

MEASURING RESTORATIVE JUSTICE IN HANDLING CHILDREN FACING THE LAW OF SEXUAL VIOLENCE

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ABSTRACT

For children in conflict with the law, the formal justice system which places children in the status of prisoners has major consequences in the lives children. While in Indonesia the majority of criminal cases are resolved through the criminal justice system.

Law enforcement against children as perpetrators of the crime sexual violence with child victims must still pay attention to the principle of proportionality. This principle seeks to limit the consequences of punishment and restrain public response in order to remain proportionate to the perpetrators of child sexual abuse.

In addition to focusing on activities, this idea also considers the child's environment. Meanwhile, law enforcement that cannot be carried out through diversion must still pay attention to children's rights, so that if children are convicted, they are only subject to half of the adult sentence, so that they can return to society naturally and are equipped with skills.

INTRODUCTION

Background

Children the nation's next generation, the foundation of the nation's future. Article 28(B) of the 1945 Constitution stipulates that "Every child has the right to survival, growth and development, and the right to protection from violence and discrimination", added by the Indonesian government to help realize this goal. Globalization presents challenges in educating students to become the future leaders of the country. Children's behavior is negatively influenced by globalization, one of which is that they may engage in unethical behavior towards others. This is demonstrated by the many immoral acts committed by children, including rape and other forms of sexual violence. According to the Indonesian Child Protection Commission (KPAI) Report, there were around 123 incidents of children committing criminal acts as perpetrators in 2020, of which 28 were sexual violence. Given that children should have the best opportunity to develop physically, mentally, and socially, this number is quite alarming. Given the increasing number of cases of sexual violence against children, whether as perpetrators or as victims, it is necessary to pay attention to the settlement process that children, whether as perpetrators or as victims, are still given their legal rights in accordance with the applicable law.

When a young person is in trouble with the law, the formal justice system that imprisons them has a significant impact on the child's life. In Indonesia, the criminal justice system is used to resolve most criminal offenses. The criminal justice system, according to Mardjono Reksodiputro, is a network of public and private organizations established to prosecute defendants and offenders. The academic community, law enforcement, forensics, judiciary, and correctional facilities form several interconnected pillars of the system. In reality, the criminal justice system does not function properly because it does not pay attention to the interests of the victims and the defendants. In other words, the traditional criminal justice system that is used in various countries around the world often causes dissatisfaction and disappointment.

A paradigm known as restorative justice seeks dispel concerns about the way the current criminal justice system functions. It implemented as a criminal justice resolution strategy that involves the community, victims of crime, and offenders in to achieve justice for all parties in the hope that things will return to normal and prevent more crime. To address criminal behavior, restorative justice provides a balance between the needs of victims, offenders, and society. There is no complete agreement on the formal definition of restorative justice because it is still evolving and has led to different interpretations in different countries. addition, alternative phrases such as communitarian justice, redemptive justice, positive justice, relational justice, reparative justice, and community justice are often used because it is difficult to translate these ideas into different languages.

The Law of Republic Indonesia (hereinafter abbreviated as SPPA) provides restorative justice in cases involving children and offenders as victims. Diversion is one of the approved restorative justice strategies. Diversion programs or interventions are designed to address the root causes of criminal behavior to give minor offenders a second chance while also removing them from the criminal record. According to article 7 paragraph i(2) of the iSPPA, the use of diversion is limited to specific criminal offenses which are criminal offenses committed when a person is less than seven years old and is not a repeat criminal offense.

17 Yearc on of (hereinafter referred to as iUUPA) contains provisions from the point of view of the child who the victim in Article 76 (D) in *conjunction* with Article 81 for criminal acts involving children and Article 76 (E) in conjunction with Article 82 for the criminal act of child abuse. The provisions of these articles determine the minimum sentence that will be given as well as the maximum sentence of over seven years. The pros and cons of the crime of sexual violence against children continue to divide society, especially women's and children's rights activist groups who want the harshest possible punishment for those who commit such crimes given the severity of the harm caused by these crimes Child sexual abuse has long-term effects that go beyond short-term health problems to long-term trauma that can last into adulthood. However, from the perspective of a child who commits sexual violence, facing legal action and imprisonment can have very serious consequences, especially for their future as young people of the nation.

Problem Formulation

- 1.How is the Indonesian juvenile justice system explained?
- 2.How is the enforcement of the law with an approach of restorative justice towards children as perpetrators of child sexual abuse?
- 3.How is the enforcement of the law with a restorative justice approach towards child victims of sexual violence?

Goal

- 1.To know and understand the Indonesian children's justice system.
- 2.To know and understand about the enforcement of law with the approach of restorative justice towards children as perpetrators of sexual violence.
- 3.To know and understand about the enforcement of law with an irestorative justice approach towards children who are victims of child sexual abuse.

METHODS OF INVESTIGATION

This research uses inormative legal research. The volumes of books that are the primary and secondary legal sources complement this research. The laws and regulations cited in this article are the primary legal sources, while the secondary legal sources include books, legal journals, legal theories, expert opinions, and legal research findings. Data was collected through literature studies conducted in libraries using various books, magazines, and legal literature. In addition, information was collected through downloading from the *internet*.

After sorting, the data was then analyzed qualitatively using inductive methodology. It is still difficult to examine the phenomena surrounding children and the law of sexual violence in depth while synchronizing with the doctrines, opinions, and recommendations of legal experts,

with a focus on regulatory studies. The topic of study is regulation, which is defined as social norms or laws that apply to everyone and serve as guidelines for their behavior. Therefore, the inventory positive law, the and doctrine of law, the conclusion of law in a particular case, the systematics of law, the degree harmony, the comparison of law, and the history of law become the main topics of inormative legal research.

DISCUSSION

Juvenile Justice System in Indonesia

Both legal protection in the justice system and legislation that explicitly regulates children's justice are part of the government's policy to protect children from the law. Law on Children's Justice Number 13 of 1997 was later replaced by Law Number 11 of 2012. For development, it is important to safeguard children who involved in the legal system, either as perpetrators or as victims of crimes. At the end July, the President and the House of Representatives passed an amendment to the law regulating the juvenile. The revision is intended to increase the effectiveness justice in protecting children who entangled the legal system through an integrated criminal justice system. The replacement of the iUU on Juvenile Justice is because rules do not consider and protect the interests of children, including those who are perpetrators, witnesses, and victims of criminal acts. as perpetrators are sometimes treated the same as adult criminals, whereas the iUU on Child Protection only protects children as victims.

The Law on the Juvenile Justice System makes it clear that the judiciary places the highest priority on the best interests and general welfare of children. request for diversion be carried out in accordance with (1) of () at every stage of investigation in the police, prosecution in the prosecution, and trial in the court. phrase "children's justice system" is a translation of the phrase "children justice system" which used to refer to a number of institutions related to justice, including the police, the prosecution and legal counsel, the supervisory institution, the children's correctional institution which provides health facilities, and the children' growth and development center.

The law is not only enforced as a form of retaliation against criminals, and the absolute theory is that punishment is an absolute consequence that must exist as a form of retaliation. So the basis of the justification of the crime in of itself. However, this of retribution is not sufficient to account for the harm suffered by the victim and is not effective enough to restore the offender's actions to their original state. A more moral person who fits into society. According to the Child Protection Law, a is 12 (twelve) has yet reached () of a crime considered to be in conflict with the law

1. Restorative Justice Approach

Restorative justice provides recovery for victims who have suffered immaterial and immaterial losses, provides understanding and opportunities for perpetrators to take responsibility for the crimes they commit. the *restorative justice* approach, the main victim of a criminal act is not the state, as in the current criminal justice system which prioritizes *Retributive Justice*. In restorative Justice, the criminal victim must get his as a victim. The criminal act that occurs gives an obligation to repair the relationship that is damaged as a of the criminal act. Justice is no longer measured by the size of the retribution from the to perpetrator, whether it or psychological. However, the results of a crime can be healed to victim, punishing the perpetrator, whether the of the or the community. The of *restorative justice* is important in handling every case, especially cases related to children. In the face as victims, the concept of irestorative justice has the goal of restoration, both for the child perpetrators so can improve themselves and for the child victims to get rights as child victims. explicit meaning restorative justice in the formulation of (6) of () states that the punishment of children is not for retaliation (*ius italionis*). formulation is , not retaliation, and confirms that diversion a of resolving children's cases.

2. Diversion of Restorative Justice Approach

Diversion is the embodiment of the concept of irestorative justice which is induced by and contained in the iSPPA. concept irestorative justice leads to justice with dignity, with the law as the embodiment of the soul of a nation. form irestorative justice approach in cases involving children

as perpetrators and children as victims is subject to the law of law as set out in the on the *Justice* and the concept *irestorative* imposed on children through diversion. iWhereas the definition of diversion is on Article (7) "of the of the criminal to the".

The diversification process is governed by Article i15 of Law and the Regulation Law Implementation of Juvenile of the Number Per-006/A/J.A/04/2015 on Guidelines for the Implementation of Diversion at the Prosecutor level also supports it. iTo carry out diversion, a person must fulfill the conditions stipulated in Article (2) of, among others, it is with maximum 7c (seven) years and not a repeated criminal act.

Several regulations, including Articles 281-287, 289, 290, 294, and 295 of the Criminal Code, regulate this crime of sexual violence. Meanwhile, the Child Protection Law, specifically Article 76 D Jo Article 81 on children and Article 76 E Jo Article 82 on violence against children, regulates sexual violence with child victims in particular. Although Law itself does not provide a specific definition for sexual violence, molestation is included in that category. Article 76D of itentangc The Law on of states, "Every person shall not commit violence ior threaten violence iforcing a child to have sexual intercourse with him/her or with another person."

Law Enforcement with a Restorative Justice Approach to Children as Perpetrators of iChild Sexual Violence

The enforcement of the law against children as perpetrators must still pay attention to the principles that prioritize the interests of children. Likewise, if the victim of a child offender is a child, of course they must accommodate the interests of the child victim to restore their rights. This concept is known as restorative justice. The threat of punishment for violating Article 76D of Law Number 35, is set out in Article to children, the criteria for sexual violence set out in the Law on the Protection of Children is "Child Abuse", the provisions of which are set out in Article 76E: "Every person shall not use violence or threaten violence, coerce, deceive, commit a series of frauds, or induce a child to commit or allow the commission of an offense."

Based on the provisions regarding the criminal act of isexual violence against children found in the Law on the Protection of Children above, is associated with the provisions of the process of resolving the criminal act with an irestorative justice approach through diversion, it cannot be done, because is threat more than seven (7) years of imprisonment. Although concept of irestorative justice in the criminal act of sexual violence with child perpetrators and victims cannot be pursued through diversion, the Constitution stipulates that every enforcement of the law against children must still take into account that the perpetrator is still a "child" who has the right to improve his/her self and develop his/her potential. Therefore, in every process, both investigation, prosecution and decision, the fulfillment of rights as a child offender is still considered. Sudarto stated that in the Children Court there is an activity of examination and decision of cases which focuses on the interests of children, i.e. all activities carried out by police, prosecution, judges and other officials, must be on the principle that is for the benefit of children. welfare of children and interests of children.

The enforcement of the law against children as perpetrators of criminal acts of sexual violence with child victims must still pay attention to the principle of proportionality. This principle aims to discipline punitive sanctions, in addition to suppressing community reactions in order to remain proportional to child perpetrators who commit antisocial acts such as sexual violence, which are not only based on the weight of the act, but also pay attention to the child environment. such as social status, family environment and social status. surrounding community, as well as other factors that make children commit antisocial acts. In essence, the reaction to antisocial offenders must be done fairly. Fair in the sense that both the treatment of child offenders and the punishment imposed on child offenders must be in accordance with the provisions of the Law on the Juvenile Justice System, the punishment of children as perpetrators is found in Article 79 and Article 81 of Law Number 11 of, That the determination of the basic punishment in the form imprisonment or restriction of freedom that is applied to children as perpetrators is (half) of the adult punishment and no special minimum punishment applied. to basic punishment, there is the imposition of a fine in the criminal act of sexual violence against children.

The of punishment that can be received by child who is in conflict with the law is as follows:

- 1.Back to the person or family;
- 2.Submit to someone;
- 3.Mental health home care;
- 4.Social Welfare
- 5.Obligation to participate in iformal education and / or training organized the government or private;
- 6.Revocation of SIM;
- 7.Remediation of the impact of the breach of law.

In essence, the actions that can be imposed on children who have committed a criminal offense are as set forth in the Law on the Juvenile Justice System, among others:

- 1.Returned to the person, the family, or the person's care if in the opinion of the judge the child can still be educated while still being under the supervision and guidance of the community.
- 2.Mentioned in Article 24 of Law Number 3 Year 1997 a child can be handed over to the state if the family is unable to provide the child with the necessary guidance. Therefore, the child must be handed over to the state, which is hereinafter referred to as a child state.
- 3.Social organizations or the Ministry of Social Affairs are tasked with helping children with education, skills, etc.

From the application of the above Law, Diversion cannot be interpreted as an attempt to restore the original situation with an approach of irestorative justice. However, the punishment imposed on children is not known as a special minimum punishment, the punishment imposed is half of the adult punishment and the fine imposed is replaced by the criminal offense, none other than to restore the rights of the child even though the child has committed a wrongdoing in the hope of improving the behavior of the perpetrator.

In essence, improving the behavior of children as perpetrators is one of the objectives of applying the concept of *restorative justice* even though the situation has not fully recovered as before, because children as perpetrators of sexual violence against children must continue to serve the crime. The main punishment that must be carried out by the child perpetrator in the criminal act of sexual violence against children and additional punishment in the form of actions instead of fines, these two forms of punishment are specifically applied to child perpetrators, which are expected to provide lessons for child perpetrators to improve themselves and after completing their sentence can return to society as they should.

Law Enforcement with a Restorative Justice Approach for Children Victims of Sexual Violence Children

In the Law on the Protection of Children, the concept of restoration of justice, which focuses the restoration of the victim, is set out in Article 71 D, which states that: "Every child who a victim has the right to submit to the court the institution for which the perpetrator of the crime is responsible."

Restitution the payment of damages that is imposed on the perpetrator on judicial decision that imposes. More than that, restitution means that the perpetrator is committed to repairing the damage caused by their offense.

Even if restitution is never proportionate or fully met. However, this is where restorative justice mechanisms are applied as a form of restoration, which empowers the offender's naturally growing sense of responsibility and commitment for his or her actions. Restoring the victim is an important part of restorative justice because it can be expected that forgiveness is part of repairing the damaged relationship between the offender and the victim. In fact, the criminal acts committed by the perpetrators should not be underestimated and ignored.

In various laws, including Government Regulation Number i44 of 2008, which amended into Government Regulation Number 7 of, and amended again into Law Number i8 of 1981 on

Criminal Procedure, Law. 35 of 2014 on the Amendment of Law No. 23 of 2002 on the Protection of Children, Law No. 13 of 2006 on the Protection of Witnesses and Victims, and Law No. 26 of 2000 on the Rights Court, all of which contain provisions on compensation or restitution. The submission of restitution is as intended in Government Regulation Number 43 Year 2017 as set out in Article 4:

- 1) The victim submits an restitution request
- 2) The victim party as referred to in paragraph (1) consists of:
 - a. The person or family child who is the victim of a criminal offense
 - b. Heirs of children who are victims of criminal acts
 - c. The person who authorized by person, the family, or the heirs of the child who the victim of the criminal act with a special power of attorney.
- 3) In the event that the victim as referred to in clause (2) he and clause (2) the perpetrator of the criminal act, the request for restitution may be submitted by institution."

An application for restitution shall be submitted in the Indonesian language a court stamped paper prior to the court's decision in the investigation or prosecution stage. for the Protection of Witnesses and Victims may also submit an application for restitution after the court's decision which has legal force remains in effect as an Institution for Protection. though it is based on the assumption that it is not possible to restore the victim to the original state, *restitution* according to the principle restoration to the original state (*restitutio in integrum*) is aimed at restoring the victim of a criminal act to the original state before the criminal act arose. This idea emphasizes the need for victim compensation to be as comprehensive as possible and to address all problems resulting from the criminal act. Restitution can enable victims to regain their freedom, their legal rights, their social standing, their family life, their citizenship, return to their previous place of residence, resume their employment, and regain their property.

According to Article 21 paragraph (2) of Government Regulation No. 43/2017, which states, "If the perpetrator is a child, then the compensation is borne by the child's parents," the imposition of restitution for child perpetrators can be paid by the child perpetrator. Therefore, in cases of sexual violence involving a child under the age either the perpetrator or the victim, it is the person of the child under the age of who committed the criminal act who is responsible for providing restitution to the victim. he pays restitution to the child victim.

If a court decision that has permanent legal force orders compensation in the form of material or immaterial losses, it is usually accompanied by a clause stating that the property of the perpetrator can be confiscated by the prosecutor's office and sold to pay compensation. If the perpetrator does not have sufficient assets to pay compensation, the perpetrator is replaced with a substitute prisoner.

Based on these obstacles, if restitution cannot be fulfilled by the parents of child perpetrators in the criminal offense committed, the concept of restorative justice will not be achieved, not only providing additional punishment for child perpetrators who are further away from the goals of restorative justice but also cannot restore the rights of child victims. Lost or unfulfilled. In addition, the bias in the regulation of restitution that often occurs in the field, whether restitution becomes a mandatory criminal offense or only an optional "*non-obligation*" considering that there will be many obstacles to implementation in the field, is the reason law enforcers are not obliged to include restitution in the implementation of both investigations and prosecutions, and in decisions.

Therefore, in order to realize the restoration of victims' rights and to realize restorative justice for victims, restitution is something that must be made an obligation for perpetrators or parents of child offenders who commit crimes of sexual violence, whose burdens are attached to the main and additional penalties. Criminal aggravation through the obligation of restitution is certainly an important part of law enforcement against child sexual abuse crimes in the context of prevention and deterrence for perpetrators of child sexual abuse, both committed by adult perpetrators and child perpetrators, and as a form of state protection for children as victims.

Conclusion

enforcement in the Law on the Juvenile Justice System is known as the concept of restorative justice in the form diversion. However for crime of sexual violence against a child with a child perpetrator, diversion cannot be carried out because it does not fulfill the requirements as stipulated in Law No. 11 of 2012 Article 7(2), which is punishable by imprisonment for a maximum of 7 (seven) years, while for crime of sexual violence against a child with a child victim, the punishment is above 7 (seven) years. The enforcement of law against children is clearly unable to conduct Diversion. Additional punishment in the form of action against juvenile offenders is one of the approaches of *restorative justice* concept to improve juvenile offenders to be better. In addition to additional punishment in the form of action against children, it can be done through restitution. In the case of children as perpetrators, the burden of compensation is the responsibility of the child's parents.

Advice

1. Need full government involvement in upholding justice with the *Restorative Justice* approach
2. The need for law enforcement officials to be more selective in choosing criminal offenses that are resolved with *Restorative Justice*.

There is a need for support from the community to prevent children from facing the law and the crime of sexual violence is increasing.

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Law Number Year 2016 on the Protection of Children

Regulation of the Mahkamah Agung Republic Indonesia

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