

A Judicial Review of the Application Restorative Justice Principle in Efforts to Resolve Criminal Acts Who Committed by Childs Law Postgraduate Program Doctorate of Law Program University of Borobudur

Lucky Ferdiles¹, Azis Budianto²
{ferdiles17@gmail.com¹, azis_budianto@borobudur.ac.id²}

Universitas Borobudur, Jakarta, Indonesia^{1,2}

Abstract. A child is an integral part of sustainable human entities in this world and they will preserve a nation survival in fore forward future. They as child must have put in the safe situation on or any random circumstances and must have properly affection for their growth to be a civilized person. Because it is the state's responsibility to carry on this legacy, It must be concerned about and ensure that every kid has the right to survive, grow, and develop while also being safeguarded from violence and prejudice; hence, the best consideration for them ought to be viewed as the best treatment for all of humanity. On a sociological level, imprisonment provided by the official criminal justice system does not adequately prove to overcome criminal activities that have affected the child's learning and expansion, as well as his or her psychological condition, as a result of criminal court penalties. To forestall and choose extra outcomes, a kid wrongdoer at the ideal level must be eliminated from the whole criminal equity framework. Subsequently, it is fundamental to rebuild the criminal equity framework by carrying out the idea of remedial equity, which entails culprits, victims, fraudster families, and other relevant parties cooperating to reach a fair settlement with a focus on repairing the situation to its original condition.

Keywords: Child; Criminal Act; Criminal Justice System; Restorative Justice

1 Introduction

A judicial system as a whole is fundamentally a "open system," meaning that it moves toward short-, medium-, and long-term goals while being highly impacted by the climate, community, and many aspects of human existence. In motion, the criminal justice system will always "interface" (communication, interconnection, and reliance) with its environmental factors in the positions of society: business, legislative issues, instruction, and innovation, just as society's subsystems [1]. Law enforcement is one of the efforts to create order, security, peace and tranquility in the community, including enforcement efforts and efforts to overcome or take action after a violation of the law is committed by someone in the community. In matters relating to law enforcement, it will lead us to talk about crime prevention in society with the term Criminal Politics [2]. Criminal Politicy as a rational effort of society in tackling

crime. Crime prevention through penal jurisdiction refers to operationally carried out through the following steps: the formulation of criminal norms, which contain substantive, structural and cultural community where the criminal law system is enforced [3]. The criminal law system that has been successfully formulated will then operationally work through a system called the Criminal Justice System

In this case, trying all efforts is not only by using penal methods or criminal justice law. But also by using non-penal. Because both material and formal criminal legislation, as well as criminal law enforcement through the criminal justice system, employ the penal technique or as the primary means to attain a certain purpose [3], the short-term goal is the resolution or resocialization of the perpetrators of criminal acts, the medium-term goal is to prevent crime and the long-term goal is to achieve social welfare. Currently, the perpetrator is the first thing that comes to mind when discussing crime or criminal activities in the criminal justice system. It has become a habit when a crime occurs, the main factor is the perpetrator of the crime himself, the only treatment is punishment or criminal action against the perpetrator of the crime by putting him in a correctional institution or prison and it is considered the most effective and effective way in tackling crime [4], Criticism of criminal justice as a means of overcoming criminal acts are continues. One of the sharp criticisms of criminal justice is, because of the negative impacts it causes, such as stigmatization, dehumanization and prisonization [5],

The emergence of various negative impacts, various shortcomings, and weaknesses in criminal justice as mentioned above, has led to various efforts to reduce the negative impacts and weaknesses of criminal justice. One of the efforts that has developed among criminal law experts includes efforts to resolve criminal cases outside the criminal justice process. One alternative that appears is the development is thinking about restorative justice. According to Muladi, Per the Kusno Adi, there has been a shift in the idea of equity in the settlement of common indictments, specifically from equity dependent on reprisal intrinsic in the criminal equity framework to equity dependent on counter, towards helpful equity local area based equity [6]. Restorative Court is currently unregulated in any way and is rarely used in the criminal court system. Just the execution of the Juvenile Justice System and criminal demonstrations, for example, grievance violations, are tended to by Restorative Justice [7]. It is tightly regulated in the juvenile criminal justice system, with provisions such as Part 5 line (1) and Equal protection paragraph (1) of Law Number. 11 of 2012 stating that diversion must be sought and carried out in the juvenile court system using a restorative justice technique. If restorative justice is not used as a remedy, the legal transfer procedure (diversion) will fail. Diversion happens at every level of the process, beginning with the investigation, prosecution, and ending with the examination of a child's case before a district court [8].

2 Methodology

Such study is organized according to the kind of prescriptive judicial research, which is concentrated on assessing the application of rules or norms in positive law, and the findings are provided in the form of systematically organized descriptions, meaning that the secondary data obtained will be linked to one another according to the problems studied, so that as a whole it is a unified in accordance with research needs.

3 Results and Discussion

According to John Rawls, the underlying issue of justice is the typical framework of civilization, or more specifically, how key social systems allocate basic rights and responsibilities and decide the allocation of profits from social collaboration. The's understanding will likely build up standards of equity for the fundamental construction of society; [9] these principles will govern future agreements, determining the types of social cooperation that can be entered and the forms of government that can be established, and the perspective on this principle of justice, which John Rawls defined as "fairness". The standards of law are adopted in a condition of ignorance, ensuring how no individual benefits or suffers a disadvantage as a consequence of natural chance or the unpredictability of social events. fairer. Fairness, like other contractual conceptions, is divided into two parts: 1) A understanding of the starting circumstance and the question of choice, and 2) An agreement collection of principles. And it is appropriate and acceptable if no one benefits or suffers harm as a result of natural or social circumstances in the choice of principle [9].

According to the author, John Rawls' theory is consistent with the notion of restorative justice, in which the basic structure of society, as the primary topic of justice, agrees on a principle in which neither side gains nor suffers harm. A reasonable form of society in combating crime as a criminal policy is using the community as an element in crime prevention with the notion of restorative justice [9]. Restorative justice arises because of dissatisfaction with the existing criminal justice system, which does not involve conflicting parties, but only between the state and the perpetrator [7]. Victims and the community are not involved in conflict resolution, in contrast to restorative justice where victims and the community are involved. as parties to conflict resolution.

This concept departed from the abolitionists' dissatisfaction with repressive laws and aspired to abolish the coercive means of penal and try to replace them with reparative means, starting in 1983 in Vienna, Austria and with the convening of The Ninth World of Criminology in Toronto in May 1983, Canada. The pioneers of this abolitionist movement such as Hilsman and others thought that community approach would be better and smoother. In a discussion that is not influenced by power, with the mediators. According to the abolitionists, no ruling organization can define what is right and what is wrong. Because only those who are in dispute can make the right decisions for themselves. The trick is to conduct criminal justice civilization, which is to use as far as possible a civil law approach as a means of conflict resolution [10]. The abolitionists do not talk about repair and reform (repair and reform) of the criminal law system and theory but they want to replace it with other forms of criminal law, such as [10]:

- a. Deinstitutionalization, namely the abolition of prisons and their replacement with control, development and service in the community;
- b. Diversion, which is to prevent criminals from being involved in a formal judicial process and replace them with a community-oriented institutional system;
- c. Decategorization or Delabeling and Destigmatisation, namely breaking various knowledge systems and discussions that make an act a crime;
- d. Delegalization, seeking forms of justice outside the formal criminal justice system;
- e. Deprofessionalization, namely, it is necessary to form a network of community control, public participation, mutual help and informal services.

3.1 Junior Crime Law System The Juvenile Criminal Justice System is governed by Law No. 11 of 2012

In recent years, there has been a shift in how children who commit delinquency and criminal activities are dealt with. Due to the system's inability to improve behavior and lower crime rates perpetrated by minors, several countries have begun to reject draconian juvenile justice methods. Legal professionals and policymakers have begun to consider alternate options that are more suited in dealing with children, such as incorporating them directly (reintegration and rehabilitation) in problem-solving, and utilizing various methods to rehabilitate adult offenders [11]. The court procedure in situations involving children, from the time they are arrested, jailed, and tried, must be overseen by specific authorities who are familiar with children's issues. However, before going to court, law enforcement, families, and the community must seek a resolution outside of the courtroom, such as via Diversion based on a Restorative Justice approach [12].

On that basis, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), which has been ratified and promulgated, is one of the legislative products of the DPR RI and the Government of 2012. As we know, Law No. 3 of 1997 concerning Juvenile Court is no longer in accordance with the times, it has even become the legal basis for criminalizing naughty acts of children, so it should be replaced. The law introduces a law enforcement concept called the Restorative Justice System. The main concern of this concept is the interests of the perpetrators, victims and the community. As a signatory to the Convention on the Rights of the Child (Convention on the Rights of the Child), Indonesia is obligated to offer specific protection to children who are involved in conflict. This aims to avoid the present criminal justice system's detrimental influence on instances involving children [13].

In addition to introducing the concept of restorative justice, the paradigm shift also introduces the idea and concept of diversion, which is defined in the United Nations Minimum Standard Rules for the Administration of Juvenile Justice or The Beijing Rules (UN General Assembly Resolution 40/33 dated November 29, 1985), where diversion (diversion) is listed in Rules 11.1, 11.2 and 17.4. (The Beijing Rules). Diversion can be used at every stage of investigation in order to lessen the negative consequences of children's engagement in the legal system. The most means that existing of this Legislation is a stringent-laws regulating Rehabilitation and Distraction, that is created to keep kids out of the legal process to prevent social stigma of kids that are in criminal responsibility, but it is wished that kids will naturally return to their social environment, which will necessitate the participation of all parties. For both children and victims, the purpose of the process must be restorative justice. Requitil is a diversionary system wherein all gatherings engaged with a wrongdoing cooperate to tackle issues and make a commitment to further develop things by including casualties, kids, and the local area in tracking down answers for fix, accommodate, and assuage the heart that are not founded on retribution [14].

3.2 The Application Restorative Justice in the Indonesian Criminal Justice System Based on Law No. 11 of 2012 concerning the Juvenile Criminal Justice System

If we mention about the Criminal Justice System (SPP), which is a term that indicates a working mechanism in crime prevention using a basic system approach, in other words a formal juridical process to prove whether a person is found guilty or not guilty of a case in criminal law through a process criminal justice [4]. According to Remington and Ohlin, the

criminal justice system can be defined as the application of a systems perspective to the crime administrative mechanism, as well as a scheme that is the result of the interaction between policies and guidelines, practices, and sociocultural attitudes and actions. Understanding this ecosystem involves the development of an acceptable and efficient interaction method capable of providing certain outputs, notwithstanding its limitations.

Based on Remington and Ohlin above, we can take meaning that The Criminal Justice System (SPP) consists of institutions that are administratively independent and are given their respective powers but have the same goal, it called law enforcement [3]. Based on the same goal, these institutions work as an integrated unit called the Integrated Criminal Justice System. Lawrence F. Travis stated the following opinion:

“he integrated justice system begins with detection of crime, proceed through investigations, arrest, initial appearance before the court, charging (arrangement) trial, sentencing, and possible revocation and end with discharge”

From the opinion of Lawrence F. Travis above, the Integrated Criminal Justice System starts from the initial investigation, investigation, preparation of prosecution, prosecution process until the judge's decision is given in court. So the institutions that work in an integrated unit include the police, prosecutors, advocates and courts. Restorative justice in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System as a Juvenile Criminal Justice System is carried out in all criminal justice processes, which are interrelated and form one unit (Integrated Criminal Justice System), Child Investigators, Child Public Prosecutors, Juvenile Judges and Officers of the Child Correctional Institution article 7 paragraph (1) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.

So it is clear the position of the institutions that have different duties and authorities but have the same goal, its "Law Enforcement" which has a different mechanism from the criminal justice system usually because the Juvenile Criminal Justice System has a different handling from the handling of adults who are dealing with them. With the law, the juvenile justice system prioritizes the handling of criminal cases by children prioritizing a restorative justice approach. Children's legal protection can be achieved by attempting to defend the law against numerous freedoms and human rights of children [13] Children's interests are likewise protected, as are children's welfare interests. Law enforcement officials share responsibility for the protection of children in dispute with the law (ABH). Not just as offenders, but also as victims and witnesses, children are involved.

Law enforcement officers who act as law enforcers are expected not only to refer to Law No. 11 of 2012, the Law on the Juvenile Criminal Justice System (SPPA) or other laws and regulations, but to prioritize peace rather than the formal legal process. The objectives of juvenile criminal justice with Restorative Justice include [8]:

- a. Strive for peace between victims and children;
- b. Prioritizing settlements outside the judicial process;
- c. Keep children away from the negative influence of the judicial process;
- d. Instill a sense of responsibility in children;
- e. Prevent children from deprivation of liberty;
- f. Realizing the welfare of children;
- g. Encouraging the community to participate;
- h. Improve children's life.

The settlement of criminal cases by including the culprit, casualty, group of the culprit/casualty, and other related gatherings to mutually look for a reasonable arrangement by underscoring reestablishment in the first state, rather than reprisal, is characterized in Article 1 point 6 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Article 5

section (1) incorporates the accompanying ideas about helpful equity: "The Juvenile Criminal Justice System will focus on a therapeutic equity approach". The purpose of using the concept of restorative justice in handling juvenile criminal cases is primarily to achieve peace between children and victims as well as families and communities by way of a fair settlement outside the judicial process, so that children involved in criminal cases avoid the negative effects of criminal justice [8]. This is clearly worrying if a child who clearly has an unstable mentality is involved in formal processes or criminal justice procedures related to the investigation of investigators, prosecution to court stage examinations.

For the author, a child will still be a separate memory for a child involved in such a situation even if accompanied by a parent/guardian, community officer and legal adviser. Law enforcement agents are jointly responsible for efforts to defend children's law in this matter, which relates to their freedom and human rights. Not just as offenders, but also as potential witnesses, children are involved. Restorative justice provides protection to children who are involved in a criminal case, This is connected to the core goal of restorative justice, which is to restore or recompense the victim's losses, restore to its original condition when there was no crime and also give responsibility to the child perpetrator to the community for their actions to improve themselves in the future [7].

In a restorative justice settlement, both the offender and the victim sit down together to find a fair solution for both, stressing the restoration (reparative) of the situation to its original condition rather than retribution for the perpetrator's crimes. As an example of a case incident that occurred several years ago, in September 2013 when the son of famous musician Ahmad Dani, Abdul Qadir Djaelani (AQJ) had a traffic accident on the Jagorawi toll road which resulted in several fatalities and AQJ was made the main perpetrator. However, when the incident occurred, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System had not yet been applied to handle cases of child crimes. AQJ as a perpetrator can be held criminally responsible according to Law no. 3 of 1997 concerning Juvenile Court. AQJ's legal process runs from the investigation to the trial stage, but during the process AQJ remains under the supervision of Ahmad Dani, not in the detention of the Children's Detention Center.

Then Ahmad Dani as the father and parent of AQJ took sympathetic actions towards the families of the victims of the accident by holding a sympathetic meeting and apologizing so that the families forgive AQJ and promise to be responsible for all medical expenses and living expenses as well as the education of their children. children of victims whose parents are the breadwinners in the family who died it called "a meeting place for people". From the AQJ case above, there was a deliberation to find a peaceful solution or known as the "Just Peace Principle". Where in the end there was a peace agreement between Ahmad Dani as AQJ's parent by emphasizing the restoration to its original state.

The application of the concept of restorative justice by prioritizing deliberation to find an agreement that is selected according to their rights and obligations in order to reach a fair and peaceful agreement between the two parties so that no one feels won or lost. Deliberations based on the concept of restorative justice are carried out so that the parties, children as perpetrators, victims, families and communities can resolve child criminal cases outside the judicial process to avoid stigma and negative effects on the process of child development and growth [8].

4 Conclusion

- a. The idea of helpful equity in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) has turned into the start of changes in the Indonesian criminal equity framework which depends on equity dependent on the standards of remedial equity. In this law, redirection has been expressly controlled which is completed with the standards of therapeutic equity as a criminal settlement for kids in struggle with the law.
- b. Settlement of criminal acts by children can be done by resolving outside the formal criminal justice or diversion to avoid children either as perpetrators or victims in these crimes because the settlement of crimes by children has its own peculiarities because it involves children. Perma Number 4 of 2014 regulates the settlement of criminal acts of children, namely resolved by Deliberation to seek mutual agreement by the families of both the perpetrator and the victim. Because deliberation to reach consensus is filled with the spirit of kinship to repair what has been damaged to be recovered, according to the spirit of our nation's ideology and philosophy, namely the fourth principle of Pancasila.

References

- [1] Sudarto. *Hukum Pidana jilid 1A*. FH Unsoed, Purwokerto (1991)
- [2] Irsan, Koeparmono. *Politik Hukum*. Universitas Borobudur, Jakarta (2004)
- [3] Arief, Barda Nawawi. *Bunga Rampai Kebijakan Hukum Pidana*. PT. Citra Aditya Bakti, Bandung (2005)
- [4] Ali, Zainuddin, 2014, *Filsafat Hukum*, Cetakan ke 6, Jakarta :Sinar Grafika.
- [5] F., Lucky. *Pelaksanaan Pidana Penjara Singkat Ditinjau Dari Tujuan Pemidanaan Yang Integratif*. Skripsi, FH UNSOED, Purwokerto (2007)
- [6] Muladi dan Barda Nawawi Arief. *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*. Ananta, Semarang (1994)
- [7] Wahyuni, Novita Dwi. "*Penerapan Restorative Justice Dalam Putusan Pengadilan Sebagai Tujuan Pemidanaan (Studi Kasus Terhadap Perkara Yang Telah Diselesaikan Secara Adat, Analisa Putusan No.21/PID.B/2009/PN.Srln Dan No.22/PID.B/2009/PN.Srln)*". Tesis, UI, Jakarta, p. 20 (2013)
- [8] Marlina. *Pengantar Konsep Diversi dan Restorative justice dalam Hukum Pidana*. USU Press, Medan (2010)
- [9] Mertokusumo, Soedikno. *Penemuan Hukum*. Universitas, Atmajaya Yogyakarta, Yogyakarta (2010)
- [10] Atmasasmita, Romli. *Sistem Peradilan Pidana; Perspektif Eksistensialisme dan Abolisionisme*. Putra A Bardin, Jakarta (1996)
- [11] Muladi dan Barda Nawawi Arief. 1995, *Kapita Selekta Sistem Peradilan Pidana*. DIP UNDIP, Semarang (1995)
- [12] Hamzah, Andi. *Hukum Acara Pidana Indonesia*. 2nd Edition. Sinar Grafika, Jakarta (2008)
- [13] Law Number 11 the Year 2012 concerning Child Criminal Justice System
- [14] Law Number 8 the Year 1981 concerning Criminal Procedure Acts