

USING THE PRINCIPLE OF RESTORATIVE JUSTICE WHEN THE STAGE OF THE INVESTIGATION OF A CRIMINAL THING ABOUT CHILD IN THE JURISDICTION OF THE POLICE RESORT OF ROKAN HULU DISTRICT

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Abstract

Crimes committed by children in Rokan Hulu Regency have shown an increase, in certain cases against minors who are of concern, especially law enforcement officers. One of the solutions that can be taken in handling cases of child crimes is the approach to the application of the Restorative Justice Principle, which is carried out by diversion. Diversion is carried out to provide protection and rehabilitation for criminal acts of minors. The purpose of this research is to find out how to resolve cases with a Restorative Justice approach to criminal acts committed by minors that occurred in Rokan Hulu Regency. In addition, it is also to find out what are the obstacles for police investigators in applying the principle of Restorative Justice in solving criminal cases of minors at the Rokan Hulu Police. The research method uses empirical law, and the subjects of this research are the parties concerned, namely the Head of Criminal Investigation Unit of Rokan Hulu, the head of the PPA and members of the investigators. The source of the data used is primary data, namely data obtained from field research by conducting observations, interviews, and documentation at the Rokan Hulu Police Station. While secondary data is data obtained from the library. data analysis in a qualitative way and presented descriptively that is to describe, explain, and describe the results of this study so that a final conclusion is obtained. Criminal acts committed by minors are carried out by diversion using a Restorative Justice approach, namely a crime that carries a penalty of imprisonment for under 7 (seven) years and is not a repetition of a crime. In addition, criminal acts with the threat of imprisonment for under 7 (seven) years include persecution, theft, destruction of goods and crimes against decency. It can be concluded that the application of the principle of Restorative Justice through the concept of Diversion against criminal acts committed by children in Rokan Hulu Regency has not been implemented in accordance with Law Number 11 of 2012 concerning the Criminal Justice System for children.

Keywords: *Implementation, Restorative Justice, Child Crime*

INTRODUCTION

Children are a deposit from God Almighty who has inherent dignity and worth as fully human beings, children are also candidates for the next generation of the Nation and State. Therefore, children from the time they are in the womb until the age of 18 years, need to get children's inherent rights. This is in accordance with the Convention on the Rights of the Child which has been ratified by the Indonesian government through Presidential Decree No. 36/1990 which states the general principles of child protection, namely non-discrimination, the best interests of the child, survival and growth and development, and respect for the opinion of the child.¹

Child protection is an important work that must be carried out by all elements of our country. These forms of child protection are also carried out from all aspects, starting from fostering the family, social control of children's associations, and proper handling through good regulations made by a country.

However, in its long journey to date, what is mandated in the law is constrained by the facilities and infrastructure provided by the Government, such as special child prisons which are only available in big cities. This of course causes the fulfillment of children's rights as mandated by the law and the Convention on the Rights of the Child. In addition, the lack of an integrated and comprehensive socialization carried out to law enforcement officers including the police down to the lowest ranks has resulted in the ineffectiveness of providing legal protection for children.

At this time children also often commit crimes or delinquency. However, juvenile delinquency in conflict with the law should not be punished but should be given guidance or guidance to the child, so that children in conflict with the law can develop properly and normally. In certain conditions the child also has a difficult situation that forces him to do an act that is prohibited and in the end the child must face the law. However, punishment is not a proper sanction to be applied to children, especially when a prison sentence is applied to the child.

The actions of children in conflict with the law increase every year, if you pay close attention to the growth of criminal acts committed by children so far, both in terms of quality and the modus operandi of children, sometimes acts of violations committed by children are felt to have disturbed all parties, especially from parents. children, the

¹ Laurensius Arliman S, *Perlindungan Anak*, Yogyakarta, CV. Budi Utama, 2016.

phenomenon of increasing acts of violence committed by children is not proportional to the age of the child or perpetrator. In addition, various efforts to prevent and overcome children in conflict with the law need to be carried out immediately.²

Children who commit crimes in the context of positive law that apply in Indonesia must still be held accountable for their actions, however, considering that the perpetrators of criminal acts are still minors, the law enforcement process is carried out specifically. In its development to protect children, especially special protection, namely legal protection in the judicial system, one of the laws and regulations governing juvenile justice is Law Number 3 of 1997 concerning Juvenile Court which has been changed to Law Number 11 of 2012 concerning the Child Court System. Juvenile Criminal Justice.³

Law No. 11 of 2012 concerning the Juvenile Justice System provides special treatment for children who are in conflict with the law, both in the procedural law and the pretrial. This binds the nature of the child and his psychological state in some cases requiring special treatment and special protection, especially against actions that basically can harm the child's mental and physical development. The implementation of investigations into criminal acts of theft committed by children is related to how the investigation process carried out by investigators determined by the Criminal Procedure Code, as well as Law No. 11 of 2012 concerning the Juvenile Criminal Justice System which specifically regulates the rights of children in conflict with the law, is applied investigator in the process of investigating criminal acts committed by children.

Starting from the complexity of the problems related to the protection that must be given to a child in conflict with the law, of course there must be efforts from various parties to save the nation's children. The police as the front line in law enforcement have a considerable responsibility to synergize the duties and authorities of the Police as regulated in Law no. 2 of 2002 concerning the Indonesian National Police.

In carrying out its duties and authorities, the police must always look at the interests of the community. One of the tasks of the police that often gets the public's attention is law enforcement. In practice, law enforcement carried out by the police always contains 2 (two) options. The first option is law enforcement as required by law in general, where there are forced efforts made by the police to enforce the law in accordance with the

²Nandang Sambas, *"Pembabaran Sistem Pemidanaan Anak di Indonesia"*, Yogyakarta, Graha Ilmu, 2010, hal 103.

³Wagiati Sutedjo dan Melani, 2013. *Hukum Pidana Anak*. Refika Aditama, Bandung, Hal 33.

procedural law regulated in Law no. 8 of 1981 concerning the Criminal Procedure Code. While the second option is an action that prioritizes beliefs that emphasize personal morals and legal obligations to provide protection to members of the community. This is known as discretion. This action is regulated in Law no. 8 of 1981 concerning the Criminal Procedure Code and the Republic of Indonesia National Police No. 2 of 2002, wherein the police have been given the freedom to be responsible for carrying out this.

The process of investigating children is carried out by child investigators who are determined based on a Decree of the Head of the Indonesian National Police or other officials appointed by the Head of the Indonesian National Police. General investigators cannot conduct investigations on children's cases. The requirements to be appointed as an Investigator are: 1). Has experience as an investigator of criminal acts committed by adults; 2). Have interest, attention, dedication, and understand children's problems.⁴

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System regulates that Restorative Justice is the settlement of criminal cases by involving the perpetrators, victims, families of the perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing the recovery of the perpetrators/victims. restitution, and not retaliation.⁵

Children as perpetrators of criminal acts are still being processed criminally but must pay attention to the rights of children. During the investigation process, the principles of Restorative Justice are treated. Children who commit criminal acts are avoided from punishment in the form of deprivation of rights. In practice, not all investigators carry out the investigation process. Therefore Investigators, especially Rokan Hulu Police Investigators, are required to be able to carry out diversion actions in handling cases of child crimes. The transfer of the juvenile justice process or what is called diversion is useful to avoid the negative effects of subsequent judicial processes in the administration of juvenile justice, for example labeling due to a guilty statement or sentencing. In carrying out the diversion of criminal acts by children, the police actually have a good legal umbrella based on the laws and regulations that authorize these actions.

Based on this description, children who have committed criminal acts are still processed up to the court level and even deposited in correctional institutions. Therefore, the author

⁴Pasal 41 ayat (2), *Undang-undang Nomor 3 tahun 1997*, tentang Peradilan Anak.LN Tahun 1997. Nomor 3.TLNNNo 3668, www.bpkp.go.id/uu/filedownload/2/46/441, 24 Desember 2020

⁵Yoachim Agus Tridianto, "*Keadilan Restoratif*", Yogyakarta, Cahaya Atma Pustaka, 2016, hal 27

discusses the problem of children as perpetrators of criminal acts in legal research with the title "Application of Restorative Justice Principles at the Investigation Stage in Child Cases in the Legal Territory of the Rokan Hulu Police". Based on the above background, how is the application of the Restorative Justice Principle to children in conflict with the law? What are the obstacles in implementing the Restorative Justice Principle at the investigation stage in the jurisdiction of the Rokan Hulu Police?

METHODS

Viewed from the point of view of the method used, this research can be classified into the type of Sociological research (empirical) where what is meant by positive legal research on people's lives, because this research the author goes directly to the field to find the truth and a complete and clear picture of the phenomenon. law that will be examined by the author. Meanwhile, when viewed from its descriptive nature, it is a research that provides a clear and detailed description of the application of the theory of Restorative Justice, one of which is the diversion of children in conflict with the law based on the Law on the Juvenile Criminal Justice System, Number. 11 of 2012 at the Rokan Hulu Police Station.

The location of the research was carried out in the jurisdiction of the Rokan Hulu Police because the number of cases of dominant crimes committed by minors and from the many juvenile delinquencies, only a few cases of children were successfully diverted, therefore the authors are interested in conducting research in the 18 region to looking for any inhibiting factors in the effort to implement diversion based on Law No. 11 of 2012 concerning the Juvenile Criminal Justice System at the investigation stage.

The population is a set of objects that will be examined based on the research location that has been previously determined related to this research. In this study, the authors have determined the research population related to the object of research at the Rokan Hulu Resort Police, namely: Investigators of the women and children protection unit at the Rokan Hulu Resort Police.

So from the population that has been determined, therefore the author has determined the author's sample using the purposive sampling method, which is to determine the sample that will represent the total population and can be known by the table below:

The types of data that will be used in this study are: Primary data is data obtained by the author directly from the source through interviews, both open and closed interviews and respondents or samples. The data obtained by the author comes from parties related to delinquency committed by children in the jurisdiction of the Rokan Hulu Police.⁶

Secondary data is data obtained by the author indirectly from the source (object of research) but through other sources, such as from literature books that support the subject matter to be discussed by the author. Apart from literatul books, the author also obtained secondary data from theses, theses, journals, dictionaries, and other sources that support the answer to the author's main problem.⁷ Namely legal materials derived from library research obtained from laws such as the 1945 Constitution, Law Number 35 of 2014 concerning Child Protection, Law Number 11 of 2002 concerning the Juvenile Criminal Justice System, and Law Number . 2 of 2002 concerning the Indonesian National Police. Research sources that are closely related to primary legal materials and can help analyze and understand primary legal materials contained in literatul quotes and scientific works from legal researchers related to the subject matter of this research. mAre research sources contained in encyclopedias and the like that support primary data, secondary data and Indonesian language dictionaries.

In order to obtain reliable and accountable data, therefore the researchers used data collection techniques with the following methods: Interview/Interview. That is by collecting various questions related to the concept of the problem and then directly questioning the respondents and the parties who have relevance to the concept of the problem raised in this thesis. Literature Review. That is by using data collection techniques either by reading books, journals, related to this research so that reading these various sources can help the author to complete this research.

In terms of data analysis, this study uses qualitative data processing, namely several descriptions that are applied to the data collected and not in the form of numbers that are

⁶Soerjono Soekanto, "Penelitian Hukum Normatif", Jakarta, Rajawali Persh, 2014, hal 12

⁷Suteki, "Metode Penelitian Hukum", Depok, Rajawali Persh, 2018, hal 215.

arranged logically and systematically without using statistical formulas so that the data can be understood. Then deductive conclusions are drawn, namely conclusions obtained from general things from specific things.

Operational concepts are limitations regarding the terminology contained in the title and scope of research or provide an understanding of the terms in the research title, are as follows: Application is the process, method, making, implementing, installing; Restorative Justice is the settlement of criminal cases by involving the perpetrators, victims, families of the perpetrators, and related parties to jointly seek a just solution with the aim of restoring the original situation, and not retaliation.⁸ A criminal act is any act that is punishable by punishment as a crime or a violation, both stated in the Criminal Code and other laws and regulations.⁹ A child is someone who is not yet 18 (eighteen) years old, and includes a child who is still in the womb.¹⁰

DISCUSSION

Application of Restorative Justice to Minors

Based on the results of the study, the data described and discussed are the results of observations, interviews and documentation related to the application of the principle of restorative justice in the settlement of cases of criminal acts of minors in Rokan Hulu Regency.

Facts about Children in Conflict with the Law

Crimes that occur today in society are not only adults, there is even a tendency that the perpetrators are still classified as children. Therefore, various efforts to prevent and overcome child delinquency need to be carried out immediately. One of the government's efforts in preventing and overcoming delinquency is to organize a juvenile justice system through Law no. 11 of 2012 concerning the Juvenile Criminal Justice System which replaces Law no. 3 of 1997 concerning Juvenile Court which was carried out with the aim of realizing a court that truly guarantees the protection of the best interests of children who are in conflict with the law as the nation's successor.

⁸Jonaedi Efendi, Ismu Gunandi Widodo, Fifit Fitri Lutfianingsi, "Kamus Istilah Hukum Populer", Jakarta, Prenadamedia Groub, 2016, hal 360

⁹Ibid hal 400

¹⁰Laurensius Arliman S, "Perlindungan Anak", Yogyakarta, CV. Budi Utama, 2016. Hal 1

According to Law no. 11 of 2012 concerning the Juvenile Justice System uses the term children in conflict with the law. A child in conflict with the law is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime.¹¹ Children in conflict with the law can be defined as children who are suspected, accused, or recognized as children who have violated the Criminal Law Law (Article 40 paragraph (1) of the Convention on the Rights of the Child. In the perspective of the Convention on the Rights of the Child, children in conflict with the law are categorized as children in special situations.

Based on the results of observations made on January 11 to 13, 2021, it can be seen that many children are involved in criminal cases. this is stated according to what the researchers got the data that cases of criminal acts committed by children at the Rokan Hulu District Police consist of various kinds of criminal acts, including; cases of theft, abuse, violence, extortion accompanied by threats, embezzlement, drugs and the most concerning are cases where a child can commit an act of theft.

Based on the category of children's actions, a legal event committed by a minor committing the crime of theft is very disturbing to the community, such as a legal event that occurred in the jurisdiction of the Rokan Hulu District Court that the child was proven to have committed a theft crime. These cases of theft can provide an illustration of the large number of children in trouble with the law who must undergo the criminal justice process.

Interview result

Based on the results of an interview conducted with the head of the Criminal Investigation Unit AKP Ranly Labolang, as the Head of the Rokan Hulu Police on June 11, 2021 he said:

"The application of the principle of Restorative justice or diversion efforts is always carried out for every child who is a perpetrator of a crime. In some cases, the diversion effort was able to obtain an agreement by each party so that the case did not proceed to the prosecution level. This diversion effort is also used if the one who commits a minor crime is. And this principle cannot be carried out if the perpetrator has already done diversion.

¹¹ asal 1 ayat (3) , Undang-Undang No.11 Tahun 2012

And later even though minors when committing serious crimes will still be tried in accordance with applicable rules because when applying the principle of Restorative justice there must be an agreement from both parties.

If the victim wants to process the case, the diversion can fail, resulting in children being imprisoned. And investigators from the Rokan Hulu Sector Police have carried out an investigation process into cases where the perpetrators are minors, in accordance with law number 11 of 2012 concerning the juvenile criminal justice system, namely by carrying out Restorative justice efforts through diversion of children involved in cases. criminal". The same thing was also expressed by the Head of the Criminal Investigation Unit of the Rokan Hulu Police, he explained:

Settlement with restorative justice is still carried out for every child who commits a crime at the Rokan Hulu Police Station. And settlement with a restorative justice/diversion approach is also considered appropriate to resolve cases by bringing together related parties, both from perpetrators, victims, families of victims/perpetrators, social workers and community advisors and from law enforcement itself. and also there are several advantages that will be obtained if diversion is carried out at the investigation stage by the police, namely::

1. Can reduce congestion and accumulation of cases in court. The large number of cases submitted to court causes the case process to be often prolonged and costly and often produces unsatisfactory results.
2. Increasing community involvement or empowering disputing parties in the dispute resolution process
3. Enlarging people's opportunities to get justice.
4. Provide an opportunity for the achievement of dispute resolution that results in a decision that is acceptable to all parties. So that the parties do not take an appeal and cassation.
5. Faster settlement of cases and low cost.
6. Being secretive or secretive, thereby reducing family embarrassment.
7. A higher level of possibility to carry out the agreement because the decisions taken are the will of the parties. So that the relationship between the disputing parties in the future is still possible to be well established.

8. Reducing the spread of legal mafia at the level of investigation, prosecution, court and at the level of implementation of court envoys.

Child cases at the Rokan Hulu Resort police often end up with a formal warning, this formal warning needs to be recorded in the police logbook and does not need to be submitted to the head of the district court to obtain a determination.

Application of the principle of restorative justice in the settlement of cases of theft committed by children at the Rokan Hulu police station

Restorative justice approach in the settlement of crimes committed by children at the Rokan Hulu Police is completed through a restorative justice approach, in which the legal settlement process occurs by bringing the victim and the perpetrator (suspect) together to sit in one meeting to talk about the process of the restorative justice model. where the role of the police is as a mediator, facilitator, or supervisor. In this case the police show the articles and provisions of the juvenile justice law, then the community is invited to find the best solution so that the process of repair, restoration of relations, conciliation and reconciliation between the victim and the perpetrator, the victim's family and the perpetrator's family occurs, with community acceptance. against the perpetrator without any stigmatization of the perpetrator.

Investigators from the Rokan Hulu Police have carried out an investigation process into cases where the perpetrators are minors, in accordance with Law Number 11 of 2012 concerning the juvenile criminal justice system, namely by carrying out restorative justice efforts through diversion of children involved in criminal cases. . Based on the results of the research, the settlement carried out with a restorative justice approach at the Rokan Hulu Police is a mediation process in accordance with the habit of deliberation, in the application of the principle of restorative justice at the Rokan Hulu Resort Police which is carried out by the police, namely through activities such as mediating victims with perpetrators/violators. ; family group deliberations, which are healing for both victims and perpetrators where involvement in the settlement process is the victim and perpetrator as well as a third party, namely the police who become the mediator and facilitator to bridge the two parties to reach an agreement and the goals to be achieved through the deliberation process are to recover all losses and injuries that have been caused by the incident of the child's delinquency.

Obstacles Experienced by the Police in Implementing Restorative Justice Principles at the Rokan Hulu Police

The application of Restorative Justice in handling criminal acts committed by children in the jurisdiction of the Rokan Hulu Police in this case is manifested in the form of conceptual diversion which will be more appropriate in carrying out enforcement efforts and peace sanctions against children who commit crimes with victims in the context of protecting children against stigma (cap. evil) when a child commits a crime or violates the law. However, in the juvenile criminal justice system in Indonesia, the idea of diversion and the restorative justice approach is not easy to implement. Efforts to apply the principle of restorative justice in the settlement of crimes committed by children at the Rokan Hulu police station by police investigators have not been implemented effectively. From the stages that have been passed by police investigators in resolving cases of criminal acts committed by children, it can be said that everything has not been successful. Because there are obstacles experienced by police investigators.

The Rokan Hulu Resort Police also has not used their discretionary authority in handling children's cases. The reason the police do not use their discretionary authority to the fullest is because there are several cases of children that they must forward to the prosecutor's office, such as cases of sexual abuse (rape) and drugs. As for cases of minor crimes such as cases of assault or theft, diversion is usually carried out. Thus, it is hoped that this regulation will also be able to provide a sense of justice for the victims and perpetrators of criminal acts. In addition, it can speed up the case settlement process because the case may not proceed to the prosecution stage if the diversion process is successful in obtaining an agreement between the parties.

CONCLUSION

Based on the results of research and discussion in this thesis research, the following conclusions can be drawn:

1. Application of the Principle of Restorative Justice to Minors in the Legal Territory of the Rokan Hulu Police. The implementation of Restorative Justice at the Rokan Hulu District Police for minors in conflict with the law is still not in accordance with the provisions of Law Number 11 of 2012 concerning the juvenile criminal justice system, which is implemented by implementing diversion. In the application

of Restorative justice/diversion efforts are always carried out for every child who is a perpetrator of a crime, but in some cases the diversion effort does not get an agreement by each party so that the case is continued to the prosecution level. Therefore, the application of Restorative Justice at the Rokan Hulu Police Resort has not been effective because the diversion objective has not been implemented, the resolution of which is through deliberation between perpetrators, victims and their families, the perpetrators do not want to make peace and choose to continue at the stage of prosecution carried out by children in Rokan Hulu Regency. and particularly on the side of the Rokan Hulu Resort Police.

2. Obstacles in the Implementation of Restorative Justice Principles at the Investigation Stage in the Legal Territory of the Rokan Hulu Police. There are differences in understanding of the meaning of justice by diversion actors, both from the perpetrators, victims, and or their families, law enforcement officers, and the community towards the application of restorative justice in the implementation of diversion. Rokan Hulu Police Investigators in implementing Restorative Justice as a settlement of child cases in conflict with the law is the attitude of the victim's family who think that Restorative justice cannot represent accountability for children who commit crimes and children will be free from responsibility for their actions, therefore the victim's family don't want to make peace so it can't be implemented with the implementation of diversion.

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