Restorative Justice Between Children as Violators and Children as Victims in The Child Criminal Justice System in Indonesia

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Abstract
Children are very valuable assets for a nation, this makes the State must pursue various policies to protect the growth and development of the children themselves. One of the efforts made is to provide maximum protection to children in conflict with the law. Related to children who have problems with the law both as perpetrators and as victims, of course law enforcement officials should provide special space for children in criminal justice related to the punishment of children and the conditions of children who are victims so that children's rights are protected. Efforts to protect the rights of children in conflict with the law, then the settlement of cases against children in conflict with the law and as victims, of course, the settlement requires all elements of both children being perpetrators, children being victims, law enforcement officials, and the community to realize a court based on the protection of children. Justice based on the protection of children in conflict with the law and as victims is one of them by using the principle of restorative justice

I. Introduction

Everyone has experienced childhood, which is a period of play and learning that will shape the character and personality of a child to a more mature age. Childhood is the most vulnerable period to accept things that happen in their environment, including actions that adults consider as bad actions. These bad actions do not only violate religious norms, morals, and decency, but include criminal acts regulated in the Criminal Code and regulated in other laws and regulations. The most unfortunate thing is the psychological condition of children who are still very weak and vulnerable who do not fully understand the actions they do, who only imitate these actions in their environment without filtering whether these actions are good or bad. Of course it becomes a bigger problem if the child is sentenced to criminal penalties such as imprisonment and confinement if proven guilty. This is because children are the next generation of a nation and the government should pay attention to children's education in order to realize the next generation that is able to sustain the vision and mission of the Indonesian nation to be better in the future. Making children imprisoned like adults is certainly the rights of children such as survival which includes physical development, mental development, social development, moral and spiritual development will be disturbed. Conflict with the law is not only experienced by children who have problems with the law, even children can be victims of a criminal act that traumatizes a child related to the events they experience. Childhood is a vulnerable period in psychological conditions where children are not yet independent, do not have full awareness coupled with the rapid advancement of technology so that children are more easily influenced by the actions shown to them so that it is not uncommon for children to take an action that they think is cool but actually endangers the safety of others or themselves.

Children who become perpetrators and victims without looking from the point of view of criminal law, so children should get great attention from the family, society, and the state considering that children are the generation of our nation so that in the process towards adulthood the role of all parties should provide sufficient attention so that the physical, psychological, spiritual development of children becomes better. Children will not do something without seeing and imitating the behavior around them, so we should

provide an established education to children so that children can develop and grow properly.

Children are very valuable assets for a nation, so we must be able to strive for the growth and development of the child itself. The effort made is to provide maximum protection to children so that their needs can be met. Related to children who have problems with the law both as perpetrators and as victims, of course law enforcement officials can provide special space for children in criminal justice related to the punishment of children and the conditions of children who become victims. This is because the justice system in Indonesia is still not maximally providing protection to children. Imprisonment as a place of punishment for children which is essentially a deprivation of children's freedom is still being carried out, during the criminal justice process sometimes children do not get or lose their basic rights such as education, health, and if they finish serving their sentence, there is a stigma in the community against these children so that it can interfere with the fulfillment of their basic needs such as socializing with the community. Suffering is not only felt by children who are perpetrators, even children who are victims of crime. It is not uncommon for the criminal justice system to see the position of children as victims not as the main target in terms of restoring the child's condition, but how to impose repressive punishment on the perpetrator of the crime without considering the interests of the child.

Facing issues related to the interests of children as perpetrators of criminal acts or children as victims of criminal acts, it is necessary in the process of resolving the case by involving all elements of both children as perpetrators, children as victims, law enforcement officials, and the community using the principle of restorative justice. The principle of restorative justice emphasizes rehabilitation efforts and social welfare for children, society, and the state. Based on this, the relevant author examines more deeply how far the principle of restorative justice can touch the pulse of child protection, so that children can grow and develop properly even though the child is in conflict with the law.

2. Research Method

Referring to the background, the problem formulations in this paper are:

1. How is the concept of restorative justice in the criminal justice system?

2. How is the placement of restorative justice principles in criminal cases involving children as perpetrators and victims in the child protection space?

3. Results and Discussion

The concept of restorative justice in the criminal justice system

The concept of restorative justice is an alternative to solving criminal problems with an emphasis on restoring problems/conflicts and restoring balance in society that involves all parties in making a decision. Criminal offenses are generally viewed as a conflict that occurs in the social relations of society that should be resolved and restored by all parties together.[1] The focus of this approach is to repair the damage or loss caused by the criminal offense, so it needs to be supported by the concept of restitution, which is an effort to recover back to the community losses suffered by victims.[2] Crime, according to the restoration approach, is not a violation of the law that must be sanctioned by the state, but an act that must be remedied through compensation or other means that avoid imprisonment.[3] The restoration approach seeks to solve crime by rebuilding relationships after a crime has occurred.

The core concept of restorative justice is divided into 3 main parts, restorative justice is related to healing the wounds of victims, restoring offenders to live law-abiding lives, repairing the damage caused by restoring relationships in the community. These three points make restorative justice more fulfilling the demands of society's needs than just referring to the formal basis in the Criminal Procedure Code which emphasizes repressive actions. Looking further, even according to the Supreme Court, the concept of restorative justice can be applied in cases of minor crimes with a maximum imprisonment of three months and a fine of Rp 2,500,000 (Articles 364, 373, 379, 384, 407, and 482) as well as juvenile crimes where the maximum sentence is 7 years (Article 7 paragraph (2) of the SPPA Law).

Understanding more deeply, restorative justice places more qualitative values of justice where direct involvement of the parties to find solutions in resolving criminal cases

[1] Mark M. Lanier dan Stuart Henry,2004, *Essential Criminology*, Second Edition Colorado, USA: Westview, hal. 332.
[2] Kathleen Daly, *Restorative Justice in Diverse and Unequal Societies*, Law in Context, Vol.1, 2000, hal. 167-190
[3]Rufinus Hotmaulana Hutauruk, 2013, *Penanggulangan Kejahatan Korporasi Melalui Pendekatan Restoratif: Suatu Terobosan Hukum*, Sinar Grafika, Jakarta, hal. 113

is prioritized. For example, the victim can provide input regarding what the perpetrator should do to take responsibility for his mistakes in order to correct his crimes committed in order to restore his social value system in the community. The role of the community is also important in order to participate in supervising and supporting the perpetrator in carrying out the agreed legal obligations in order to restore the good name of the perpetrator in the community. Without the support of the community, of course this is difficult to fulfill, so the main requirement of restorative justice is how to restore a damaged situation to its original state by involving all parties.

The theoretical basis of restorative justice is the assumption to believe and strive that crime victims or their families can return to the original state as before the crime. [4] The purpose of restorative justice is to obtain clarity from the events that occurred by providing encouragement to the perpetrator, compensating the victim both materially and immaterially, as well as reintegrating the victim into society and joint responsibility.[5]

The process undertaken in order to uphold restorative justice is different from our criminal justice system, which refers to the legal process in KUHAP. What is done in resolving cases through a restorative justice approach includes at least the perpetrator, the victim/victim's family, the police, and the community. The first thing to do is to provide an opportunity for the victim to be directly involved in the discussion and decision-making regarding the suffering that occurred to him as a result of the perpetrator's actions with appropriate sanctions for the perpetrator and hear directly the explanation from the perpetrator of the motives and arguments for committing the act. Furthermore, after an agreement regarding the imposition of sanctions is made, then give the perpetrator full responsibility for his actions. The final stage that can be done is to provide an opportunity for the perpetrator and victim to establish a better relationship in order to strengthen the order in society.[6]

Restorative justice is more likely to meet the demands of society in relation to criminal cases than a repressive-based criminal justice system. Restorative justice is not

[4] I Made Wahyu Chandra Satriana, Ni Made Liana Dewi, 2021, *Sistem Peradilan Pidana* (perspektif *Restorative justice).* Udayana Press, Denpasar, hal.24.
[5] Mark M. Lanier dan Stuart Henry,2004, Op.Cit, hal. 336
[6] Mark M. Lanier dan Stuart Henry,2004, Op.Cit, hal. 338

only aimed at the perpetrator as the main point of the process, but instead rehabilitates a situation that has been tarnished (justice and law). According to several experts in the theory of restorative justice, restorative justice is a reaction to the criminal justice system that emphasizes the aspect of punishing the perpetrator without seeing the position of the victim. This theory considers the imposition of imprisonment in practice in the field does not provide retribution and correction to the perpetrator of the crime (in addition to not paying attention to the condition of the victim), but does not deny that the perpetrator of the crime must receive sanctions. The determination of the sanction given is an important point in the theory of restorative justice.[7]

Placement of restorative justice principles in the child protection space

As previously discussed, the principle of restorative justice is very much needed by the Indonesian criminal justice system considering that its main goal is to restore the situation to its original state, especially if it is positioned in the child protection space. Legal protection of children is very much needed, because it is one way to protect the next generation of the Indonesian nation in the future. The progress of a civilization is certainly inseparable from the next generation of a nation, so the Government and society need to make an effort in order to meet the needs of children, especially related to children in conflict with the law. Children in conflict with the law have the potential to inhibit the development process of the child himself, including children as victims. This makes the Government through its policies to be able to consider children in conflict with the law to meet their needs.[8]

Juridically, it can be seen that nationally the protection of children in conflict with the law is regulated in various laws and regulations such as:

1. The 1945 Constitution of the Republic of Indonesia to be precise in Article 28B paragraph 2 which states, “Every child has the right to survival, growth and development and the right to protection from violence and discrimination.”, as well as Article 34 which states, “the state's obligation to care for the poor and abandoned children.”
2. Law Number 39 Year 1999 on Human Rights

[7] I Made Wahyu Chandra Satriana, Ni Made Liana Dewi, 2021, Op.Cit, hal. 27
[8] Rufinus Hotmaulana Hutauruk, 2013, *Op.Cit,* hal. 115.

3. Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection
4. Law No. 11/2012 on Juvenile Justice System

Arrangements related to the protection of children in conflict with the law both as victims and perpetrators based on the legislation above are broadly speaking to provide protection from the targets of persecution, torture, and imposition of inhumane punishment. This is because it will affect the psychological and physical development of children who become perpetrators of criminal acts. Children who become victims also receive protection in the form of legal assistance and confidentiality of information.[9]

In the existing regulations, which according to the author by paying attention to the concept of restorative justice to the existing laws and regulations are still incomplete because the involvement of victims and the community has not been explicitly regulated in such a way, so that the orientation of legal protection for children in trouble with the law is still through formal justice even though there are several special treatments related to child protection that prioritize restorative justice.[10]

The use of the principle of restorative justice is something that is needed today, because the purpose of criminal law is not solely to retaliate against the perpetrator, but how to restore a condition in society that has suffered as a result of a criminal offense. This is what needs to be developed and improved by the Government so that the implementation of judicial diversion using the principle of restorative justice can run optimally.[11]

The principle of restorative justice essentially means restorative justice. Case handling by prioritizing conventional principles, namely restitution or compensation for victims, is different from recovery in the principle of restorative justice in essence.

Restoration of this relationship is based on mutual agreement between the victim and the offender so that decision-making involves the victim, not only based on the demands of the prosecutor, investigator, or judge. The victim can convey the losses

[9] Arief, Barda Nawawi. 1998, Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana. Citra Aditya Bakti, Bandung, hal. 67.
[10] *Ibid,* hal. 69.
[11] D.S., Dewi dan Fatahilah A. Syukur. 2011. Mediasi Penal: Penerapan Restorative Justice di Pengadilan Anak Indonesia, Indie-Publishing, Depok, hal. 38.

suffered and the perpetrator is also given the opportunity to make up for it, through compensation mechanisms, peace, social work, or other agreements that are focused on the interests of the victim who still prioritizes the principles of child protection, namely prioritizing the interests of the child's welfare. The conventional criminal justice process only prioritizes the process and prosecution of perpetrators without seeing room for the involvement of victims and the community in the main. It can be concluded that the active participation of the community and victims is not the main point, although technically there is a diversionary settlement, it seems that everything has been guided and coordinated by law enforcement without giving the position of determining punishment and / or recovery freely to the victims and the community.[12]

For example, if there is a case of a child victim of damage to his property, which if examined in the Child Protection Law related to the diversion process, the loss is not up to the minimum wage, so there is no need for an agreement by the victim (Articles 9 and 10 of the UUPA). Moreover, in the diversion process, law enforcers will look at the category of the crime committed, as well as the age of the child without looking at the losses suffered by the victim. Materially, it can be assumed that damaged goods with losses not reaching the minimum wage of the local province may be resolved by replacing the price of the goods, but what if the goods owned by the victim have a value that cannot be replaced even if they are bought/replaced with new ones. Psychologically, children who become victims will continue to suffer, even though the procedure has been carried out. These matters have not been given maximum attention in our laws and regulations, although the child as the perpetrator has been given sufficient protection.[13]

The involvement of children as victims is much more important in order to make a decision (not only saying agree or not to the advice given by law enforcement in the context of implementing diversion). Children as victims are first given the wishes they want to get in order to recover the losses suffered from a criminal offense, without any restrictions made by law enforcers. After the victim's wishes are conveyed, then law enforcers adjust to the protection of children as perpetrators (if in the case the child is the perpetrator) so

[12] *Ibid,* hal. 42.
[13] Marlina, 2010, Pengantar Konsep Diversi dan Restorative Justice dalam Hukum Pidana, USU Press, Medan, hal. 8.

that their rights are not violated but still carry out a legal action to be responsible to the victim. The wishes of the victim, which have been selected by law enforcement, are then conveyed to the child as the perpetrator or perpetrator of the crime. Compensation, social work, or education are instruments in negotiating an agreement in diversion, but not the free will of the victim. According to the author, whatever the victim wants in order to recover is the main thing considering that it is the victim who has suffered.[14]

Looking at the case related to the destruction of the victim's property by the perpetrator, if using the concept of restorative justice either through diversion or formally, the first thing that needs to be done by law enforcement as a facilitator is to ask a child psychology expert to ask the child about the losses experienced and what the child wants so that the suffering can be overcome in accordance with the wishes of the victim. The results of the victim's statement are submitted to law enforcement and then filtered based on the principle of the interests of the victim and the perpetrator so as not to be one-sided. The filtered wishes are then conveyed to the perpetrator. The negotiation of interests between the victim and the perpetrator can be given space so that each party can produce an agreement that is considered fair by both parties, after the agreement then the role of the community is needed in order to supervise as well as participate in providing ethical encouragement to the perpetrator to be responsible, and not repeat the actions that have been committed.[15]

Regarding the placement of the principle of restorative justice in the protection of children dealing with the law, it is the main and most important position because the basic concept of restorative justice is based on the principle of due process which highly upholds human rights and child protection related to the fulfillment of basic needs for children in solving criminal cases. The perpetrator is given the rights that are basic needs in order to grow and develop and for children who are victims, their interests are considered and restored through an agreement mechanism between the perpetrator and the victim. The community is given a place in order to support the child's responsibility to be responsible for his actions and restore the value system that exists in society, so that the child can

[14] Arief, Barda Nawawi. 1998, hal. 45.
[15] Mark M. Lanier dan Stuart Henry, 2004, hal. 78.

return to society and be accepted. The principle of restorative justice can be a solution in solving the problems of children in conflict with the law both as perpetrators and victims while still paying attention to the protection of children's lives and can restore the problems that occur, so that the lives of children as perpetrators and victims there is a recovery of children's lives and grow strong in a sustainable manner.[16]

4. Conclusion

Conclusion

The core concept of restorative justice is divided into 3 main parts, restorative justice is related to healing the wounds of victims, restoring offenders to live law-abiding lives, repairing the damage caused by restoring relationships in the community. These three points make restorative justice more fulfilling the demands of society's needs than only referring to the formal basis in the Criminal Procedure Code which emphasizes repressive actions.

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Suggestion

Law enforcement officials are expected to carry out law enforcement by diversion to really understand the philosophy of the principle of restorative justice. Law enforcement using the principle of restorative justice, it is hoped that law enforcers can be the right facilitator so that the agreement between the victim and the child offender can truly fulfill the wishes (victim) and in accordance with their capacity (offender), so that the balance of children's interests can be realized.

[16] Mark M. Lanier dan Stuart Henry, 2004, hal. 81.

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