

RESTORATIVE JUSTICE AS PART OF THE PROTECTION OF CHILDREN IN CONFLICT WITH THE LAW, IT IS REVIEWED FROM LAW NUMBER 11 OF 2012 ABOUT THE JUVENILE JUSTICE SYSTEM

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ABSTRACT

The application of the principle of restorative justice in dealing with criminal acts committed by children in a formal juridical manner has been regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The formulation of the problem in this is how to regulate restorative justice for children as perpetrators of criminal acts, how to apply restorative justice in resolving child protection crimes, how are the obstacles in implementing restorative justice for child protection crimes. The results of the study indicate that the obstacle in implementing restorative justice against children as perpetrators of violent crimes is that they are still very limited, both physical facilities where the implementation of restorative justice is carried out, and non-physical facilities, namely the unavailability of professional personnel such as doctors, psychologists, skill instructors and educators. in various places where children are placed during the handling of the legal process.

INTRODUCTION

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) states that Indonesia is a state based on law, so that in the general explanation of the 1945 UUD NRI regarding the Indonesian government system, it is explained that Indonesia is a state based on law, not based on power.

One of the problems that often occurs in the lives of people in Indonesia along with the progress of the times marked by the development of technology and culture, makes it 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 cause a child to have to face the justice system, give rise to responses saying 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 sufficiently pro-children, whereas as part of the legal subject children should receive protection because children are entrusted by God and the next generation of the family, clan, tribe, nation and state as well as the next generation of humanity. Child protection is all efforts made to create conditions so that every child can exercise their rights and obligations for the development and growth of children naturally both physically, mentally and socially.

Acts of violating norms, both legal norms and social norms, carried out by children are called juvenile delinquency. This tends to be called juvenile delinquency rather than juvenile crime, because it is too harsh to call a child who commits a crime a criminal.

Criminal acts are not only committed by adults; many perpetrators are children. When children are treated in the same way as adults through criminal justice, the results are ineffective. Instead of a deterrent effect, most children who go through the criminal justice process experience lasting trauma. Because children's psychological state differs from that of adults, the concept of criminal justice, which places significant pressure on perpetrators, is inappropriate for children.

Children are not meant to be punished, but rather to be given guidance and development so they can grow and develop as normal, healthy, and intelligent individuals. Children are a gift from Almighty God, the future generations of the nation, still in their physical and mental development. Sometimes children experience difficult situations that lead them to commit unlawful acts. However, children who break the law do not deserve to be punished, let alone imprisoned.

Considering that children are not the same as adults, both physically and psychologically, and that they are mentally vulnerable, they are not yet independent, do not yet have full awareness, and their personalities are not yet stable, it is appropriate for the sake of children, who will become the successors to the state, to handle children in conflict with the law differently.

Children are part of the younger generation as one of the human resources who are the potential and successors of the ideals of the nation's struggle in the future who have a strategic role and have special characteristics and traits that require guidance and protection in order to

ensure balanced physical, mental, and social growth and development. Childhood is a period of sowing seeds, erecting stakes, and making foundations which can also be called a period of forming the character, personality and character of a human being, so that they will have strength and ability and stand strong in navigating life.

Indonesia is a country that has ratified and adopted the principles of the Convention on the Rights of the Child, based on Presidential Decree Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child. This convention regulates several basic principles for children, namely the principle of non-discrimination, the principle of the best interests of children, the principle of the right to life, survival and development, and the principle of respect for children's opinions.

According to Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice states that the Republic of Indonesia National Police needs to realize the resolution of criminal acts by prioritizing restorative justice which emphasizes restoration to the original state and balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards punishment is a legal need of society.

The Republic of Indonesia National Police, in order to respond to the development of the legal needs of the community that fulfills the sense of justice for all parties, is given authority in accordance with Article 16 and Article 18 of Law Number 2 of 2002 concerning the Republic of Indonesia National Police, it is necessary to formulate a new concept in enforcing criminal law that accommodates the norms and values that apply in society as a solution while providing legal certainty, especially the benefits and sense of justice of the community.

The Indonesian National Police Regulation on Handling Criminal Acts based on Restorative Justice is a new concept in criminal law enforcement that accommodates prevailing norms and values in society as a solution while providing legal certainty, especially the benefits and sense of justice of the community, in order to answer the development of legal needs of the community that fulfills the sense of justice of all parties, which is a manifestation of the authority of the Indonesian National Police in accordance with Article 16 and Article 18 of Law No. 02 of 2002 concerning the Indonesian National Police.

Restorative Justice is the resolution of criminal acts by involving the perpetrator, victim, the perpetrator's family, the victim's family, community

leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a just resolution through peace by emphasizing the return to the original state.

Handling criminal acts based on Restorative Justice must meet both general and specific requirements. General requirements apply to the implementation of criminal investigation functions, inquiries, or investigations, while specific requirements apply only to criminal acts based on Restorative Justice during investigation or investigation activities.

RESEARCH METHODS

A research method is an effort to discover, develop, and test the truth of knowledge, conducted using scientific methods. Research methods describe the methods or methods researchers use to obtain data or information. These methods serve as guidelines and a foundation for conducting research operations and writing scientific papers. This study uses qualitative research methods, which do not require a population or sample.

This research is descriptive and analytical in nature, meaning it describes, examines, explains, and analyzes the problems in the crime of livestock theft, as related to laws and regulations, which are then analyzed. This research is a scientific activity based on specific methods, systems, and thinking aimed at studying a particular law through analysis.

The data collection technique used to obtain secondary data is through literature review. This research aims to have clear and focused objectives and can be accounted for as a scientific work. To obtain data related to the problem under study, a literature review was conducted. This literature review seeks concepts, theories, opinions, or findings closely related to the main problem. This literature includes laws and regulations, scholarly works, and other sources.

The data collection tool used is a document study, used to obtain secondary data by reading, studying, researching, identifying, and analyzing secondary data related to the research object. This secondary data is obtained by studying books, research results, and legal documents related to the subject. application of restorative justice for child protection crimes.

RESULTS AND DISCUSSION

Children are a national asset, part of the younger generation, who play a very strategic role in the nation's progress. They are the hope of their parents, the hope of the nation and state, who will continue the baton of

development and play a strategic role. They possess special characteristics and traits that will ensure the continued existence of the nation and state in the future. Every child must receive guidance from an early age, given the broadest possible opportunities to grow and develop optimally, both physically, mentally, and socially. Childhood

Childhood is a period of formation of a human's character, personality and self-character as they go through life.

The philosophy of children is the younger generation, one of the human resources who have the potential and continue the ideals of the nation's struggle in the future, who have a strategic role and have special characteristics or traits, special guidance and protection as well. According to Kartini Kartono, children are a normal human condition that is still young in age and soul, so it is very easily influenced by its environment. According to Shanty Dellyana, children are those who are not yet adults and who become immature due to certain regulations (as a result of mental that is still immature).

The definition of a child under statutory regulations varies due to the differing age limits within the laws themselves. The definition of a child, when viewed from a chronological age perspective, can vary depending on the place, time, and circumstances, which also influence the determination of the child's age limit. The definition of a child is as seen from current statutory regulations.

Indonesia guarantees the human rights of every citizen in its constitution, including the guarantee and protection of children's rights as part of human rights. As a State Party to the Convention on the Rights of the Child, which regulates the principles of legal protection for children, Indonesia is also obliged to provide special protection for children in conflict with the law. One form of child protection by the state is realized through a special criminal justice system for children in conflict with the law. This system is built on a foundation of legislation, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning Child Protection.

The enactment of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System provides confirmation regarding the protection of children in Indonesia. This law introduced the concept of diversion, which aims to provide protection for children in conflict with the law, children who are victims of crime, and the community in general as a form of diverting the resolution of children's cases from the criminal justice process

to a process outside the criminal justice system in order to realize restorative justice.

The Juvenile Criminal Justice System Law aims to establish a justice system that truly guarantees the protection of the best interests of children in conflict with the law. The Juvenile Court Law is considered no longer appropriate to the legal needs of society and does not comprehensively provide special protection to children in conflict with the law.

Law Number 11 of 2012 concerning the Child Criminal Justice System, regulates the form of protection of children's rights in the judicial process, where in this case children as perpetrators of criminal acts have the right to obtain their rights, in accordance with what is written in Article 3, Article 4 paragraph (1) and Article 4 paragraph (3).

Article 4 paragraph (3) of Law Number 11 of 2012 also explains that in the juvenile criminal justice system, diversion must be attempted. The function of the Juvenile Court is generally no different from other courts, namely receiving, examining, and trying and resolving cases submitted to it, but for the Juvenile Court, cases handled specifically involve children's cases. Providing special treatment in order to guarantee the physical and mental growth of children as the next generation whose future must be taken into account, where in this case, to provide justice, the judge takes various actions by first examining the truth of the events submitted to him.

In adjudicating, judges strive to uphold the law that has been violated. Therefore, it is often said that judges or courts are law enforcers. In adjudicating, courts must adhere to applicable law, including both written and unwritten law. Based on this, this function is carried out by special officials in the Juvenile Justice System. In other words, this function would not be achieved without the role holders, namely judicial officials.

Given the unique characteristics and traits of children and for the sake of their protection, cases of children in conflict with the law must be tried in a juvenile criminal court within the general court system. The judicial process for children, from arrest, detention, and trial, must be carried out by specialized officials who understand children's issues.

Investigators as stipulated in Law Number 11 of 2012 concerning Juvenile Courts must be viewed with the same status and function as investigators as stipulated in the Criminal Procedure Code. It is stipulated that an investigator is a police officer with the rank of captain and/or an officer as determined by statutory regulations.

An investigation is a series of actions taken by investigators during a preliminary examination to gather evidence of a crime. These actions include summoning and questioning witnesses, confiscating evidence, conducting searches, summoning and questioning suspects, making arrests, and detaining them. When conducting investigations involving children, these are typically carried out by female police officers, and in some cases, with the assistance of male police officers, if necessary. Child investigators must also possess knowledge in areas such as psychology, psychiatry, sociology, pedagogy, and anthropology. They must also love and be dedicated to exploring the child's psyche and understanding their desires.

The Child Criminal Justice System Law does not provide strict sanctions for investigators if this obligation is violated, and does not regulate the legal consequences of the results of the investigation, this affects the quality of the investigator's work and greatly affects child protection. Children can become victims of the lack of clarity in the Child Criminal Justice System Law and can result in physical, mental, and social harm to children because it can hinder the physical, mental, and social development of the child in their social life.

The prosecutor's role in carrying out his duties in juvenile cases requires him to promptly prepare an indictment and detain the juvenile for a period of 10 days, extendable to 15 days. Within 25 days, the prosecutor's indictment against the juvenile who has committed a crime or violation must be submitted to the Juvenile Court.

Public prosecutors are advised to understand the basic psychology of children at various ages or levels from the lower limit of 0 years to the upper limit of 18 years. Where in the age of children who are categorized as minors, it is necessary to obtain legal provisions that can protect children's rights in relation to prosecution.

Actions to provide protection for children as defendants are carried out by prosecutors based on considerations stipulated by law, namely Supreme Court Circular Letter Number 3 of 1959 regarding how to treat the actual juvenile court system. In the case of prosecutors carrying out prosecution duties in accordance with the provisions of Article 1 paragraph (7), Article 14, Article 110 paragraph (3), Article 138 of the Criminal Procedure Code as guidelines for the implementation of prosecution and pre-prosecution, they must also pay attention to the provisions for prosecution regulated in Supreme Court Circular Letter No. 3 of 1959,

especially regarding the attitude and method of prosecutors in carrying out prosecution duties against a child who is a suspect.

Children as the next generation who are often touted as the nation's heirs, the young shoots of the nation's hope, in every era have the responsibility to continue the nation's struggle to achieve national ideals as mandated in the 1945 Constitution.

The concept of naughty children according to Romli Atmasasmita in Wagiyati Soetodjo uses the term "Juvenile Delinquency" which is any act or behavior of a child under 18 years of age and not yet married which is a violation of applicable legal norms and can endanger the personal development of the child concerned.

The common term, the word "Juvenile" is often used as another term for children. There are two interpretations of this term: first, the meaning of children for the consideration of law enforcement officials (police, prosecutors, judges) in the context of implementing criminal policies in the juvenile justice process. From the first, this is only intended to differentiate between criminal offenders who are still children (non-adult offenders) and criminal offenders who are adults (adult offenders). Then the second understanding is the meaning of adolescents, this term is usually based on a person's psychological condition, where those in their teens are often referred to as teenagers. However, this understanding is not everyone can accept, because the meaning of "juvenile" is too general and includes all people who are still young.

According to Kartini Kartono in Wagiyati Soetodjo, what is meant by juvenile delinquency is evil/immoral behavior or crime/delinquency of young people, which is a symptom of social illness (pathology) in children and adolescents caused by a form of social neglect so that they develop a form of neglect at the level of deviant behavior. Romli Atmasasmita in Wagiyati Soetodjo said that juvenile crime is an act committed by children which is considered to be contrary to the legal provisions in force in a country, which is perceived and interpreted by society as a reprehensible act.

Mischief in this case is an act that contains elements of reprehensible acts which are considered to be a violation of the law, at a minimum the act can disturb the peace of other people or the surrounding community.

As part of the younger generation, children are the successors to the nation's ideals and human resources for national development. In various

ways, efforts to protect children face problems and challenges that can directly and indirectly influence their behavior and conduct.

Changes in the lifestyles and lifestyles of some communities have brought about fundamental social changes in community life, which undoubtedly impact children's values and behavior. Furthermore, children who receive little or no affection, care, guidance, and development in attitudes, behavior, adjustment, and supervision from parents, guardians, or foster parents are easily drawn into unhealthy social and environmental influences that can be detrimental to their personal development.

Dealing with and addressing delinquent behavior in children requires considering the various underlying factors. Although children can determine their own actions based on their thoughts, feelings, and desires, their surroundings can influence their behavior. Therefore, guidance and support from parents and the surrounding community are essential.

If there is a lack of identification between parents and children, they will live in their own worlds with little in common with one another. Parents often don't know what their children are doing, and children don't know about their parents' activities. Therefore, a focused foundation is needed to create harmony in family life and create a generation with potential. Parents must be role models for their children. This is crucial for a child's sense of belonging. The moral code applied at home should not deviate from the moral code at school or in the community so that children can understand and not seek the truth in their own way.

Children are an inseparable part of human survival and the survival of a nation and state. The Indonesian constitution clearly states that children play a strategic role, guaranteeing the right of every child to survival, growth, and development, as well as protection from violence and discrimination. Therefore, the best interests of children should be recognized as the best interests of humanity. The consequences of Article 28B of the 1945 Constitution of the Republic of Indonesia require follow-up by creating government policies aimed at protecting children.

Children need protection from the negative impacts of rapid development, globalization in the fields of communication and information, advances in science and technology, and changes in the lifestyles and ways of life of some parents, which have brought about fundamental social changes in the lives of people who have a significant impact on children's values and behavior. Deviant behavior or illegal acts

committed by children are caused, among other things, by factors outside the child.

A crime, delinquency, or criminal act committed by a person must have a cause that serves as the background for why the act was carried out. The factors that drive the act are often also referred to as motivation, which contains elements of intention, desire, will, driving needs, ideals that are then manifested in the birth of actions. Likewise, criminal acts committed by children are inseparable from factors that support children who commit criminal acts.

CONCLUSION

The legal provisions for restorative justice for children as perpetrators of criminal acts are regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The judge did not provide restorative justice by implementing diversion for children who committed violent crimes, as seen in the judge's decision where the judge only referred to the articles on implementing diversion in Law Number 11 of 2012, PERMA Number 4 of 2014 and the Criminal Code.

Implementation *restorative justice* in resolving criminal acts against children as a perpetrator of a crime is focusing on the needs of victims and perpetrators of crimes, and involving community participation, rather than solely fulfilling legal requirements or imposing criminal penalties. In this case, victims are also involved in the process, while perpetrators are encouraged to take responsibility for their actions by correcting the mistakes made by children.

Obstacles in the application of restorative justice to children as perpetrators of violent crimes are: There are still very limited physical facilities in the buildings where restorative justice is carried out, as well as non-physical facilities, namely the unavailability of professional staff such as doctors, psychologists, skills instructors and educators in various places where children are placed during the legal process.

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