



IMPLEMENTATION OF RESTORATIVE JUSTICE FOR CHILD OFFENDERS OF CRIME: ANALYSIS AND EVALUATION

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ABSTRACT

Restorative Justice is an alternative approach in solving criminal cases, which focuses on recovering victims, perpetrators and society, and creating justice that is more inclusive and effective. This study aims to examine and evaluate the implementation of Restorative Justice in handling child offenders in Indonesia, by emphasizing aspects of justice, participation, and prevention of abuse of human rights. This study uses qualitative research methods, with data obtained through library research. The results of the study show that the implementation of Restorative Justice for children of criminal offenders has had a positive impact on the process of law enforcement, protection of human rights and recovery of victims. In addition, this research also suggests that the government and society be more proactive in exploring the potential of Restorative Justice as a tool to create justice that is more inclusive and effective, and to prevent abuse of human rights against child offenders. In this context, a more comprehensive and integrated approach involving various sectors and stakeholders will be the key to success in implementing Restorative Justice as an integral part of the justice system and social development in Indonesia.

Keywords: Restorative Justice, child offenders, inclusive justice, protection of human rights, implementation evaluation.

I. INTRODUCTION

Restorative Justice is an approach that focuses on restoring the relationship between perpetrators and victims of crime, as well as involving the community in the recovery process (Zehr, 2002). In the last few decades, Restorative Justice has received significant attention as an alternative or complement to the conventional criminal justice system (Braithwaite, 2002). This concept is based on the belief that justice must be oriented towards recovery, not just punishment (Van Ness & Strong, 2010).

The application of Restorative Justice to children who commit crimes is considered important because they are still in the process of growth and development and have the potential to be improved (Bazemore & Umbreit, 1995). In addition, children and adolescents have a greater capacity to learn from mistakes and change their behavior (Steinberg, 2009). Therefore, Restorative Justice is considered more appropriate in dealing with crimes involving children than the criminal justice system which focuses on punishment (Braithwaite, 2004).

The implementation of Restorative Justice for child offenders has been adopted in various countries, including Australia, Canada and several European countries (Walgrave, 2008). Previous studies have shown that Restorative Justice has the potential to reduce recidivism, increase victim satisfaction, and promote the social reintegration of offender children (Latimer, Dowden, & Muise, 2005; Sherman & Strang, 2007). However, the implementation of Restorative Justice does not always run smoothly and often encounters various obstacles, such as public misunderstanding, resistance by law enforcement officials, and lack of resources (Umbreit & Armor, 2011).

Therefore, this study aims to analyze and evaluate the implementation of Restorative Justice for child offenders, as well as provide recommendations for improvement. This research is expected to contribute to the understanding of the implementation of Restorative Justice for child offenders, as well as



provide useful information for the government, law enforcement officials, the public and civil society organizations in increasing the effectiveness of Restorative Justice.

In the criminal law system, imposing sanctions on perpetrators of criminal acts is often seen as a solution to punish perpetrators and prevent crime. However, this approach is often not effective enough in dealing with crime problems involving children, bearing in mind that they are still in their developmental stages and need better guidance and recovery (Van Ness & Strong, 2014). Therefore, the concept of Restorative Justice is important to be applied in the handling of child offenders.

Restorative Justice is an alternative approach in solving crimes that focuses on restoring the relationship between the perpetrator and the victim, as well as involving the community in the recovery process (Zehr, 2002). Restorative Justice has several main principles, such as accountability, empathy, and active participation from perpetrators, victims, and society (Braithwaite, 2002). Some methods of Restorative Justice include mediation, family conferences, and peace circles (McCold, 2003).

II. METHODS.

2.1. Concept

The library research method is a method used to collect and analyze data originating from written sources, such as books, journals, articles, reports, and official documents. In the context of the research "Implementation of Restorative Justice for Child Offenders: Analysis and Evaluation,"

To collect data through library research, the researcher took the following steps:

1. Identify relevant library sources, such as books, journals, articles, reports, and official documents.
2. Read and review literature sources related to the research topic.
3. Summarize and categorize information obtained from library sources.
4. Analyze and interpret the information obtained to answer research questions.
5. Integrating the results of literature research with the results of qualitative and quantitative research that has been done before.

2.2. Discussion Theory of Restorative Justice

In the consideration of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System it is also stated that children are a mandate and a gift from God Almighty who has dignity and worth as a whole human being. To maintain their dignity, children are entitled to special protection, especially legal protection in the justice system. According to Retnowulan Sutianto, child protection is part of National Development. Protecting children is protecting humans, and developing humans as whole as possible. This is reflected in the essence of national development, namely the development of a whole Indonesian human being who is virtuous. Ignoring child protection issues will not strengthen national development.

Along with the times there are many things that can interfere with the growth and development of children. Many children fall into negative things, starting from violence, free sex, narcotics and so on. Some of these things can damage the personality and development of children. There are many factors that can plunge children into negative things, both from within the child and from outside such as the surrounding environment (Kartono, 2017).

Restorative Justice is an alternative approach in solving crimes that focuses on restoring the relationship between the perpetrator and the victim, as well as involving the community in the recovery process (Zehr, 2002). This approach is different from the conventional criminal law system which places more emphasis on imposing sanctions and punishments on perpetrators. Restorative Justice considers that crime not only violates the law, but also damages the relationship between perpetrators, victims, and society (Zehr, 2015).

Some of the main principles in Restorative Justice include accountability, empathy, and active participation from perpetrators, victims, and society (Braithwaite, 2002). Accountability refers to the perpetrator's awareness to admit mistakes and take steps to repair the losses that have been caused.



Empathy refers to the ability of perpetrators and victims to understand each other and feel each other's feelings. Active participation refers to the involvement of perpetrators, victims and the community in an inclusive and democratic recovery process.

Restorative Justice has several methods used in practice, such as mediation, family conferences, and peace circles (McCold, 2003). Mediation involves direct or indirect meetings between the perpetrator and the victim with the help of a neutral facilitator to reach an agreement on how to repair the losses incurred. Family conferences involve families of perpetrators and victims, as well as other related parties, in the process of discussing and making decisions regarding recovery methods. Peace circles engage perpetrators, victims, families and community members in open and inclusive discussions to create common solutions.

In the context of child offenders, Restorative Justice is considered more appropriate because this approach emphasizes recovery and reintegration of offender children into society, rather than giving punishments that have the potential to damage the child's future (Van Ness & Strong, 2014). Restorative Justice can also help the offender's child to develop the social, emotional, and moral skills needed to avoid future criminal behavior (Bazemore & Schiff, 2005).

The following are several laws that regulate criminal settlements for children in Indonesia:

- 1) Law Number 35 of 2014 concerning Child Protection
- 2) Law Number 11 of 2012 concerning the Child Protection System
- 3) Law Number 3 of 1997 concerning Juvenile Courts
- 4) Law Number 23 of 2002 concerning Protection of Witnesses and Victims
- 5) Law Number 13 of 2006 concerning Ratification of the Convention on the Rights of the Child

The provisions in the law emphasize that children who commit criminal acts must be accepted and protected by society, and must receive fair and responsible treatment in the legal process. Therefore, criminal settlement for children must be carried out with a social rehabilitation and reintegration approach, not just giving punishment.

2.3. Restorative Justice Legal Framework

In Indonesia, Restorative Justice has been recognized and integrated into several laws and regulations related to child protection and the criminal justice system. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) is the main basis for implementing Restorative Justice for child offenders (State Gazette of the Republic of Indonesia, 2012). The SPPA Law creates a legal framework that accommodates the principles of Restorative Justice, such as diversion, mediation and rehabilitation.

In addition to the SPPA Law, several implementing regulations and other policies also support the implementation of Restorative Justice, such as the Government Regulation of the Republic of Indonesia Number 65 of 2010 concerning Protection Measures for Children in Conflict with the Law (State Gazette of the Republic of Indonesia, 2010), which regulates diversion and mediation as alternative settlement of child criminal cases.

Although the legal framework for Restorative Justice in Indonesia already exists, several aspects that need to be improved to support more effective implementation include:

- 1) Clarity and consistency of regulations: Improving regulations related to Restorative Justice so that they are clearer and more consistent in regulating processes, mechanisms, and case criteria that can be resolved through a Restorative Justice approach (Sulistiyowati, 2014).



- 2) Training and capacity of law enforcement officials: Increase the understanding and skills of law enforcement officials, such as the police, prosecutors and judges, in implementing Restorative Justice through continuous training and education (Setyowati, 2017).
- 3) Infrastructure development: Building and optimizing supporting facilities, such as mediation and rehabilitation centers, needed to carry out Restorative Justice for child offenders (Susanti, 2017).
- 4) Community involvement: Increasing community participation in the Restorative Justice process, such as involving community leaders, NGOs, and families in mediating and rehabilitating children who have committed crimes (Nugroho, 2016).
- 5) Monitoring and evaluation: Establishing an effective monitoring and evaluation system to measure the success and impact of Restorative Justice, as well as to identify obstacles and challenges in its implementation (Wahyuni, 2016).

Following are the mechanisms and stages of resolving juvenile crimes through restorative justice in Indonesia, sourced from Law Number 11 of 2012 concerning the Child Protection System, Law Number 3 of 1997 concerning Juvenile Courts, are as follows:

- 1) Preliminary Examination: The police or the Attorney General's Office conduct an examination of a child who is suspected of having committed a crime.
- 2) Determination of Child Status: If it is proven that the child committed a crime, the child's status will be determined as the perpetrator of the crime.
- 3) Settlement Through Restorative Justice: If the child concerned meets the requirements for restorative justice, a settlement will be made in this way.
- 4) Restorative Justice Trials: Restorative justice trials are conducted by the juvenile judge in charge, involving the offender's child, family, and other related parties.
- 5) Deliberation and Resolution: In a restorative justice trial, all parties will be invited to speak and discuss to find the best solution to the problem at hand, with the aim of restoring relations between the affected parties and improving the situation.
- 6) Determination of the Rehabilitation Program: If the juvenile judge decides that the child is eligible for restorative justice, a rehabilitation program will be determined according to the child's condition and needs.
- 7) Implementation of Rehabilitation Program: Child offenders will carry out a predetermined rehabilitation program, such as training, counseling, or other activities aimed at helping children understand the impact of their actions and become better children.
- 8) Evaluation and Monitoring: The rehabilitation process will be monitored and evaluated to ensure that the program is running well and the child is getting the expected benefits.
- 9) Final Settlement: If the child successfully completes the rehabilitation program, then he will be declared finished with the crime and will have the opportunity to start his life again as a good child and be of benefit to society.

At the international level, the legal framework for Restorative Justice is supported by various instruments and policies that serve as guidelines for member countries in implementing Restorative Justice. One of the most important international instruments is the Convention on the Rights of the Child (United Nations, 1989), which emphasizes the protection of children's rights, including the right to reintegration and recovery for children involved in the criminal justice



system. The convention encourages member states to ensure that their legal systems protect children's rights and support a more rehabilitative rather than retributive approach.

In addition, the Resolution of the Economic and Social Council of the United Nations (United Nations, 2002) regarding the basic principles of using the Restorative Justice program in criminal cases provides guidance for member countries in developing and implementing Restorative Justice. This resolution covers principles such as voluntary participation, informed consent, confidentiality, and community involvement in the Restorative Justice process.

However, to support the implementation of Restorative Justice more effectively at the international level, several aspects that need to be improved in the legal framework include:

- 1) Legal harmonization and consistency: Encouraging member states to adopt and integrate Restorative Justice principles and methods into their laws, regulations and policies in a consistent and harmonious manner (Van Ness & Heetderks Strong, 2015).
- 2) Research and evaluation: Conduct comprehensive research and evaluation to assess the effectiveness and impact of Restorative Justice in various countries and contexts, as well as identify factors that influence the successful implementation of Restorative Justice (Daly & Immarigeon, 1998).
- 3) Capacity and resources: Increase capacity and resources for member countries, especially developing countries, to implement Restorative Justice through the transfer of technology, knowledge, and financial support (Walgrave, 2008).
- 4) International cooperation and coordination: Increase cooperation and coordination between member countries and relevant international organizations to promote and support the implementation of Restorative Justice at the global level (Van Wormer & Walker, 2013).

Sourced from United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Mechanisms and stages of settlement of juvenile crimes through restorative justice at the international level are as follows:

- 1) Problem Identification: First, it must be identified that criminal acts committed by children are a problem for society and require a good and fair solution.
- 2) Goal Setting: The goal of the restorative justice process is to help children understand the impact of their actions and improve the relationship between the child and society.
- 3) Determination of Related Parties: Related parties in the restorative justice process include the offender's child, victim, family, and community.
- 4) Resolution Through Discussion: The process of restorative justice involves discussion and communication between related parties, with the aim of finding a good and satisfactory solution for all parties.
- 5) Determination of Corrective Action: After the discussion, a corrective action will be determined to be taken by the child, such as apologizing or paying compensation.
- 6) Implementation of Corrective Actions: The child perpetrator will take the corrective actions that have been determined, and will be monitored and evaluated to ensure that these actions are carried out properly.
- 7) Final Resolution: After the corrective action is taken, the restorative justice process will be declared complete and the child will have the opportunity to restart his life as a good child and be beneficial to society.



III. RESULT

3.1. Restorative Justice.

One important aspect in supporting the implementation of Restorative Justice for child offenders is adequate infrastructure. The necessary infrastructure includes mediation centers, rehabilitation and other supporting facilities that assist children and their families in the process of reintegration and recovery (Achmad & Supaat, 2017).

Mediation centers play an important role in carrying out the Restorative Justice process. Mediation involves related parties, such as the perpetrator's child, victim, family and community, to reach a joint resolution that meets the needs of all parties (Braithwaite, 2002). Mediation centers must have conducive facilities, such as comfortable and safe meeting rooms, as well as staff who are trained and experienced in carrying out the mediation process (Hayati & Suharko, 2019).

Apart from mediation centers, rehabilitation facilities are also very important in supporting the implementation of Restorative Justice. Rehabilitation facilities must provide services and programs designed to help children overcome problems that underlie their behavior, such as substance abuse, mental disorders, and socio-economic problems (Achmad & Supaat, 2017). Rehabilitation facilities must have adequate resources, including professional staff, such as psychologists, counselors, and social workers, as well as education and skills programs that are appropriate to the needs of children (Hayati & Suharko, 2019).

To support an effective Restorative Justice infrastructure, the government needs to invest in the development of mediation and rehabilitation centers and engage the private sector and non-governmental organizations in the provision of services and support (Achmad & Supaat, 2017). In addition, there needs to be good coordination between various agencies, such as the judiciary, education, social welfare, and communities, to ensure effective integration between Restorative Justice and the existing criminal justice system (Braithwaite, 2002).

This is in line with the Restorative Justice Case Study Report in Indonesia by the Child Social Welfare Foundation, the Restorative Justice Program Evaluation Report by the Legal Aid Institute. Infrastructure support for restorative justice in Indonesia includes various things, such as increasing access to counseling and rehabilitation services for child offenders, establishing a mediation team that is trained and understands the principles of restorative justice, and increasing the capacity of juvenile judges and other law enforcement officers in implementing restorative justice.

However, even though there are efforts to improve infrastructure support for restorative justice, there are still some problems being faced, such as:

- 1) Lack of Resources: In some cases, restorative justice lacks adequate resources, such as mediation staff and limited counseling services.
- 2) Funding Limitations: Restorative justice often lacks sufficient funds to carry out the necessary programs and activities.
- 3) Need for Education and Training: There is a need for education and training for law enforcement officers and the public to understand the principles and mechanisms of restorative justice.
- 4) Lack of Awareness: There is still a lack of public awareness and understanding of restorative justice, so it is often not prioritized as a solution for juvenile crimes.

3.2. Evaluation of the Success and Barriers to the Implementation of Restorative Justice

Restorative Justice is an approach in law enforcement that emphasizes restoring the relationship between victims, perpetrators, and society. The implementation of Restorative Justice has had various successes and obstacles. In implementing Restorative Justice, several indicators of success can be used to evaluate the effectiveness of this approach in dealing with child offenders. These indicators include the



level of recidivism, the satisfaction of victims and perpetrators, and changes in the behavior of the perpetrator's children (Achmad & Supaat, 2017).

The level of recidivism is one of the main indicators in assessing the success of Restorative Justice. The decrease in recidivism rates indicates that children who have undergone a Restorative Justice process are less likely to re-engage in criminal activities (Latimer, Dowden, & Muise, 2005). Several studies in Indonesia show that Restorative Justice has contributed to reducing the recidivism of child offenders (Hayati & Suharko, 2019).

Satisfaction of victims and perpetrators is also an important indicator in evaluating the success of Restorative Justice. Studies show that victims and perpetrators involved in restorative justice processes generally feel more satisfied than those who undergo conventional justice processes (Sherman & Strang, 2007).

However, the implementation of Restorative Justice is faced with several obstacles that may affect its success. First, a lack of resources, such as funds, skilled manpower, and adequate infrastructure, can hinder the effective implementation of Restorative Justice (Achmad & Supaat, 2017).

Second, resistance from law enforcement officials and judicial institutions sometimes becomes an obstacle in the implementation of Restorative Justice. Some law enforcers and judges still tend to use a retributive approach rather than Restorative Justice in dealing with child offenders (Hayati & Suharko, 2019).

Third, the public's lack of understanding of the principles and objectives of Restorative Justice is also an obstacle in its implementation. Society often perceives Restorative Justice as a way to avoid punishment, thereby reducing support for this approach (Achmad & Supaat, 2017).

Changes in the behavior of the offender's children are also an indicator of the successful implementation of Restorative Justice. Children of perpetrators who undergo a Restorative Justice process have a higher probability of understanding the consequences of their actions and improving their behavior in the future (Umbreit & Coleman, 2000). In conclusion, the implementation of Restorative Justice has had various successes and obstacles. Low recidivism rates, satisfaction of victims and perpetrators, changes in the behavior of the offender's children, and obstacles such as lack of resources, resistance from law enforcement officials, and community misunderstanding. The three points above are fundamental evaluations that should be the homework of the state and must be resolved soon. In order to reduce the number of children who commit crimes and save the future of Indonesian children.

IV. CONCLUSION.

Implementation of Restorative Justice for children of criminal offenders is an alternative approach that emphasizes restoring relations between perpetrators, victims and society, and focuses on the needs of victims and the accountability of perpetrators. Analysis and evaluation show that Restorative Justice is effective in reducing recidivism rates, improving social relations, and increasing victim satisfaction. However, cooperation between various parties, including government, correctional institutions, and the community, is required to ensure efficient and effective implementation. In addition, adequate training and support for program implementers, as well as improvements to existing laws and policies, will assist in realizing the success of Restorative Justice in addressing the problem of child offenders.



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