



## RESTORATIVE JUSTICE EFFORTS TO PROVIDE A SENSE OF JUSTICE FOR CHILDREN

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### ABSTRACT

This research aims to a discussed diversion policy in restorative justice under the Criminal Justice System for Children. The research has been descriptive of normative legal research type related to the application of diversion policy in restorative justice under the criminal justice system for children. The research results show that the application of diversion policy in restorative justice under diversion policy for children in conflict with the law under the juvenile justice system is an implementation of the restorative justice system in providing justice and legal protection to children in conflict with the law without necessarily impairing the children' responsibilities for their delinquency. Diversion is not reconciliation between the children in conflict with the law and the victims or their families but it should be a form of punishment against the children in conflict with the law in a non-formal manner. Recommendations in this research are, law enforcers in performing their tasks of investigation, prosecution, investigation, and determination of the case by the court should prioritize the implementation of a diversion policy as an alternative to imprisonment or jail terms. Massive socialization of this diversion policy to the community is highly required. The government should provide facilities and infrastructure for the diversion policy to guarantee protection for children.

**Keywords:** diversion; restorative justice; child crime

### 1 INTRODUCTION.

Restorative justice is a settlement process that is carried out outside the criminal justice system involving victims, perpetrators, families of victims, and perpetrators, the community and parties have an interest in a criminal act that occurs to achieve agreements and settlements. Restorative Justice is a settlement in a fair manner involving the perpetrators, victims, their families, and parties others associated with a non-criminal, jointly seeking the settlement of the criminal act and its implication, with emphasizing recovery and not retribution.

Children are an integral part of the sustainability of human life and the sustainability of a nation and state. By role, this important child, the rights of the child have been expressly stated in the constitutions, that the state guarantees every child the right to survival, growth, and develop and have the right to protection from violence and discrimination. The best interests of the child are to be lived, as the best interests for the survival of mankind. Therefore, the state and society always try not to let children become victims of violence, or the child falls into doing evil deeds or unfortunate deeds Other.<sup>1</sup>

Differences in characteristics in terms of the psychic of the child and adult also make a difference in acceptance of things that are new or unfamiliar. The child has a psychic condition that is still unstable, not yet knowing the right and wrong of the actions taken, even if it is just follow the invitation or when the child sees what he sees what he sees so that the child tends to follow, as is the case with acceptance in the development of science and technology.<sup>2</sup>

There are not a few children who commit mischief or transgressions as a result of imitation of their social environment, without regard to and didn't even know the consequences of their deeds. For example, out of a desire

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<sup>1</sup>Amahoru, Ibnu Kasir, "Threatened with 7 Years in Prison, Teacher Gang of SMKN 2 Makassar Officially Detained, <http://news.rakyatku.com/read/16604/2016/08/11/terancam-7-tahun-penjara-pengeroyok-guru-smkn-2-makassar-resmi-ditahan>, accessed on September 13, 2022

<sup>2</sup>Haling, Syamsu, Paisal Halim, Syamsiah Badruddin, & Hardianto Djanggih, (2018). Protection of The Human Rights of Street Children In The Field Of Education According To National Law And International Conventions. Journal of Law & Development, Vol.48, No.2, April – June 2018.



to have a good thing like his friend's, the children took the desired item from his friend. The thing that's in the minds of the child is what is desired to be obtained. Child delinquency some even lead to crimes or criminal acts. Child mischief that harms others and causes legal consequences and falls into the category of child crimes should not be allowed just like that. This is due to the neglect of such a child behaviour will also affect his behaviour until adulthood. W.A. Bongor posits that the crimes of children and youth are already a big part of the crime, after all, most adult criminals have generally been since childhood doing crime. Prevention of children's crimes will also have a good effect on adult crime prevention.<sup>3</sup>

The problem of the child committing a crime or criminal act can be easily understood, that is, in violation of the provisions in the existing criminal law regulations, for example, violating the articles regulated in the Code of Law Criminal (Criminal Code) or other criminal law regulations that are spread outside Criminal Code. Even if the child commits a crime, his rights must still get protection from the state. Under Section 28B of the Act Basis of the Republic of Indonesia in 1945 Second Amendment, stated that: "Every child has the right to survival, growth, and development and the right to protection from violence and discrimination". As the wrong one UN member state, the Indonesian government has ratified the Convention on Rights Child (KHA) by issuing Presidential Decree Number 36 dated 25 August 1990. In the Preamble to the Convention on the Rights of the Child, among others, it is mentioned that the child is entitled to special care and assistance due to immaturity in his physical and mental needs special protection and care, including proper legal protection, before and after birth.

According to Arief Gosita, child protection is an effort to establish conditions and situations that allow the exercise of rights and the humane duty of the child. Therefore, every right of the child must be upheld for the achievement of the goal, namely the birth of a healthy young generation for the survival of the nation's life. The state must protect all its citizens and it is only natural that the state pays more attention to the victim's crimes that may be suffering, both economically, physically, nor psychic.<sup>4</sup>

The perpetrator is not the main object of the restorative justice approach but the sense of justice and conflict recovery itself, which is the main object of" Restorative justice arrangements have been regulated in various regulations, including the Circular of the Chief of Police of the Republic of Indonesia Number: SE/8/VII/2018 of 2018 concerning the Implementation of Restorative Justice (Restorative Justice) in The Settlement of Criminal Cases, Regulation of the Chief of Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigations and Regulation of the Prosecutor of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

## **2 METHODS.**

### **2.1. Approach**

The method used is qualitative research that does not use the count in the form of surveys. In this case, analysing and describing the rule of law is then connected with the application of existing legal rules in solving problems in society. Using this type of normative legal research is to find principles, rules, theories of law specifically related to peace justice/restorative justice.

### **2.2. How to collect data**

Data collected through literature to be able to answer formulation of research problems. Types of data are the following normative laws:

[1] Primary legal Data in the form of legal rules as follows Perpol No. 8 of 2021 the handling process in the police using Restorative Medicine, sop of the RI prosecutor's office No. 15 yrs 2020 termination of prosecution, in the Supreme Court through Supreme Court Regulation No. 4 yr 2014 about diversion guide in the process of investigation, prosecution until the trial process and the decision of PN Padangsidempuan number: 89/Pid.Sus/2015/PN.Psp.

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<sup>3</sup> Anonymous, There Are More And More Cases of Children Facing the Law, This is what the Minister of Education and Culture <http://www.solopos.com/2016/01/25/perlindungan-anak-kasus-anak-berhadapan-hukum-kian-banyak-ini-kata-mendikbud-684467> said, accessed on September 13, 2022

<sup>4</sup> Aprilianda, Nurini, "Juridical Implications of Diversion In Children's International Instruments in Children's Law in Indonesia, Journal of the Law Arena, Vol.6, No.1, April 2012.



Secondary legal

[2] Data, namely in the form of literature, journals, previous research in accordance with the formulation of the problem.

[3] Tertiary Legal Data, is a legal dictionary, KBBI which provides an explanation related to the understanding to be explained.

### **3 ANALYZE AND RESULT.**

#### **3.1. Implement and Analysed.**

The implementation of the Decree of the Director General of the General Judiciary of the Supreme Court of the Republic of Indonesia Number: 1691 / DJU / SK / PS.00 / 12/2020 dated December 22, 2020, concerning Guidelines for the Implementation of Restorative Justice in the General Judiciary is intended to: "encourage the optimization of the implementation of the Court Rules. Supreme Court, Supreme Court Circular, and Chief Justice's Decree regulating restorative justice in the courts, restorative justice is reforming the criminal justice system that still prioritizes imprisonment. The development of the criminal system no longer rests on the perpetrator but has led to the alignment of the interests of the recovery of the victim and the accountability of the criminal act."<sup>5</sup>

Thus the purpose of issuing this Decree is to: "facilitate the courts" in the general judicial environment in understanding and implementing their implementation The Supreme Court Rules, the Circulars of the Supreme Court and the Chief Justice of the Supreme Court governing the implementation of restorative justice, encourage an increase in the application of restorative justice regulated by the Supreme Court in decisions issued by the panel of judges, and the fulfilment of the principle of rapid trial, simple and cheap haya with balanced justice.

The application of restorative justice must be applied and applied by all district courts in Indonesia, especially in terms of:<sup>6</sup>

1. settlement of minor criminal cases,
2. the child's case,
3. women in conflict with;
4. Legal cases and narcotics

#### **3.2. Application of Restorative Justice in Criminal Cases**

Based on the Decree of the Director General of the General Court of the Supreme Court of the Republic of Indonesia Number: 1691 / DJU / SK / PS.00./ 12/2020 dated December 22, 2020, concerning the Implementation of Guidelines for the Implementation of Restorative Justice in the General Court (hereinafter abbreviated as "Decision") One of the criminal acts that can be applied with restorative justice is a minor criminal case. The exercise of restorative justice in the case of misdemeanour Armor (2012) is limited to: "misdemeanours as provided for in Articles 364, 575, 379, 384, 407 and Articles 482 Criminal Code which is threatened with imprisonment for a maximum of 3 months or a fine with a loss value of not more than Rp. 2,500,000,- (two million five hundred thousand rupiah)"

Cases of theft, fraud, embezzlement, and complete detention of the investigator, including presenting the perpetrator, the victim, the perpetrator's family, the victim's family, and related parties on the day of the hearing, the Chief Judge appoints a single judge taking into account the value of the goods or money that are the object of the aforementioned case.

Then in the annex to this Decree, it is stipulated that "The Head of the District Court shall immediately appoint a single judge (1x24 hours) to examine, adjudicate and decide the case by the event of speedy examination as provided in Articles 205-210 of the Criminal Procedure Code. After opening the trial, the judge read out the indictment letter and sought opinions from the defendant and the defendant. Then the judge made a peace effort."

If a peace process is reached, the parties make a peace agreement signed by the defendant, the victim, and the relevant parties and the peace agreement is included in the consideration of the judge's ruling. Settlement of minor criminal cases through restorative justice can be carried out on the condition that peace has been established

<sup>5</sup> Ariani, Nevey Varida, "Implementation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in an Effort to Protect the Interests of Children", Journal of Legal Media, Vol.21, No.2, June 2014

<sup>6</sup> Djanggih, Hardianto, "Conception of Legal Protection for Children as Victims of Cybercrime Through Penal and Non-Penal Approaches", Journal of Legal Pulpits, Vol.30, No.2, June 2018.



between the perpetrator, korhan, the family of the perpetrator/korhan, and related community leaders. who litigates with or without damages. If the peace deal is unsuccessful, the single judge will continue the examination process. During the trial, the judge continued to seek peace and put restorative justice first in his ruling. Restorative justice does not apply to offenders who repeatedly follow the provisions of the law.

### **3.3. Implementation of Restorative Justice in Children's Cases**

So far, the handling of cases refers to the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Not Yet 12 Years Old, Supreme Court regulation of the Republic of Indonesia Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. The juvenile criminal justice system must prioritize a restorative justice approach. Any determination of diversion (settlement of cases out of court) is a form of restorative justice. If the transfer is unsuccessful or does not meet the requirements for diversion, the judge will seek a verdict using a restorative justice approach as stipulated in Article 71-82 of Law Number 11 of 2012 concerning the juvenile criminal justice system.

However, this Decision provides that: "after reading the indictment, the judge" proactively encourages the child/parent/ legal counsel and victims and related parties (Correctional Institution Community Development, Social Workers, and Community Representatives) to seek peace. In the event that a peace process is reached, the parties make a peace agreement. Furthermore, the child and/or family, the victim, and related parties are signed, and a peace agreement is included in the consideration: the decision of the judge in the best interest of the child. Suppose a judge imposes a sentence in the form of an act. In that case, the judge is obliged to clearly and appoints a place or institution in coordination with the Correctional Centre Community Development,<sup>7</sup>

Social Workers and the Regional Technical Implementation Unit for the Protection of Women and Children. In the case of a child offender who is not yet 14 years old and faces legal problems, it can only be subject to non-criminal acts, which include: return to parents, surrender to a person, treatment in a psychiatric hospital, and treatment in Social Welfare. Organizing Institutions, the obligation to attend formal education and / or training is organized by the government or private entities, the revocation of driver's licenses, and the rectification of the consequences of the crime.

The criminal settlement through diversion aims to make the perpetrator aware that the criminal act committed is unjustified and has harmed the other party. Therefore, if the diversion is successfully agreed upon by the parties, especially the victim at the investigation level (Polres), the child (perpetrator) will immediately get a restoration of his rights. On the contrary, if it has not been successful, the diversion will be continued at the level of investigation (Prosecutor's Office), and if it has not been successful, the diversion will be continued until it is in court. The implementation of diversion in the Police is a maximum of 30 (thirty) days (Article 29 Paragraph (2) of the Juvenile Criminal Justice System Law), as well as in the Prosecutor's Office for a maximum of 30 (thirty) days (Article 42 Paragraph (2) of the Juvenile Criminal Justice System Law), from the next in the Court for a maximum of 30 (thirty) days (Article 52 Paragraph (3) of the Juvenile Criminal Justice System Law).<sup>8</sup>

The implementation of the diversion involves all law enforcement apparatus from any line. Diversion is implemented at all levels of the criminal justice process. The process starts from the application of an agency or the first institution to report a criminal act or the victim himself who gives consideration for diversion. The existence of different views in each problem handled depends on the point of view of the officer in determining the decision, but the essence of the concept of diversion is to divert the child from formal to informal processes. One of the important conditions in the implementation of diversion is the recognition or statement of guilt of the perpetrator and his willingness to make diversion efforts. This diversion effort is not merely a settlement outside the formal legal

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<sup>7</sup> Ernis, Yul, "Diversion and Restorative Justice in Solving Child Crime Cases in Indonesia", Scientific Journal of Legal Policy, Vol.10, No.2, July 2016.

<sup>8</sup> Harahap, Halim, Palindungan. "Sociological Juridical Review of Diversion Policies for Children in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System", UNNES Law Journal, Vol.3, No.1, 2014. <http://www.bappenas.go.id/berita-dan-siaran-pers/indonesia-akan-berlakukan-uu-no-11-tahun-2012-tentang-system-criminal-justice-juvenile/>, accessed September 13, 2022.



process of criminal acts committed by children as mentioned in Article 6 Letter b of the Juvenile Criminal Justice System Act.

One of the goals of diversion is to instill a sense of responsibility to the child. Moreover, the diversion effort is an effort to learn and recover children as perpetrators of criminal acts. The absence of a confession/statement of guilt from the perpetrator of a criminal act is an impetus for formal legal proceedings for a criminal act. The implementation of diversion is motivated by the desire to avoid negative effects on the psyche and development of the child by his involvement with the criminal justice system. The application of this diversion prioritizes efforts to protect children from imprisonment.

Efforts to resolve problems against children who conflict with the law do not always have to use formal legal channels considering that a child can be said to be a person who does not have the ability to act legally, this is because a person is considered immature and his actions cannot be legally accounted for. The solution can be achieved with various alternatives, one of which is by using the restorative justice model concept approach. In relation to diversion, in the teachings of the Islamic religion, in QS Ash-Shura (42): 40 and QS An-Nur (24) : 44 in principle Allah likes everyone who is forgiving and has a chest in responding to a mistake or evil of others. So here with a diversionary settlement, there is a possibility of forgiveness values from the victim because the settlement is resolved by prioritizing the way of deliberation between the victim's family and the community.

The basic idea of this diversion or diversion is that to avoid the negative effects of conventional juvenile criminal justice examinations on children, both the negative effects of the judicial process and the negative effects of the stigma (evil stamp) of the judicial process, then the conventional examination is transferred to the child. The philosophies embodied in the diversion as part of the restoration justice, namely:<sup>9</sup>

The philosophy of rehabilitation is based on the concept of *parentspatriae*, where the state gives attention and protection to children as befits parents to their children. Based on this philosophy, the handling of children in conflict with the law is carried out through efforts in the best interests of the child. This means that each child is considered to have the capacity to learn and especially to change his behavior. So that children are seen more as victims of circumstances and the environment than as perpetrators. Such rehabilitation aims to support and provide treatment within the scope of the individual. So that the judicial structure that is carried out is more informal and closed, this has been reflected in the Juvenile Criminal Justice System Law as stated in the explanation, among others; the most fundamental in this law is the strict regulation of restorative justice and diversion, that is, it is intended to avoid and keep children away from the judicial process to avoid stigmatizing the child to reasonably return to the social environment. Article 1 Paragraph (6) as what is meant by diversion is a transfer of the settlement of a child's case from a criminal justice process to a process outside the criminal justice.

The philosophy of non-intervention emphasizes efforts to avoid stigmatizing or labeling delinquent children as children in conflict with the law, including intervention efforts that do not give negative labels or stereotypes to children in conflict with the law, so that interventions are directed to the provision of community-based treatment (restorative justice) where the child is placed in a community environment. The implication is that the placement of a child in a prison institution should be the ultimate alternative option. The programs advocated by the philosophy of non-intervention are deinstitutionalized through restorative justice and diversion.

The advantages of implementing diversion for children are:<sup>10</sup>

1. The child does not need to be detained (avoiding detention);
2. Avoid stigma/stamp/as a criminal;
3. Opportunities for children to improve life skills;
4. Opportunities for the child to take responsibility for his actions;
5. Not committing a repetition of a criminal offence;
6. Promote the necessary interventions for victims and perpetrators without having to go through a formal process;
7. Prevent children from following the judicial system process by keeping children away from the negative influences and implications of the judicial process

<sup>9</sup> Kaimuddin, Arfan, "Legal Protection of Victims of Minor Theft Crimes in the Diversion Process of Investigation Level", *Journal of the Law Arena*, Vol. 8, No.2, August 2015.

<sup>10</sup> Edyanto, Novi, "Restorative Justice To Solve Cases of Children Facing the Law", *Journal of Police Science*, Vol.11, No.3, December 2017.



#### **4. CONCLUSION**

The application of diversion to children facing the law in the juvenile justice system is the implementation of a system in restorative justice to provide justice and legal protection to children who conflict with the law without neglecting the accountability of the child. Diversion is not a peaceful effort between a child who conflicts with the law and the victim or his family but a form of punishment for a child who conflicts with the law in a non-formal way. The implementation of the diversion that the implementation of diversion in restorative justice in the Juvenile Criminal Justice System is the transfer of the settlement of a child's case from a criminal justice process to a process outside of fair criminal justice with an emphasis on restoring back to the original state, and not a retaliatory one. In addition, a diversion is a form of punishment that is based on education towards children.

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