

**LEGAL PROTECTION OF CHILDREN IN CONFLICT WITH THE LAW IN
INVESTIGATION PROCESS THROUGH *RESTORATIVE JUSTICE* (CASE STUDY
OF BALIKPAPAN CITY RESORT POLICE)**

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ABSTRACT

Investigation through a restorative justice approach to children is an effort to resolve criminal cases involving children by emphasizing the restoration of relationships between perpetrators, victims, and society, not just punishment. The legal regulation of restorative justice against children as perpetrators of criminal acts is regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The implementation of restorative justice as a protection for children in conflict with the law as perpetrators of sexual intercourse crimes in the Balikpapan City Resort Police is to focus on the needs of victims, perpetrators of crime, and also involve community participation.

Keywords: Restorative Justice , Children, Peer Sex.

**PERLINDUNGAN HUKUM TERHADAP ANAK YANG BERKONFLIK DENGAN
HUKUM DALAM PROSES PENYIDIKAN MELALUI RESTORATIF JUSTICE
(STUDI KASUS KEPOLISIAN RESOR KOTA BALIKPAPAN)**

ABSTRAK

Penyidikan melalui pendekatan keadilan restoratif (restorative justice) terhadap anak adalah upaya untuk menyelesaikan perkara pidana yang melibatkan anak dengan menekankan pemulihan hubungan antara pelaku, korban, dan masyarakat, bukan hanya pemberian hukuman. Pengaturan hukum restoratif justice terhadap anak sebagai pelaku tindak pidana diatur dalam Undang-Undang No. 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak. Implementasi restorative justice sebagai perlindungan terhadap anak yang berkonflik dengan hukum sebagai pelaku tindak pidana persetubuhan di Kepolisian Resor Kota Balikpapan adalah memfokuskan kepada kebutuhan dari pada para korban, pelaku kejahatan, dan juga melibatkan peran serta masyarakat.

Kata Kunci: Restorative Justice , Anak, Peersetubuhan.

INTRODUCTION

Children are the next generation of the nation and the successors of the existing development struggle. Children are a mandate as well as a gift of God Almighty that we must always take care of because in them are inherent dignity, dignity and rights as human beings that must be upheld. Children's rights are part of human rights contained in the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) and the United Nations Convention on the Rights of the Child. In terms of the life of the nation and the state, children are the future of the nation and the next generation of the nation's ideals, so that every child has the right to survive, grow, and develop, participate and have the right to protection from violence and discrimination as well as civil rights and freedom.

Children cannot protect themselves from various actions that cause mental, physical, and social harm in various areas of life. Children must be assisted by others in protecting themselves, considering their situation and conditions, especially in the implementation of juvenile criminal justice that is foreign to them, children need to be protected from errors in the application of laws and regulations that apply to them, which cause mental, physical, and social losses. Child protection in this case is called legal/juridical protection.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System regulates the entire process of resolving cases of children facing the law from the investigation stage to the guidance stage after serving a sentence. The word judiciary is not defined as a judicial body as regulated in Article 24 of the 1945 Constitution of the Republic of Indonesia and in Law Number 48 of 2009 concerning Judicial Power. The juvenile criminal justice system is part of the general judiciary, so the hearing of children's cases itself covers various scopes of the authority of the general judicial body.

Article 23 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states: Judges, Public Prosecutors, Investigators, and Legal Advisors, as well as other officers in the Children's Trial do not wear toga or official clothes. The purpose of all this process is for children to be more relaxed and not mentally (psychologically) depressed and willing to tell the events they experienced. Children who commit criminal acts, according to Article 68 of the Law on the Juvenile Criminal Justice System, are sentenced to a crime or are subject to action.

The juvenile criminal justice process starting from investigation, prosecution, court, and in carrying out court decisions in child welfare institutions must be carried out by specially educated officials or at least knowing about the problem of delinquent children. Treatment during the juvenile criminal justice process and still uphold the dignity and dignity of children without neglecting the implementation of justice, and not making the human value of children lower. For this reason, it is sought that law enforcers are not only experts in the field of law but especially honest and wise and have a broad and deep view of the weaknesses and strengths of human beings and their society.

Legal protection in this case contains the definition of child protection based on the applicable legal provisions (which regulate juvenile criminal justice), both as a suspect, defendant, convict/inmate. Juvenile criminal justice, starting from the stages of investigation, prosecution, trial, and corrections. Child protection is all efforts made to create conditions so that every child can carry out his or her rights and obligations for the development and growth of children in a reasonable manner both physically, mentally, and socially.

RESEARCH METHODS

This research is descriptive analytical, which reveals laws and regulations related to the legal theories that are the object of research. Descriptive analysis is a method used to describe a condition or situation that is currently occurring or ongoing with the aim of providing the most accurate data possible about the object of research so that it is able to explore things that are ideal, then analyzed based on legal theories or applicable laws and regulations. In this writing, it describes matters about the protection of children as perpetrators of criminal acts.

RESULTS AND DISCUSSION

The legal arrangement for the settlement of children's cases in conflict with the law in Indonesia is based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law), which prioritizes the concept of restorative justice and diversion. The SPPA Law replaces Law Number 3 of 1997 by applying a recovery and balance approach, not retaliation, and prioritizing children's rights through exemption from criminal justice processes to processes outside criminal justice if possible.

Investigators, public prosecutors, and judges are obliged to seek diversion at every stage. If the diversion is successful, the settlement of the case will be carried out outside the criminal justice route, such as returning the child to the parents and continuing school. If the diversion fails, the child will be processed through a trial in juvenile court, but still with special consideration. Diversion is a process that has been internationally recognized as the best and most effective way to deal with children who are facing the law. Interventions against children facing the law are broad and diverse, but most emphasize detention and punishment, regardless of how minor the offence is or how young the child is.

The main principle of implementing the diversion concept is persuasive action or a non-penal approach and providing an opportunity for a person to correct mistakes. Officers in conducting diversion show the importance of obedience to laws and rules. Officers carry out diversion by means of a persuasive approach and avoid arrests that use acts of violence and coercion. According to the concept of diversion in handling child cases in the Police that face the law, due to the adventurous nature of children, the punishment of children is not solely to punish but to re-educate and re-evaluate. To prevent children from exploitation and violence, it will be better if it is diversionary and if it is punished it will not be effective. The concept of diversion is also based on the fact that the criminal justice process against the children of criminal offenders through the criminal justice system causes more harm than good. The basic reason is that the court will stigmatize children for their actions, so it is better to prevent them from leaving the criminal justice system.

The implementation of the method is enforced in order to achieve the welfare of children based on the principle of the best interests for children. In other words, the diversion is based on child protection and fulfilment child rights based approach. The 1959 Declaration of the Rights of the Child can be referred to to interpret the principle of the best interests for children. The second principle states that children should enjoy special protection and be provided with opportunities and facilities through legal and other efforts so as to enable children to develop physically, mentally, morally, spiritually and socially in realizing the freedom and honor of children. This principle can be found in the 2 (two) General Comments of the Human Rights Committee, especially General Comments Numbers 17 and 19) as an effort by the Commission to interpret the law on the principle of the best interests of the child

in the case of separation of the child from the parental environment (parental separation or divorce). In this framework, the welfare approach can be used as the basis for the philosophy of handling violations of the law on the age of children. In principle, this approach is based on 2 (two) factors, namely children are considered not to understand the mistakes that have been made, so it is appropriate to be given a reduction in punishment, as well as a distinction between giving punishment for children and adults. When compared to adults, children are believed to be easier to nurture and be aware of.

Diversion is applied to children who are 12 (twelve years old) but not yet 18 (eighteen) years old or have reached the age of 12 (twelve) years even though they have been married but are not yet 18 (eighteen) years old, who are suspected of committing criminal acts. The judge is obliged to seek diversion in the event that the child is charged with committing a criminal act that is threatened with imprisonment of less than 7 (seven) years and is also charged with a criminal act that is threatened with a prison sentence of 7 (seven) years or more in the form of a subsidiary, alternative, cumulative or combination (combined) indictment. The application of diversion provisions is an important thing to consider, because with diversion, children's human rights can be more guaranteed, and children can be avoided from the stigma of being a "delinquent child", because criminal acts that allegedly involve a child as a perpetrator can be handled without the need to go through a legal process.

The purpose of diversion is to get a way to deal with violations outside of the court or formal criminal justice system. There is a similarity between the purpose of discretion and diversion. The implementation of diversion is based on the desire to avoid negative effects on the soul and development of children through their involvement with the criminal justice system. The implementation of diversion by law enforcement apparatus is based on the authority of law enforcement officials called discretion. The relationship between the concept of diversion and the concept of restorative justice with the settlement of fraud and embezzlement criminal cases raised in this study is about ways to avoid cases between the complainant and the reported person in the case of fraud and embezzlement in order to take the path of peace. So that the case does not need to be resumed. Because if it is continued, the perpetrator will take part in a trial that takes a relatively long time and costs a lot of money. With peace, the complainant can make and submit an application for the revocation of the complaint report to

the Indonesian Police to revoke the report with the aim that the report will not be followed up. In fact, the concepts of diversion and restorative justice have been known in the juvenile criminal justice system. The law that regulates it is Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Even for child perpetrators, diversion (restorative justice) can be carried out, so if child perpetrators can be diverted (restorative justice) by means of peace, of course, for fraud and embezzlement crimes where the perpetrators are adults, it can also be done by emulating the concepts of diversion and restorative justice applied to child perpetrators.

Article 1 number 7 of Law No. 11 of 2012 concerning the Criminal Justice System states that diversion is the transfer of the settlement of children's cases from the criminal justice process to the process outside the criminal court. This diversion concept has been applied for a longer period of time in several countries. According to historical records, in Britain the police have long exercised discretion and transferred children to non-formal processes. The record of the first time special treatment for children was applied for a criminal act committed was in 1833, namely by conducting informal proceedings outside the courts, besides that there was also judicial separation for minors regulated in the Children Act of 1908 which according to the Children Act In 1908 the police were given the task of handling children before entering the court by paying more attention to the provision of welfare and justice to the children of criminal offenders and the provision of special treatment to children of criminal offenders was included in the concept of diversion.

Indonesia has the concept of diversion which is first regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, where the concept of diversion is a new breakthrough in the juvenile justice system in Indonesia where the concept of diversion is a transfer of the settlement of cases of children suspected of committing certain criminal acts from formal criminal proceedings to a peaceful settlement between the suspect/defendant/perpetrator of the crime and the victim facilitated by the family and/or community, Children's Community Counselors, Police, Prosecutors or Judges. Diversion is carried out to find a form of solution that is a win-win solution, where the concept of diversion was born based on the fact that the criminal justice process against perpetrators of criminal acts through the conventional criminal justice system causes more harm than good.

Diversion also has the purpose of avoiding stigmatization of children who are suspected of committing criminal acts, so that it is hoped that children can return to a reasonable social environment and also enforce the law without committing painful acts of violence by giving a person the opportunity to correct his mistakes without going through criminal punishment by a state that has full authority, one example of the background of the importance of applying the concept of diversion is because The high number of children who enter the criminal justice system and are sentenced to prison and experience violence while undergoing a series of processes in the criminal justice system. Another consideration for the applicability of the concept of diversion in the juvenile criminal justice system is based on the reason to provide justice to perpetrators who have already committed criminal acts and provide opportunities for perpetrators to improve themselves.

Law No. 11 of 2012 concerning the Child Criminal Justice System expressly states that in handling children in conflict of law, investigators, prosecutors, and judges are obliged to seek diversionary actions. In accordance with Article 7 paragraph (2) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, diversion can be enforced if the child perpetrator is threatened with imprisonment for less than 7 (seven) years and is not a repetition of the criminal act, taking into account the category of the crime, the age of the child, the results of community research from Bapas and the support of the family and community environment (Article 9 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System). Other regulations that regulate diversion are also contained in the Government Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System and also in the Government Regulation of the Republic of Indonesia Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under the Age of 12 (twelve) years.

One of the problems that often occurs in people's lives in Indonesia along with the progress of the times marked by technological and cultural developments, makes not only adults who can violate the values and norms that exist in society, especially legal norms, someone who is categorized as a child can also violate legal norms both consciously and unconsciously. Violations of legal norms that make a child have to deal with the judicial system, provoke a

response that there are law enforcers who have not paid special attention to child suspects, and this shows that the existing law in Indonesia is still not enough in favor of children, while as part of the legal subject children should get protection because children are entrusted by God and the next generation of the family. clans, tribes, nations and countries as well as the next generation of mankind.

CONCLUSION

The regulation of restorative justice law against children as perpetrators of criminal acts in investigation is regulated in Law No. 11 of 2012 concerning the Child Criminal Justice System. Investigators have an important role in identifying cases that allow for the application of diversion and initiating restorative justice processes. If possible, diversion can be carried out from the investigation stage, before the case is transferred to the public prosecutor. The implementation of *restorative justice* as a protection for children in conflict with the law as perpetrators of sexual intercourse crimes in the Balikpapan City Resort Police is to focus on the needs of victims, perpetrators of crimes, and also involve community participation, and not solely fulfill legal provisions or solely impose criminal penalties. In this case, the victim is also involved in the process, while the perpetrator of the crime is also encouraged to take responsibility for his actions, by correcting the mistakes made by the child.

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