

Implementation of Restorative Justice Towards Children in Conflict with The Law in Traffic Cases (Case Study of Ketapang District Court Decision Number 6/Pid.Sus-Anak/2024/Pn Ktp)

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Abstract. *This study is motivated by the growing application of restorative justice within the juvenile criminal justice system, which emphasizes recovery, the protection of the best interests of the child, and proportional case resolution. In practice, the implementation of this principle often encounters various challenges, particularly in traffic crime cases involving children as offenders. Therefore, this study aims to analyze the implementation of restorative justice for children in conflict with the law in traffic crime cases through a case study of the Decision of the Ketapang District Court Number 6/Pid.Sus-Anak/2024/PN Ktp. This research is a normative legal study employing both statutory and case approaches. The legal materials used consist of statutory regulations, court decisions, as well as relevant legal doctrines and theories. The analysis was conducted qualitatively through systematic interpretation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 22 of 2009 concerning Road Traffic and Transportation, by applying the theories of law enforcement, justice, and restorative justice as analytical frameworks in examining the trials of children in conflict with the law. This study also employs the perspective of maqāṣid al-sharī'ah to examine the orientation of child protection and social welfare within the juvenile criminal justice system. The results of the study indicate that all elements of Article 310 paragraph (4) of the Road Traffic and Transportation Law were proven legally and convincingly. However, the panel of judges did not impose an effective imprisonment sentence, but instead imposed imprisonment with a probationary period accompanied by community service. This sentencing choice reflects the internalization of restorative justice values at the adjudication stage, even though the formal diversion mechanism was not successfully implemented. The judicial considerations were not solely oriented toward fulfilling the elements of the offense but also took into account sociological and philosophical aspects, including*

the negligent nature of the act (culpa), the child's remorse, compensation provided to the victim's family, as well as the principle of the best interests of the child and the principle of ultimum remedium, which reflects the orientation toward substantive justice and social restoration within the juvenile criminal justice system. From the perspective of maqāṣid al-sharī'ah, such sentencing construction aligns with the objectives of protecting life (ḥifẓ al-nafs) and safeguarding future generations (ḥifẓ al-nasl), thus understanding justice not merely as retribution but as an effort toward restoration and social welfare.

Keywords: *Children In Conflict With The Law; Restorative Justice; Traffic Crime.*

1. Introduction

Law exists in the world to provide certainty and as a way of life for humans to live with each other and with the environment in which they coexist. From prehistoric times to the modern era, humans have unconsciously created these laws in accordance with the development of civilization and human knowledge. Various discoveries at the beginning of history, with humans already able to put things in writing, enabled humans to study past civilizations.

Indonesia, as a nation governed by law, has several laws, both written and unwritten, that are embedded in society. These laws control and drive the lifeblood of citizens within society, nation, and state. One of the primary characteristics of a nation governed by law lies in its tendency to assess its citizens' actions based on legal regulations. This means that a nation governed by the rule of law consistently regulates all actions and behavior of its citizens based on applicable laws.

The implementation of this law itself is carried out to create, maintain, and defend peace in social life in accordance with what is mandated in the nation's ideology in accordance with the ideals of the founders of the Indonesian nation as Pancasila and carry out the mandate of the 1945 Constitution that every citizen has the right to feel safe and free from all forms of crime, so in this case the role of the state is very important to create laws that can protect all citizens or what we usually know as public law where in public law, such as criminal law, what is protected is the interests of the general public so that in this case for general criminal offenses do not require a complaint, but can be handled by the police without the need for victims to make a report, for example cases of theft or rape.

Criminal law serves as a tool or means for resolving problems in society. It can provide justice and appropriate solutions for that society. Criminal law is a set of

regulations that govern actions, whether they require or prohibit actions, as stipulated in the law, with criminal sanctions for violators.¹ Meanwhile, the criminal law applicable in Indonesia can be divided into two types, criminal law known in the Criminal Code (KUHP) and Special Criminal Law which is regulated outside the KUHP.²

Criminal law not only provides an understanding of actions prohibited by a legal rule, which prohibition is accompanied by a threat (sanction) in the form of a certain penalty for anyone who violates the prohibition, but also includes matters related to the imposition of penalties and how the penalty can be implemented. The prohibition is directed at actions, a condition or incident caused by a person's behavior or actions. The threat of criminal penalties or sanctions is directed at the perpetrator who commits a criminal act, usually referred to as "whoever", namely the perpetrator of the criminal act as a legal subject, namely the supporter of rights and obligations in the legal field.³ So in this case, various types of criminal acts are one of the parts studied in criminal law from a material perspective, namely regarding the criminal act itself.

In general, criminal law is the most important part of sentencing, as it is the culmination of the entire process of holding someone guilty of committing a crime accountable. Criminal law without punishment means declaring someone guilty without any definite consequences for that offense. Thus, the concept of guilt has a significant influence on the imposition of punishment and the process of its implementation.⁴ While in this case, a crime is any human behavior or deed that is formulated in the law, is against the law, is punishable and is done wrong. As the principle that a person who commits a criminal act will be held responsible for the act with a criminal penalty if he has made a mistake, a person has made a mistake if at the time of committing the act, seen from the perspective of society, it shows a normative view regarding the mistake that the person has made.

In its current development, criminal acts are not only committed by adults, but criminal acts are now starting to be committed by children in the sense that as stipulated in Article 1 number 1 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, a person who is not yet 18 (eighteen) years old, including in the womb and in this element, the context of the child in this case is the child as a victim and in this

¹Rahman Syamsuddin, 2014, *Weaving Law in Indonesia*, Mitra Wacana Media, Jakarta, p. 192

²Rodliyah, 2017, *Special Criminal Law: Elements and Criminal Sanctions*, 1st Edition, PT. Raja Grafindo Persada, Jakarta, p. 1

³Chairul Huda, 2006, *From No Crime Without Fault Towards No Criminal Responsibility Without Fault*, Kencana Prenada Media, Jakarta, p. 127

⁴Adami Chazawi, 2014, *Experiments and Inclusion of Criminal Law Lessons*, Rajawali Press, Jakarta, p. 99

case the child as the perpetrator of the crime.

Various legal theories that have emerged as well as the very significant development of legal science in this case have given encouragement to law enforcement officers to fill the gaps that have arisen, however, this itself cannot be separated from the sensitivity of the community because sometimes the community only looks at the final decision without looking at the substance of the decision and the considerations formulated by the Judge or Panel of Judges in deciding a case.

Some people still believe that criminal acts must be punished with corporal punishment, either imprisonment or prison, or what is known as retributive justice, or justice based on the perpetrator's fault. However, the question remains: can retributive justice erase the wounds or feelings of turmoil caused by criminal acts? This remains a matter of debate, as restorative justice, which is victim-centered justice and thus requires the victim's role in resolving the crime, is now recognized.

Restorative justice itself stands in stark contrast to the retributive justice approach we currently use. According to retributive justice, crime is defined as a violation against the state, while restorative justice defines crime as a violation by one person against another. Furthermore, retributive justice holds that the perpetrator's responsibility is defined within the framework of punishment, while restorative justice defines the perpetrator's responsibility as the impact of understanding the act and helping to decide what is best.⁵

Initially, criminal law adopted the idea of distributive justice to the idea of Restorative justice, which Musakkir said was a shift in perspective. This shift in perspective is a shift in the basic elements of the perspective of "Retributive Justice to Restorative Justice", namely: From an orientation of error to an orientation of consequences; From moral responsibility to social responsibility; From legal fiction to social reality; From repression to regulation; From rejection/prevention to social prevention; From intimidation (separation) to mediation (reconciliation); and From retribution to restitution.⁶

Before the enactment of codified positive law, Indonesian communities had their own rules, commonly known as customary law. Although customary law is passed down through generations, it is still followed by those living in that environment. These customary laws and sanctions often reorganize the rights of victims, ensuring that justice in a crime is not only for the community but also for

⁵Rena Yulia, *Restorative Justice and Human Rights Violations (a preliminary study)*, Sultan Ageng Tirtayasa University, Banten, *Journal of Law and Justice*, Volume 1 Number 3, 2012, p. 284

⁶ Musakkir, Paper "Criminal Law and Criminology Training: Collaboration between the Faculty of Law, UGM and the Indonesian Criminal Law and Criminology Society (MAHUPIKI), Yogyakarta; 23-27 February 2014, p. 9

the victim.

The development of children and the younger generation is an integral part of national development and is also a means to achieve the goals of national development, namely, a just and prosperous society, safe and secure based on Pancasila and the 1945 Constitution within the framework of the Unitary State of the Republic of Indonesia in a peaceful, just and independent international order.⁷

The concept of child protection covers a broad scope, in the sense that child protection is not only about protecting the child's body and soul, but also includes protection of all their rights and interests that can guarantee normal growth and development, both spiritually, physically and socially so that Indonesian children will develop into Indonesian adults who are able and willing to work to achieve and maintain the National Development goals mentioned above.

Child protection is all efforts made to create conditions so that every child can exercise their rights and obligations for the child's natural development and growth, both physically, mentally, and socially. Child protection is a manifestation of justice in a society, thus child protection is sought in various areas of national and social life.⁸

Child protection activities have legal consequences, both in relation to written and unwritten law. The law serves as a guarantee for child protection activities. Arif Gostita stated that legal certainty is necessary to ensure the continuity of child protection activities and to prevent abuses that could have unintended negative consequences in the implementation of child protection.

Children are not exempt from the possibility of committing crimes, just like adults, whether they commit the crime alone or in collaboration with others. Children who experience obstacles in their development, such as those who are denied the necessary attention and support, can experience stunted development and even mental health problems. Ultimately, this can lead to children becoming perpetrators of delinquency.⁹ According to Ramli Atmasasmita, delinquency is an action or deed carried out by a child which is considered to be in conflict with the legal provisions in force in a country and which is felt and described by the child as a reprehensible act."¹⁰

Addressing criminal acts committed by children requires consideration of the

⁷Wagiati Soetodjo, *Criminal Law on Children*, (Bandung: PT. Refika Aditama, 2008), p. 62

⁸Maidin Gultom, *Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia*, (Bandung: Pt Refika Aditama, 2008), p. 3

⁹Marlina (1), *Juvenile Criminal Justice in Indonesia: Development of the Concept of Diversion and Restorative Justice*, (Bandung: PT Refika Aditama, 2009), p. 60

¹⁰Maidin Gultom, *Ibid*, p. 55

child's unique characteristics and traits. Although children can determine their own actions based on their feelings, thoughts, and desires, their surroundings can influence their behavior. Parents and the surrounding community are more responsible for fostering, educating, and developing children's behavior when dealing with juvenile delinquency.¹¹

Regarding the age limit for children in conflict with the law, namely those who have reached the age of 8 but have not yet reached the age of 18 and have never been married. The age limit for children in conflict with the law was later raised to 12. This change was made by the Constitutional Court in its decision Number 1/PUU/VIII/2010 in connection with the submission of a judicial review of the juvenile court law by the Indonesian Child Protection Commission.

As mandated by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, inappropriate sentencing can disregard protection provisions, as child sentencing should be a last resort and should only be imposed for a short period of time. Sentencing as the ultimum remedium is one form of protection for the child's best interests.

Prof. Mr. JC Hudig, professor of juvenile criminal law at Utrecht State University, stated the best course of action to be taken to resolve juvenile cases as follows:¹²

In general, I can say that a criminal prosecution is carried out if the young maker's difficulties clearly center on the crime committed. However, if the criminal act is a symptom of an undesirable (bad) condition, something that is coincidental, one of the many forms of bad behavior, which originates from family circumstances, then the results will be better if the route of providing civil legal action is taken in the form of handing it over to the state for guidance.

The philosophy of the juvenile criminal justice system prioritizes the protection and rehabilitation of child offenders, who still have a number of limitations compared to adults. Children require protection from the state and society for the long term. For children who have already committed crimes, a criminal justice system strategy is required, which aims to minimize criminal justice system intervention as much as possible.¹³

One way to protect children is by removing them from the formal processes of the juvenile criminal justice system itself. This has led legal and humanitarian experts to develop formal rules for removing children who have committed violations of the law or committed crimes from the criminal justice process by providing alternatives deemed better for them, giving rise to the concept of

¹¹Explanation of Law Number 3 of 1997 concerning Juvenile Courts

¹²Sudarto, *Selected Chapters on Criminal Law*, (Bandung: Alumni, 2006), pp. 142-143

¹³Marlina (2), *Introduction to the Concept of Diversion and Restorative Justice in Criminal Law*, Medan; USU Press, 2010), p. 1

diversion.

The concept of diversion is based on the fact that the criminal justice system for juvenile offenders does more harm than good. The underlying rationale is that the courts stigmatize children for their actions, as if they were evil. Therefore, it's better to keep them out of the criminal justice system. However, this doesn't erase the criminal nature of the act itself.

2. Research Methods

The analytical method used is qualitative analysis, which systematically examines and interprets legal materials to answer the problem formulation. The analysis was conducted using law enforcement theory, justice theory, restorative justice theory, and the principle of maqasid al-syari'ah as analytical tools in assessing the implementation of restorative justice in the decisions studied.

3. Results and Discussion

3.1. Implementation of Restorative Justice in Traffic Cases Involving Children

The case in the Ketapang District Court Decision Number 6/Pid.Sus-Anak/2024/PN Ktp is a traffic crime case committed by a child which resulted in the victim's death. Normatively, this act fulfills the elements of a crime as regulated in Law Number 22 of 2009, specifically Article 310 paragraph (4), namely negligence in driving a motorized vehicle which resulted in the death of another person.¹⁴

Description of the Facts of the Case

In the case a quo, the child, as the perpetrator, was accused of driving a motor vehicle, which, through negligence, caused a traffic accident that resulted in the victim's death. Based on the trial evidence, it was determined that the accident occurred due to the child's lack of caution in controlling the motor vehicle, resulting in an unavoidable collision.

During the evidentiary process, the panel of judges considered witness testimony, the testimony of the child as the defendant, and written evidence submitted by the Public Prosecutor. Based on this evidence, the panel of judges concluded that the element of negligence (*culpa*) had been met.

According to the author, it's important to emphasize that in traffic cases involving children, the element of fault cannot be viewed as rigidly as it is for

¹⁴ Law Number 22 of 2009 concerning Traffic and Road Transportation, Article 310 paragraph (4).

adult perpetrators. This is because children's psychological state and maturity are still developing, so their risk management abilities are not yet optimal.¹⁵

Child growth and development, according to the author, are greatly influenced by factors, primarily family factors that shape the child's personality, so the author believes that in cases involving children as perpetrators, it is very necessary to further explore what makes children commit criminal acts, which is carried out by community guidance when the litigation process begins, starting from investigation, prosecution to trial in court.

Moeljatno, in his book entitled *Principles of Criminal Law*, is of the opinion that negligence or culpa is a mistake made by the perpetrator that is not intentional, but due to carelessness, forgetfulness, negligence, or failure to heed the obligation to act carefully as should be done according to the law.¹⁶

In relation to Moeljatno's opinion regarding the culpa and related to the main topic in this article regarding traffic cases committed by children, the author is of the opinion that the culpa is the same as the culpa committed by adult perpetrators, this is due to negligence, whoever the perpetrator is, whether child or adult, in essence no one wants the criminal act and/or its consequences so that the line between intentional and negligent is very clear and greatly influences the evidence process in court.

Legal Analysis and Implementation of Restorative Justice

Based on the legal facts revealed at the trial in the Ketapang District Court Decision Number 6/Pid.Sus-Anak/2024/PN Ktp, the Juvenile Judge stated that all elements of the crime had been legally and convincingly proven. Therefore, from a formal legal perspective, the child as the perpetrator can be held criminally responsible. However, in the context of the juvenile criminal justice system, punishment is not solely oriented towards retribution, but must also consider the principles of child protection and the best interests of the child as stipulated in Law Number 11 of 2012.¹⁷

In this case, diversion efforts were undertaken, but no agreement was reached between the parties. Diversion, as the primary instrument for achieving restorative justice, essentially aims to shift the resolution of cases from the criminal justice process to a process outside the criminal justice system.¹⁸ However, the failure of diversion in this case caused the judicial process to continue to the adjudication stage so that the subject matter of the case was

¹⁵ Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

¹⁶ Moeljatno, *Principles of Criminal Law* (Jakarta: Rineka Cipta, 2008), p. 216.

¹⁷ Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Article number 7.

¹⁸ Howard Zehr, *The Little Book of Restorative Justice*, 2002.

re-examined by the Judge handling this case until the case was successfully decided.

Even though the diversion was not formally successful, the panel of judges in its decision did not impose an effective prison sentence, but instead imposed a prison sentence of 1 (one) month with a probationary period of 2 (two) years accompanied by community service.

In his considerations, the judge essentially stated:

"The child has admitted and regretted his actions and there have been efforts to provide compensation to the victim's family, so that the punishment imposed is more directed towards development."

In the Ketapang District Court Decision Number 6/Pid.Sus-Anak/2024/PN Ktp, the judge's considerations did not stop at proving the elements of Article 310 paragraph (4) of the LLAJ Law, but instead entered the stage of selecting a proportional sentencing model. This shows the function *judicial discretion* in child cases, so that the judge does not have to agree with the public prosecutor regarding either the type of crime or the length of the sentence imposed.

According to the author, the judge's considerations demonstrate that the implementation of restorative justice does not always have to be realized through formal diversion, but can also be internalized in the judge's decision. Thus, the restorative approach in this case is substantive, not merely procedural.¹⁹

In addition, according to the author, in cases involving children, law enforcement officers seem to be pressed for time to resolve cases involving children as perpetrators. Although the child perpetrator in this case was not detained because the article of the indictment does not require detention due to the threat of criminal penalties, the mindset of officers handling cases with child perpetrators according to the author has been patterned that the resolution of children's cases must not only be carried out procedurally in accordance with procedural law, but also must be done quickly.

In the author's opinion, cases involving negligence, such as traffic cases, should be handled differently than crimes committed "intentionally," because, in the author's opinion, there is no *mens rea* in crimes committed through negligence. Moreover, in this case, the perpetrator's parents had attempted to provide compensation to the victim's family (who died), but ultimately because the compensation did not match what was requested, the legal process continued.

¹⁹ Wagianti Soetodjo, *Criminal Law for Children*, 2008.

In relation to these facts, according to the usual practice carried out by the Author when resolving cases, this is quite common in the process of resolving cases, for example, cases of child molestation where the perpetrator will then marry the victim's child to take responsibility, but because the money requested by the victim's family as 'dowry' is not enough, then they start reporting to the police. Although these things cannot be equated with the case being discussed in this thesis, according to the Author sometimes exploitation occurs in a criminal case carried out by the victim and/or his/her family so that compensation money/peace money or even dowry money is requested from the perpetrator without considering the economic situation of the perpetrator of the crime and seems like revenge.

Furthermore, the judge also considered sociological aspects, such as the child's remorse and the provision of compensation to the victim's family. This demonstrates that the judge is not only oriented towards fulfilling the elements of the crime, but also pays attention to efforts to restore social relationships disrupted by the crime. According to the author, these sociological considerations are in line with the spirit of restorative justice, which prioritizes restoration of the situation. Therefore, even though life cannot be replaced with money, the sincere goodwill of the perpetrator's family is necessary to resolve the case by prioritizing restorative justice.

According to the author, this approach represents a concrete form of restorative justice, emphasizing restoration for both victims and perpetrators. This aligns with the view that crime is not only a violation of the state, but also of individuals and social relationships.²⁰

Furthermore, the sentencing also reflects the application of the principle of *ultimum remedium*, which makes imprisonment a last resort. In this case, the judge gave the child the opportunity to improve himself through probation and community service, a principle similar to Marlina's opinion that this principle is a key characteristic of the juvenile criminal justice system to minimize repressive intervention.²¹

According to the author, this choice of punishment is appropriate because the child as the perpetrator is still developing and therefore requires guidance rather than punishment. Excessively harsh punishment could potentially have negative consequences for the child's future.²²

The judge chose a one-month prison sentence with a two-year probation period and community service. According to the author, the case construction in decision number 6/Pid.Sus-Anak/2024/PN Ktp can be understood as a form of

²⁰ Jasser Auda, *Maqasid al-Shariah*, 2008.

²¹ Marlina, *Juvenile Criminal Justice in Indonesia* (Bandung: Refika Aditama, 2009), p. 198.

²² Rena Yulia, *Journal of Law and Justice*, 2012.

application.individualization of crime, namely, that punishment be tailored to the perpetrator's character and the goal of rehabilitation, not merely retribution. According to Barda Nawawi Arief, individualization of punishment aims to adapt punishment to the perpetrator's specific circumstances and social protection needs.²³

So even though it is different from the public prosecutor's criminal demands which require a prison sentence, according to the author, the judge carefully observed in the trial that the case was different from a criminal act which must be sentenced to prison.

From the perspective of *maqāṣid al-syarī'ah*, the judge's decision in this case reflects an effort to maintain public benefit. The principle of protecting life (*ḥifẓ al-nafs*) is reflected in the existence of responsibility for the loss of the victim's life, while the principle of protecting offspring (*ḥifẓ al-nasl*) is reflected in efforts to safeguard the future of children through punishment that is coaching in nature.²⁴

According to the author, the integration between positive law and the values of *maqāṣid al-syarī'ah* in this decision shows that justice is not only interpreted legally, but also morally and socially.

Based on the above description, it can be concluded that the implementation of restorative justice in this case did not take place through a formal diversion mechanism, but was still realized in the form of considerations and decisions by the judge that prioritized recovery, guidance, and the best interests of the child.

According to the author, the construction of legal considerations in the Ketapang District Court Decision Number 6/Pid.Sus-Anak/2024/PN Ktp has strong relevance when read in the perspective of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice.

Although the a quo case was examined within the framework of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the values that were later emphasized in the PERMA indicate that the direction of national criminal justice policy increasingly provides space for rehabilitation as part of the decision considerations.

PERMA Number 1 of 2024 essentially emphasizes that judges in adjudicating criminal cases are not solely oriented towards proving the elements of the crime and imposing repressive sentences, but can also consider aspects of reconciliation, restitution of the victim's losses, the interests of the perpetrator,

²³ Barda Nawawi Arief, *Anthology of Criminal Law Policy* (Jakarta: Kencana, 2011), p. 45.

²⁴ Teguh Prasetyo, *Criminal Law*, 2010.

and the social benefits of the decision handed down.²⁵ According to the author, this orientation has a strong point of agreement with the considerations used by the judge in the a quo case.

This is evident from the fact that even when formal diversion is unsuccessful, judges still place weight on the child's remorse, efforts to provide compensation to the victim's family, and the child's future as a subject still in need of guidance. Such considerations are essentially in line with the spirit of restorative justice, which is explicitly affirmed in Supreme Court Regulation No. 1 of 2024.

According to the author, the relevance of the PERMA to the a quo case is apparent in at least three aspects.

First, a restorative orientation. In this case, the decision views the crime not only as a violation of norms that requires retribution, but also as a social event that causes harm that needs to be remedied. The judge's consideration of compensation demonstrates recognition of remedial efforts, even though such restitution does not eliminate criminal liability.

This view is in line with Howard Zehr's thinking, which emphasizes that the essence of restorative justice is to repair the harm caused by the violation, not simply to punish the perpetrator.²⁶ Thus, the judge's considerations in this case substantially reflect the restorative approach which was later emphasized in the PERMA.

Second, the proportionality of sentencing. The judge did not follow the prosecutor's demand of one year in prison, but instead sentenced him to one month in prison with two years of probation and community service. According to the author, this construction demonstrates the application of proportionality, taking into account the nature of the negligence offense, the perpetrator's condition as a child, and the goals of the correctional system.

This approach is in line with Satjipto Rahardjo's idea that just law is not a law that merely applies rules rigidly, but rather a law that provides solutions that are substantively just.²⁷ In this context, PERMA Number 1 of 2024 actually strengthens the legitimacy of the judge's approach.

Third, the orientation toward social utility. According to the author, the community service sentence imposed in this case is not only beneficial for the child's development but also represents a constructive model of accountability, as the perpetrator is not separated from his social environment but remains burdened with responsibility.

²⁵ Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice

²⁶ Howard Zehr, *The Little Book of Restorative Justice* (Pennsylvania: Good Books, 2002), p. 37.

²⁷ Satjipto Rahardjo, *Progressive Law* (Jakarta: Kompas, 2009), p. 73.

This model is in line with the principle of the best interests of the child in the juvenile criminal justice system and is also consistent with the direction of PERMA which places social benefits as one of the considerations in making decisions.²⁸

According to the author, the important thing to underline is that PERMA Number 1 of 2024 was born after the development of judicial practices that began to accommodate the restorative approach, so that the existence of this PERMA can be read not as a completely new concept, but as a form of codification and strengthening of the direction of development of judicial considerations that had previously emerged in practice, including in the a quo case.

From that perspective, the Ketapang District Court decision Number 6/Pid.Sus-Anak/2024/PN Ktp can be understood as a concrete example of adjudication practices whose substance is in line with the policy direction that was later emphasized through PERMA Number 1 of 2024.

According to the author, this alignment strengthens the argument that the application of restorative justice in this case not only has a basis in the SPPA Law, restorative justice theory, and the principle of *maqāṣid al-syarī'ah*, but also has support from the development of national criminal justice policy.

Thus, the analysis of the a quo case shows that the judge's approach that prioritizes guidance, recovery, and the best interests of children has theoretical legitimacy, normative legitimacy, and policy legitimacy, so that it can be seen as an implementation of restorative justice that is in accordance with the direction of criminal law reform in Indonesia.

3.2. Obstacles in the Implementation of Restorative Justice in Traffic Cases by Children

The application of restorative justice in traffic cases involving children as perpetrators does not always run optimally. In the case a quo, the failure of diversion was a key indicator of obstacles to the implementation of restorative justice.

One of the main obstacles is the difficulty in reaching an agreement between the perpetrator and the victim, particularly in cases that result in death. In such circumstances, the victim's family tends to demand strict criminal accountability.

According to the author, this condition is a sociological obstacle influenced by the retributive justice paradigm that is still dominant in society.²⁹

²⁸ Eva Achjani Zulfa, *Restorative Justice in Indonesia* (Depok: FH UI Press, 2017), p. 91.

²⁹ Marlina, *Juvenile Criminal Justice in Indonesia*, 2009.

In cases with serious consequences, the restitution approach is often considered insufficient to satisfy a sense of justice because what is lost is a life, unlike when a crime occurs involving property that can still be replaced.

Furthermore, the diversion mechanism, which requires agreement between the parties, also presents a challenge. If no agreement is reached, the diversion process cannot proceed.

According to the author, this overly formalistic approach is a weakness in the implementation of restorative justice. However, restorative values should still be applied at every stage of the judicial process. The author believes that the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System are still implemented formally and only pursue the quantity of cases, in contrast to prioritizing quality. If the juvenile justice system prioritizes quality, then the resolution of criminal acts, especially those committed through negligence, should be more easily resolved using restorative justice methods.

Another obstacle is the limited understanding of restorative justice among law enforcement officers. Not all officers share the same perspective in implementing this approach. This is evident in the different types of criminal penalties demanded in Ketapang District Court case No. 6/Pid.Sus-Anak/2024/PN Ktp, which was a prison sentence. However, the judge's decision did not impose a prison sentence, but rather a one-month prison sentence with a two-year probation period and community service.

According to the author, this is in line with the legal system theory put forward by Lawrence M. Friedman, which states that the success of law enforcement is influenced by legal structure, legal substance, and legal culture.³⁰

In this context, obstacles stem not only from the substance of the law, but also from the legal culture of society, which is still oriented towards revenge. According to the author, in his practice, Indonesian legal culture in all cases remains oriented towards revenge. This sometimes makes it difficult for victims to apologize, and the high egos of perpetrators and complainants to find a fair solution for both parties often lead to friction within the community when perpetrators reintegrate into society.

In addition, the author is of the opinion that Indonesia's legal culture has not been caused by obedience to the legal system, but rather arises from fear of legal consequences, so it returns to the mindset of society towards the law itself, whether it is based on obedience or fear, because each will give rise to different outputs if there is an escalation of the case.

³⁰ Lawrence M. Friedman, *The Legal System*, 1969.

Furthermore, the role of supporting institutions such as the Correctional Center has not been optimal in promoting successful diversion. Although recommendations have been made, they have not yet been able to reach an agreement.

According to the author, strengthening the role of supporting institutions is important in increasing the effectiveness of restorative justice so that if the case has not yet reached prosecution or trial, each of the child perpetrators and victims have forgiven each other and there is compensation or compensation resulting from the criminal act committed by the child perpetrator.

Thus, it can be concluded that the obstacles to implementing restorative justice are not only normative, but also sociological and structural. Therefore, a more comprehensive approach is needed to develop restorative justice in the juvenile criminal justice system.

4. Conclusion

Based on the results of research and discussion regarding the implementation of restorative justice for children in conflict with the law in traffic cases through a case study of the Ketapang District Court Decision Number 6/Pid.Sus-Anak/2024/PN Ktp, the following conclusions can be drawn: 1. The implementation of restorative justice in traffic cases involving children as perpetrators is not fully implemented through formal diversion mechanisms, but is still realized in judges' decisions. Although the diversion effort failed to reach an agreement between the parties, the panel of judges still internalized the values of restorative justice in their deliberations and decision. This was reflected in the imposition of a prison sentence with probation and community service, as well as consideration of sociological aspects such as the child's remorse and the provision of compensation to the victim. Therefore, restorative justice in this case is understood not only as a diversion procedure, but also as a substantive approach in the adjudication process that prioritizes recovery, guidance, and the best interests of the child. 2. Obstacles in implementing restorative justice in traffic cases involving children are multidimensional, encompassing sociological, normative and structural aspects. Sociological constraints are evident in the tendency of society, particularly the victims' families, to remain oriented toward retributive justice, making it difficult to reach a diversion agreement. Normative constraints are reflected in the diversion mechanism, which requires the consent of all parties, thus preventing the formal restorative process from continuing. Furthermore, structural constraints arise from the suboptimal understanding of law enforcement officials and the suboptimal role of supporting institutions in promoting the successful implementation of restorative justice.

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