

Restorative Justice Criminal Judgment In Indonesia

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Abstract

Settlement of cases of children in conflict with the law must continue to prioritize the principles of children's rights, where arrest, detention, or even imprisonment are only carried out as a last resort (ultimum remedium) and in the shortest possible period of time. Restorative justice is a case settlement concept that emphasizes restoration to its original state, not retaliation. The prioritization of restorative justice in the criminal justice system in Indonesia is only specifically regulated in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, but its implementation has not been carried out evenly. This is because it still takes time to adjust to the new rules, in order to meet the completeness of facilities as well as additional resources for law enforcement and professionals who are specially trained to handle children's cases.

Keywords: Restorative Justice, Juvenile Justice, Child Criminal.

I. INTRODUCTION

In dealing with their problems, children are sometimes found to have deviated or even violated the law. Limitations in understanding and protecting themselves from the various influences of the existing system are also the cause of deviations or violations of the law committed by children, therefore when children become perpetrators of criminal acts, the state must provide protection to them (Marlina. 2012). The International Convention on the Rights of the Child has formulated the principles of the rights of the child aimed at protecting the rights of the child, among which the arrest, detention or imprisonment of a child must be in accordance with the law and only as a last resort and for the shortest possible period of time (M. Nasir Djamil. 2013).

The statement is contained in the Convention on the Rights of the Child which was ratified by acclamation on November 20, 1989 in UN General Assembly Resolution No. 44.25, which has been ratified by the Indonesian government by Presidential Decree no. 36 of 1990 dated January 26, 1990 (Abitoro Prakoso. 2013).

Legally, the Indonesian state has several provisions that regulate when children are in conflict with the law (ABH), including the 1945 Constitution, Article 28 B paragraph (2) and Article 28 H paragraph (2), Law no. 4 of 1979 concerning Child Welfare, Law no. 12 of 1995 concerning Society, Law no. 5 of 1998 concerning the Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Law no. 23 of 2002 concerning Child Protection as amended by Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection, Law no. 23 of 2004 concerning the Elimination of Domestic

Violence, Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, Law no. 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons, Law no. 11 of 2012 concerning the Juvenile Criminal Justice System.

There are also several law enforcement policies including the Supreme Court Circular (SEMA) No. 6 of 1959 stipulates that child trials must be conducted in private, Circular Letter of the Supreme Court (SEMA) No. 6 of 1987, dated November 16, 1987 concerning Procedures for Child Trials, Circular Letter of the Attorney General of the Republic of Indonesia SE-002/ja/4/1989 concerning Prosecution of Children, Letter of the Deputy Attorney General for General Crimes B-532/E/11/1995, 9 Nov 1995 concerning Technical Guidelines for Prosecution of Children, MOU 20/PRS2/KEP/2005 DitBinRehSos Ministry of Social Affairs RI and DitPasDepKumHAM RI concerning external guidance for children in conflict with the law, Circular Letter of the Chief Justice of the Supreme Court of the Republic of Indonesia MA/Kumdil/31/I/K /2005 concerning the obligation of each District Court to hold a special court room and a special waiting room for children to be tried, the Chief Justice of the Supreme Court of the Republic of Indonesia appealed to avoid detention of children and prioritized the decision on action over imprisonment 16 July 2007, KAPOLRI Regulation 10/2007, 6 July 2007 concerning Women and Children Service Unit (PPA) and 3/2008 regarding the establishment of RPK and procedures for examining witnesses/victims of TP, TR/1124/XI/2006 from the Indonesian Police Headquarters, 16 Nov 2006 and TR/395/VI/2008 9 June 2008, about the implementation of diversion and restorative justice in handling cases of child perpetrators and fulfilling the best interests of children in cases of children, whether as perpetrators, victims or witnesses, Mutual Agreement between DEPARTMENT OF SOCIAL RI Number: 12/PRS2/KPTS/2009, DEPARTMENT OF LAW AND HUMAN RIGHTS RI Number: M.HH .04.HM.03.02 Th 2009, MINISTRY OF NATIONAL EDUCATION OF THE REPUBLIC OF INDONESIA Number 11/XII/KB/2009, DEPARTMENT OF RELIGION OF THE REPUBLIC OF INDONESIA Number: 06/XII/2009, AND THE STATE POLICE OF THE REPUBLIC OF INDONESIA Number: B/43/XII/2009 concerning Protection and Rehabilitation Social Affairs of Children in Conflict with the Law, dated December 15, 2009, Joint Decree of the Chairman of the Supreme Court of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, HEAD of the Indonesian National Police, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, the Minister of Women's Empowerment and Child Protection of the Republic of Indonesia, NO.166 /KMA/SKB/XII/2009, NO.148A/A/JA/12/2009, NO. B/45/XII/2009, NO.M.HH-08 HM.03.02 YEAR 2009, NO.10/PRS-2/KPTS/2009, NO.02/Men.PP and PA/XII/2009 (HJ. DS. Dewi, Restorative Justice, Diversionary Schemes And Special Children's Courts In Indonesia). All of the above rules basically adhere to the general principles of child protection, namely non-discrimination, the best interests of children, survival and development, and respect for children's participation (Hadi Supeno. 2010).

Facts that occur in the field, in terms of the implementation of the juvenile criminal justice system in Indonesia, there are still various problems. The problems include the detention of children, a long judicial process starting from investigations, prosecutions, courts which ultimately place the child convict in a correctional institution which leaves trauma and negative implications for the child (Marlina. loc. cit.). Around 2005-2006 a violation of the principle of proportionality occurred against a child named Raju, an 8-year-old elementary school student in Langkat, North Sumatra, who was arrested, detained, and tried only for fighting with his peers. He was also finally returned to his parents, but after the public through the mass media, there was an uproar about it (Hadi Supeno. Op. Cit.). Seeing this case, it is not surprising that more than 4000 other children in Indonesia are brought to court every year for minor crimes such as theft. In general, they do not get support from lawyers or social services. So it is not surprising that nine out of ten children are thrown into prison or detention centers (Paradise. 2013).

Based on the description of the facts above, of course, it is necessary to implement a better juvenile criminal justice system in accordance with the principles of children's rights. The juvenile criminal justice system must emphasize or focus on the "interests of the child" starting from elements of child investigators, child public prosecutors, juvenile judges, and child correctional officers (Maidin Gultom. 2013.) RI Law No. 11 of 2012 Article 5 paragraph (1) states that the juvenile criminal justice system must prioritize a restorative justice approach. The restorative justice approach according to the RI Law no. 11 of 2012 is intended to seek diversion or settlement processes outside the criminal justice system.

Based on the description above, the authors are interested and feel the need to conduct a research entitled "Restorative Justice in Child Criminal Justice in Indonesia". And formulation of the problem is:

1. How is restorative justice in the criminal justice system?
2. How is the implementation of restorative justice in the juvenile criminal justice system in Indonesia?

II. LITERATURE REVIEW

Restorative Justice in the System Criminal Justice

1. General Criminal Justice System

Based on the appeal of the United Nations (Declaration of Bangkok 2005-pen), recommends so that every country uses the concept of restorative justice approach as part of the criminal justice system, so that every settlement of a crime can be reached through more concepts respect the rights of victims and more easy to carry out the rehabilitation process criminals while looking for alternative to prosecution by means of avoid the effects of imprisonment which so far it is still used in the criminal justice system in general (Rofinus Hotmaulana Hutaauruk. Op. Cit). If we look at the explanation of Law no. 8 years 1981 concerning the Criminal Procedure Code, in part general explanation there are 10 (ten) principles that must be

upheld in implementation of the Criminal Procedure Code. According to Rofinus Hotmaulana Hutaaruk, it turns out 9 (nine) of these principles provide higher ratings of perpetrators criminal act. The following is the powers of law enforcement allows for treatment that has a spirit of restorative justice at every stage in the judiciary criminal.

a. Inquiries and investigations

Explanation of the investigation and investigation is contained in Article 1 point 1 up to 5 Law no. 8 Year 1981 about the Criminal Procedure Code. One mechanism which is part of justice restorative is diversion. In Indonesia the settings for Diversion have not been set in the criminal justice system general, in terms of doing treatment similar to the diversion trait, police/investigators can use its authority in accordance with Article 7 letter of Law no. 8 of 1981 concerning the Criminal Procedure Code, as well as other provisions regarding authority discretion from the police is also contained in Article 16 paragraph (1) letter i and paragraph (2), which confirmed in Article 18 paragraph (1) of Law no. 2 2002 concerning the National Police Republic of Indonesia.

b. Prosecution

An explanation of the prosecution is available in article 1 points 6 and 7 of the Law No. 8 of 1981 concerning the Criminal Procedure Code, in the criminal law system in Indonesia, the prosecutor's authority to conduct diversion it's not explicitly regulated in the criminal justice system common, but the opportunity to give diversion is still possible based on the provisions, as in Article 30 paragraph (1) of Law no. 16 of 2004 concerning Prosecutor's Office of the Republic of Indonesia. ¹This matter can be achieved if done the diversion order or the good faith of perpetrators and victims to commit mediation from the beginning of the investigation in order to create a positive agreement, so that the prosecutor can do its authority in accordance with Article 14 letter h Law no. 8 of 1981 concerning the Criminal Procedure Code.

c. The trial judge has a very important role important in the trial process, it is explained in Article 1 point 8 and 9 Law No. 8 Year 1981 about the Criminal Procedure Code. Restorative justice it's not set in the system criminal justice in general, however if the judge wants to apply it in decision, it is possible. These provisions are contained in Article 10 paragraph (1) and Article 5 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power. The rule shows that when the judge found something missing clear, then the judge can do something discovery of law for the sake of creating taste justice in society, including use of the concept of restorative justice.

d. Implementation and Post Implementation Punishment

In Indonesia the opportunity to do restorative justice approach at the This is for release conditional, i.e. based on Decision Minister of Justice and Circular Director of Development in Institutions Correctional No. DDP. Z.I/4/144 December 10, 1980.

2. Juvenile Criminal Justice System

Indonesia, which basically consists of from various tribes and rich in customs of course have mechanisms legal settlement based on local wisdom. Spirit Bung Karno's "Gotong Royong" can of course be used as a the pinnacle of the Indonesian nation's ideology contains the values of restorative justice. The 4th precept of Pancasila which reads "a populace led by wisdom" discretion and representation" is a very possible value to practice restorative justice because deliberation emphasizes more the best way and the common good, right? win-lose path as a reflection strong group and strong group weak (Hadi Supeno. Op. Cit., p).

Law No. 11 Year 2012 about the Juvenile Criminal Justice System has clearly regulated about restorative justice and priority restorative justice approach to child of a criminal, it can be we see in Article 1 point 6, Article 5 paragraphs (1), (2), (3) and Article 8 paragraph (1). Furthermore, Law no. 11 years old 2012 on the Criminal Justice System Children, put restrictions on application of a restorative justice approach through Diversion, as contained in Article 7 paragraphs (1) and (2). Law No. 11 of 2012 concerning System The Juvenile Criminal Court is new promulgated July 30, 2012 and new enacted in August 2014, meaning that it has only been a few months since the law was enacted. Previously in terms of handling cases where children as perpetrators of criminal acts carried out based on Law no. 3 of 1997 concerning Juvenile Court which has not been clearly entered on the restorative justice model.

III. METHODOLOGY

Research is basically a planned activity carried out with the scientific method that aims to obtain new data to prove the truth or untruth of an existing symptom or hypothesis (Bambang Waluyo. 2002). Research is a (scientific) means for the development of science and technology, so the applied research methodology must always be adapted to the science that is the parent (Soerjono Soekanto and Sri Mamudji. 2004). Because the scope of this research is in the discipline of "legal science", the legal research carried out by examining library materials or secondary data can is called normative legal research or library law research. Search data/materials is done by browse and look for good materials/data which are primary, secondary, or tertiary. This is done in various places, ranging from libraries, shops books, borrow from friends or lecturers, and look for accurate data from official website on the internet.

IV. RESULTS AND DISCUSSION

Implementation of Restorative Justice in Juvenile Criminal Justice System In Indonesia

1. Community

Community is one of the pillars most important in the justice model restorative. The role of the community is very needed from the beginning of understanding concept to implementation of the system the judiciary itself. Restorative Justice will fail if people do not understand and ready to do it. Public education or public education is the first thing to do in

process to achieve restorative justice. The core understanding that must be instilled in relation to the judicial system child punishment is a child not as a object of punishment, vent, retaliate revenge, and the subject to be asked legal liability for his delinquency.² One of case examples still lack of understanding society as happened in Bogor. A child in Bogor was forced to confess has stolen HP. When the child still doesn't admit it because it's not do so, the child is beaten until dead .

2. Police

Model for restorative justice, the police are only limited to acting as a mediator, facilitator, and supervisor. The police show the laws and regulations of the juvenile criminal justice system, then they are then handed over to the parties involved to find the best solution for the creation of a process of repair, rapprochement, reintegration, conciliation and reconciliation between the victim and the perpetrator, the victim's family and the perpetrator's family as well as reinstatement society without any labeling / stigma against the perpetrators.³

One example of handling bad things done by the police happen in 2009 where as many as 10 children Police arrested in Tangerang Soekarno-Hatta Airport Metro Police, on charges of violating Article 303 Criminal Code, which is about gambling. Ten the child is fully interrogated snapped and told to lie in a row grounded grass for 30 minutes under hot sun. The 10 children then detained and deposited in Tangerang Prison without telling people their old.

⁴This case shows that the retributive justice model is still the primary choice over the justice model restorative in handling cases Where is the child suspected of being the perpetrator? criminal act.

3. Prosecutor 's Office

The prosecutor's authority has been regulated in UU no. 16 of 2004 concerning the Prosecutor Republic of Indonesia. When the model of justice restorative has not been clearly regulated in juvenile criminal justice system, role prosecutors are very active, namely making efforts prosecution which includes action public prosecutor to accept or reject the file submitted from investigator and to transfer files criminal cases to court and carry out the execution according to the regulated in Law no. 8 of 1981 concerning Criminal Procedure Law. Same as experienced by the police as investigators, in Bandung at the time not yet promulgated or enacted by law which clearly regulates prioritizing a justice approach restorative, there are obstacles in implementation of restorative justice by the prosecutor acting as a prosecutor, that is, based on the applicable rules of the prosecutor the public prosecutor is required to submit a plan demands on superiors and superiors that's the one who has the authority to decide the crime or what action will be prosecuted to the defendant, so that in the case of implement the concept of restorative justice, there must be an understanding comprehensive for all

² Id., p. 212.

³ Id., p. 215.

⁴ Id., p. 10.

components implementation of juvenile justice. It means the same understanding must be embedded thoroughly in every individual in institutions involved in the judicial system child crime (Marlina. Op. Cit., p. 206).

Handling of child cases in Medan by the prosecutor who previously still used Law no. 3 of 1997 concerning Juvenile court, in case of sake interests of the prosecution the general public can make appropriate detention rule. Even though at this time or handling of juvenile crime has been replaced with, it turns out that the prosecutor's authority to make arrests for the sake of prosecution interests can still be done, as contained in Article 34 of Law no. 11 years old 2012 on SPPA.

Advantages of handling children level of prosecution according to Law no. 11 of 2012 concerning SPPA, that is, the public prosecutor is obliged to seek The maximum diversion is 7 (seven) days, p it is contained in Article 42 paragraph (1) UU no. 11 of 2012 concerning System Juvenile Criminal Justice. Child care with the concept of pure restorative justice, make the role of the prosecutor very small or no longer even has the same role very. Even if given a role, role prosecutors will be the same as police who can only act as mediators and facilitator because of the process of taking the decision is left to the perpetrator victims, families of perpetrators/victims, and the main community (Hadi Supeno. Op. Cit., p. 217).

4. Trial

Examination at court level is a follow-up to the process investigation and prosecution. Article 43 paragraph (1) Law no. 11 of 2012 concerning System The Juvenile Criminal Court stated that, examination in court of child cases are carried out by judges who determined by the chairman's decision Supreme Court on the recommendation of the chairman The District Court concerned through the head of the High Court. Relation with the concept of restorative justice, the role of judges are very limited when viewed from the point of view of pure restorative justice, because it is in restorative justice pure unknown whose name court. Settlement with pure restorative justice concept leave everything to the perpetrator victims, families of victims/perpetrators and communities involved in taking decision by way discussion. Even if there is a role from the judge, only limited to being a mediator, facilitator or supervisor.

Restorative justice is an effort to support and implement the provisions stipulated in Article 16 paragraph (3) Law no. 23 of 2002 on Child Protection in conjunction with Law No. RI. 35 2014 concerning Amendments to the Law No. 23 of 2002 concerning Protection Son, namely that "the arrest, detention, or imprisonment child is only carried out if it is in accordance with applicable law and only can be done as a last resort".

In line with the goals of restorative justice, The Bandung District Court has made children's courtroom and waiting room and separate child defendants who detained from adult defendants since concerned arrived from the detention center. Defendant child waiting for time the trial is placed in the waiting room especially accompanied by parents or his family and or Father's officers and there are books in the room. children's and youth books donated by UNICEF

(United Nation Children and Education Fund). The child's courtroom itself, a place for Defendant, intentionally not given writing "defendant" with the psychological considerations of the child in order to feel safe, free, and don't feel humiliated for run the trial.

5. Correctional Center

Correctional Center (BAPAS) is Correctional technical implementing unit handle client coaching correctional, some tasks from Fathers are fostering children liberated country conditional, child of the country who gets leave before being free, and a country boy who by the judge it was decided to be returned to parent. Fathers in Indonesia have show coaching and guidance according to his abilities. Proven many ex child prisoners who have become people intellectual, emotional, spiritual and social, so that no longer commit a crime (Widodo. 2011). Fathers who are the unit below The Ministry of Law and Human Rights, in carrying out their duties and functions turned out to be not so optimal. Amount Fathers are only 70 units, while there are 228 LPs. 16 of them LP children with a total of prisoners approximately 184,000,000 (one hundred and eighty four thousand). Besides that, the quality of the Fathers' human resources is also not adequate. Recommendations from Fathers officers copy-paste the previous recommendations. Fathers seem to be just a mere formality. Whereas if the main duties and functions of the Fathers taken seriously, existence this agency can reduce the number of criminalize children on their recommendation to the police, prosecutors and judges, because more children will saved from punishment and imprisonment (Hadi Supeno. Op. Cit., p. 217-218).

6. Child Correctional Institution

Ineffective child development in LAPAS is proven by research that carried out by Widodo, at the Children's Prison Kutoarjo and the children's prison in Blitar, which In essence, it can be concluded that the handling is still bad against children caused by lack of supporting facilities and lack of human resources trained (Widodo. Op. Cit., p. 75, 94.).

Different from the Children's Prison in Kutoarjo and Blitar, apparently in a few years Recently, there have been reforms in several Child prisons in Indonesia. Children's Prison Tangerang, for example, has done various update attempts with create an atmosphere of children's prison no longer scary. Painted building bright, gardens built, the wardens no longer use keki but arms long tie, children are taught life skills from agriculture to electronics and for gifted children given space for expression such as music or sport. Children's rights are still given by bringing in teachers professional. In the corners of our room can see displays of students' work in the form of paintings, poems, and works of other works. Prison model update Tangerang children are now starting to be followed by prisons Another child, although not successful fully (Hadi Supeno. Op. Cit., p. 218.)

No matter how good the condition of the Children's Prison in Indonesia, still it is a prison, where is the place for the perpetrator's child? convicted guilty, restrained by the rights of rights, can change children's behavior become a more qualified criminal and place of labeling as prisoners for

children who can create a bad stigma from society. The true restorative justice model is not know crime and imprisonment against children. Prison is not a place for children, prison is only suitable for para criminals (adults). The place what is appropriate for children is a home and the school where he studied and socialize, live a normal life with peers in protection his parents.

V. CONCLUSION

Based on the legal analysis, it can be concluded as follows:

1. Restorative justice restorative) in the justice system criminal law in general has not been regulated explicitly in the regulations Indonesian legislation. These rules are only specifically regulated in the criminal justice system children (Law No. 11 of 2012), however law enforcement can apply the concept of justice restorative in the justice system criminal law in general, including because there is discretionary authority owned by the police investigator and the obligatory powers of judges explore, follow, and understand legal values and sense of justice who live in society.
2. Implementation of the restorative concept justice (restorative justice) in juvenile criminal justice system done evenly by various judicial institutions in Indonesia. This is because because it takes time adjustment to the rules has just taken effect, in order to fulfill supporting infrastructure and equal distribution of resources trained and reliable human in every judicial institution in various areas throughout Indonesia, especially those dealing with child crime.

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