caused by the dispute, or the aim of the criminal justice process should be to create peace in communities, by reconciling all parties and replacing all losses caused by the dispute..<sup>74</sup>In cases of criminal acts committed by children, the restorative justice system aims at least to repair/restore (to restore) criminal acts committed by children with actions that are beneficial for the child, the victim and their environment which involve them directly (reintegration and rehabilitation) in solving the problem, and is different from the way adults are handled, which will then lead to the goal of the criminal act itself.



The following is the process for resolving criminal cases against children if diversion efforts are unsuccessful, presented in the following image:

According to PERMA 4 of 2014, Diversion Deliberation is a deliberation between parties involving Children and parents/guardians, victims and/or their parents/guardians, Community Guidance, Professional Social Workers, representatives and other parties involved to reach a diversion agreement through a restorative justice approach. While the Facilitator is a judge appointed by the Chief Justice to

handle the child's case in question. Diversion is a diversion of the process in a long and very rigid child case resolution system. Mediation or dialogue or deliberation as an inseparable part of diversion to achieve restorative justice.

Punishment for perpetrators of Child Crimes does not then achieve justice for

the victim, considering that on the other hand it still leaves its own problems that are not resolved even though the perpetrator has been punished. Seeing the principles of child protection, especially the principle of prioritizing the best interests of the child, it is necessary to have a process of resolving child cases outside the criminal mechanism or commonly called diversion. The institution of punishment is not a way to resolve children's problems because it is precisely in it that there is a risk of violations of children's rights.

Therefore, an event and procedure are needed in the system that can accommodate the resolution of cases, one of which is by using a restorative justice approach, through a legal reform that does not merely change the law but also modifies the existing criminal justice system, so that all the objectives desired by the law are achieved. One form of the restorative justice mechanism is dialogue which is better known among Indonesian people as "deliberation for consensus". So that diversion, especially through the concept of restorative justice becomes a very important consideration in resolving criminal cases committed by children.

If the diversion agreement is not fully implemented by the parties based on the report from the Community Guidance of the Correctional Center, then the Judge will continue the examination of the case in accordance with the Criminal Procedure Code for Juvenile Justice. The Judge in making his decision must consider the partial implementation of the diversion agreement.

In PERMA 4 of 2014 it is explained that Diversion is applied to children who are 12 (twelve) years old but not yet 18 (eighteen) years old or who are 12 (twelve) years old even though they have been married but not yet 18 (eighteen) years old, who are suspected of committing a crime (article 2). This PERMA also regulates the stages of diversion deliberation, where the facilitator appointed by the Chief Justice is required to provide an opportunity to:

1. Child to be heard regarding the charges
2. Parents/Guardians to convey matters relating to the child's actions and the form of resolution expected
3. Victims/Children of Victims/Parents/Guardians to provide responses and the form of resolution expected.

If deemed necessary, the diversion facilitator can call community representatives or other parties to provide information to support the resolution and/or can hold separate meetings. (Caucus). A caucus is a separate meeting between the Diversion Facilitator and one of the parties known to the other party.

The dispute resolution mechanism based on restorative justice is based on consensus where the parties are asked to compromise to reach an agreement.

Each individual is asked to give in and put the interests of society above personal interests in order to maintain mutual harmony. The concept of deliberation has proven to be more effective in resolving disputes in society amidst the failure of the role of the state and the courts in providing justice.<sup>76</sup>As conveyed by Aipda Dedi Dahrudin EP, SH as Assistant Investigator of Cirebon City Police:

"In the application of the restorative justice model in handling cases of children, the police make careful considerations to detain a child who, according to the initial investigation stage, is a suspect in a criminal act, so in cases of children with the application of restorative justice, the role of the police is very dominant, the role of the police as a mediator, facilitator, and supervisor. The police show articles or arguments of the provisions of laws and regulations.

Based on the Regulation of the Indonesian National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice concerning Handling of Criminal Acts Based on Restorative Justice, it is a step by the Police in realizing the resolution of criminal acts by Prioritizing Restorative Justice which emphasizes restoration to the original state and a balance of protection and the interests of victims and perpetrators of criminal acts that is not oriented towards punishment is a legal need in society.

The practice of resolving child criminal cases from a restorative justice perspective by Investigators at the Cirebon City Police can be done through the Litigation process: Settlement of cases through the trial process. Non-litigation: Settlement of cases outside the criminal justice process, such as mediation or restorative justice. In the investigation process, investigators need to pay attention to several things, such as:

- 1) Ask for advice from a community advisor
- 2) Provide sufficient space to alleviate the suffering of the victim.
- 3) Conduct psychological therapy if the victim experiences trauma
- 4) Providing protection for victims
- 5) Ensuring children's physical, spiritual and social needs are met
- 6) Carrying out examinations of children's cases in closed court

According to the author, the practice of resolving child criminal cases in the perspective of restorative justice by Investigators at the Cirebon City Police Resort was analyzed using the theory of justice that justice is a balance measured by numerical equality and proportional equality. Numerical equality: Every human being is equalized in one unit, for example everyone is equal before the law. Proportional equality: Everyone gets what is their right, according to their ability and his achievements. In the practice of resolving child criminal cases,

Aristotle's theory of justice can be interpreted as giving something to each person according to what is his right.

#### 4. Conclusion

Settlement of Criminal Cases of Children in the Perspective of Restorative Justice in the Cirebon City Police Resort is a mediation process in accordance with the habit of deliberation. The application of the principle of restorative justice in the Cirebon City Police Resort carried out by the police is carried out through activities such as Mediation of victims with perpetrators/offenders; family group deliberations, which are restorative for both victims and perpetrators where involvement in the settlement process is the victim and perpetrator as well as a third party (the police) who act as mediators and facilitators to bridge both parties to reach an agreement and the goal to be achieved through the deliberation process is to restore all losses and injuries that have been caused by the child's delinquency incident.

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