


A Review Of Children's Restorative Justice In Minors Criminal Cases

Nurhimmi Falahiyati¹, Detania Sukarja²

^{1,2}Universitas Sumatera Utara, Medan, North Sumatera, Indonesia

ArticleInfo	ABSTRACT
Keywords: Responsibility, Investigator, Restorative Justice.	The settlement of juvenile cases through restorative justice approach includes: the stages of investigation, prosecution, court and implementation of punishment or action and after serving the punishment or action. The problems in this study are about what factors are used against children in restorative justice in resolving child criminal cases. How is the responsibility of investigators in the implementation of restorative Justice in the settlement of juvenile criminal cases in the PPA Unit of the Langkat Police Criminal Investigation Unit. How are the obstacles and efforts of investigators in the PPA Unit of the Langkat Police Reskrim Unit in the implementation of restorative Justice in the settlement of criminal cases committed by children. Where this research uses an empirical juridical approach method, which tries to describe the application of restorative justice in the settlement of sexual abuse of children committed by minors by the PPA Unit of Satreskrim Polres Langkat. The data source of this research consists of primary and secondary data. The data analysis used is qualitative data analysis. The responsibility of PPA Satreskrim investigators of Langkat Police in implementing restorative Justice in resolving cases of children in conflict with the law is inseparable from the implementation of the duties and functions of investigators specified in the Law on the Child Criminal Justice System, where the implementation of diversion in resolving cases of children in conflict with the law is mandatory (imperative). The obstacle of investigators in the PPA Unit of the Langkat Police Criminal Investigation Unit in the implementation of restorative Justice is the difficulty of bringing together the balance of the various interests of the parties, namely the perpetrator, victim, and society.
Thisisanopenaccessarticle under the CC BY-NC license 	Corresponding Author: Nurhimmi Falahiyati Universitas Sumatera Utara, Medan, North Sumatera, Indonesia nurhimmi19@gmail.com

INTRODUCTION

Children as perpetrators of criminal offenses, then the judicial process carried out The judicial process, starting from the investigation and ending with the imposition of punishment, is different from the adult judicial process. The process of juvenile criminal justice, legal protection of children's rights must be a serious concern. In previous research, Maidin Gultom (2020) mentioned:

Child protection can also be defined as all efforts aimed at preventing, rehabilitating, and empowering children who experience acts of child abuse, exploitation, and neglect, in order to ensure the survival and growth of children naturally. Children are essentially unable to protect themselves from a variety of actions that can cause mental, physical, social harm,

even actions that can threaten life safety. Therefore, child protection is very important, including the protection of children who commit unlawful acts. Child protection in the implementation of the juvenile criminal justice system is an effort to avoid mistakes in the application of various laws and regulations that apply to them, which allows mental, physical and social harm to children.

Examination of children as perpetrators of criminal offenses must be taken into account the purpose of juvenile justice is to correct and rehabilitate, so that children can return to a normal and independent life. children can return to a normal and independent life for the sake of their future potential. This will affect the way children's cases are handled. Children as one of the human resources and are the next generation of the nation should get special attention from the government, in the context of fostering children to realize strong and quality human resources. In connection with the development of children, legal facilities and infrastructure are needed to anticipate all the problems that arise. The facilities and infrastructure in question concern the interests of children as well as those concerning deviations in attitudes and behavior that make children forced to face the court.

Based on these considerations, the government considers it necessary to regulate child protection and legal protection mechanisms for children in the event that children are in conflict with the law. Law Number 23 of 2002 concerning Child Protection, as amended by the issuance of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is one of the legal products that seeks to provide legal protection to children. Legal protection of children, especially children in conflict with the law is an important thing to note. Therefore, the government regulates the legal rules for the implementation of the juvenile criminal justice system, which was previously regulated in Law Number 3 of 1997 concerning Juvenile Justice, then replaced by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

The protection of children in conflict with the law (ABH) is a shared responsibility of law enforcement officials. Not only children as perpetrators, but also children as victims and witnesses. Law enforcement officials involved in handling ABH, especially Police Investigators have an important role in handling criminal cases committed by children. Based on the provisions of the Law on the Juvenile Criminal Justice System, the handling of juvenile criminal cases must prioritize peace (diversion) over the formal legal process. Therefore, the imposition of punishment in the settlement of juvenile criminal cases has the potential to violate children's rights.

The resolution of a case of a child in conflict with the law must be prioritized in a more familiar or familial way, by prioritizing restorative justice. In accordance with the provisions stipulated in Article 1 point 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the Juvenile Criminal Justice System Law), restorative justice is an effort made by victims, families of perpetrators/victims and other related parties to jointly seek a fair settlement by emphasizing recovery back to its original state and not retaliation.

The settlement of criminal cases committed by children, in the juvenile criminal justice system is known as diversion, in accordance with the formulation of Article 1 Point 7 of the

Law on the Juvenile Criminal Justice System, that what is meant by diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside criminal justice. The implementation of diversion in the criminal justice system has certain objectives to be achieved. According to Marlina, the objectives of the implementation of diversion by law enforcers in the juvenile criminal justice system are to achieve peace between the child as the perpetrator and the victim, settle the child's case outside the judicial process, avoid deprivation of liberty, and instill a sense of responsibility in the child.

Literature Review

Definition of duties and responsibilities of Investigators

Investigation is the stage of completing a criminal case after an investigation which is the initial stage of looking for an event. The emphasis of the investigation lies in the act of searching and collecting evidence in order to find the suspect. The definition of investigation is stated in Article 1 point 2 of the Criminal Procedure Code, namely in Chapter I regarding general explanations, namely "investigation is a series of investigator actions in the case and in the manner regulated in this law to seek and collect evidence with which the evidence makes light of criminal acts that occur and to find the suspect".

The duties and authorities of investigators specified in the Criminal Procedure Code are, among others, First, to make an official report on the implementation of the actions referred to in Article 75 of the Criminal Procedure Code. Second, submitting case files to the public prosecutor as referred to in Article 8 paragraph 2 of the Criminal Procedure Code. Third, Investigators who know, receive reports or complaints about the occurrence of an event suspected of being a criminal offense are obliged to immediately carry out the necessary investigations as referred to in article 106 of the Criminal Procedure Code. Meanwhile, the authority of investigators include First, receiving a report or complaint from someone about a criminal offense, making arrests, detention, searches and seizures, summoning people to be examined as suspects or witnesses as referred to in Article 7 paragraph (1) of the Criminal Procedure Code.

In Indonesia, there are two concepts of policing, namely *sicherheit polizei* which functions as a guardian of order and security, and *verwaltung polizei* or *wohlfart polizei* which functions as an economic organizer or organizer of all the needs of citizens.⁴ Historically, the term "police" in Indonesia seems to follow and use the term "politie" in the Netherlands. This situation is a result and influence of the building of the Dutch legal system which is widely adopted in the State of Indonesia.⁵ Based on the understanding that has been mentioned, it can be said that the Police is a government agency that is given the task of maintaining security and public order. Thus the meaning of police is still highlighted as a body or institution that must carry out government functions, and as a designation of members of the institution.

The definition of the Police can also be seen in Law No. 2 of 2002 concerning the Police (hereinafter referred to as the Police Law), "Police is all matters relating to the functions and institutions of the police in accordance with laws and regulations". The term Police in the Police Act contains two meanings, namely police functions and police institutions."

The function of the Police in accordance with Article 2 of the Police Act is to carry out government functions in the field of maintaining security and public order, enforcing the law,

protecting, protecting, and serving the community, while the police institution is a government organ that is designated as an institution and given the authority to carry out its functions based on statutory regulations. The purpose of the establishment of the police institution aims to realize domestic security which includes the maintenance of public security and order, order and law enforcement, the implementation of protection, protection, and services to the community, and the preservation of public peace by upholding human rights. The main tasks of the Indonesian National Police are:

- a. Maintaining security and public order.
- b. Enforcing the law; and
- c. Provide protection, protection, and services to the community.

The substance of the main task of the Indonesian National Police to provide protection, protection and services to the community stems from the position and function of the police as part of the state government function which is essentially a public service included in the general obligations of the police. The formulation of Article 15 paragraph (1) letter a of the Police Act legitimizes the Indonesian National Police as the "authorized officer" to receive reports and complaints in the context of carrying out police duties. Article 15 paragraph (1) letter a is also an affirmation of the authority of investigators and investigators as referred to in Article 5 paragraph (1) and Article 7 paragraph (1) of KUHAP, namely: "Receiving reports and complaints from a person about a criminal offense". Thus it can be understood that the authority of the Indonesian National Police in receiving reports and complaints has two sources, namely: first, as a general obligation of the Police under the Police Act and second as an obligation in the context of criminal proceedings under the Criminal Procedure Code.

Definition of Child Protection

Soerojo Wignjodipoero quoted by Tholib Setiadi, states that: "Except being seen by his parents as a successor to the generation, the child is also seen as a container in which all the hopes of his parents in the future must be shed, also seen as a protector of his parents in the future when the parents are no longer physically able to make a living.

According to Article 1 Paragraph (3) of the Law on Juvenile Justice System, a child in conflict with the law, hereinafter referred to as a child, is a child who has reached the age of 12 (twelve) years, but not yet 18 (eighteen) years old who is suspected of committing a criminal offense. Article 1 paragraph (2) of the Child Protection Law states: "Child protection is all activities to ensure and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with the dignity of humanity, and receive protection from violence and discrimination."

In juvenile criminal justice, every child has the right to freedom in accordance with the law. Arrest, detention, or imprisonment of children is only carried out if in accordance with applicable law can only be done as a last resort. Legal protection of children is an effort to protect the law against various freedoms and human rights of children. Legal protection for children includes assistance from community officers, shorter detention periods than adults, facilities by special law enforcement officers for children, including separation of detainees. children from adult detention is one form of legal protection for children.

Criminalization is basically oriented towards the individual perpetrator or commonly referred to as individual responsibility (Individual responsibility), where the perpetrator is seen as an individual who is able to take full responsibility for his actions. Crimes committed by children always draw criticism against law enforcers who are considered by many to have ignored the procedures for handling children in trouble with the law, and there is an impression that they are often treated as adults. A child is basically an individual who has not been able to fully realize the actions or deeds he/she has committed. The Juvenile Criminal Justice System Law adheres to the principle that juvenile criminal justice must pay attention to the best interests of the child. In addition, it is also necessary to pay attention to respect for the opinion of the child, the survival and growth of the child and the guidance and guidance of the child.

Definition of Restorative Justice

Restorative juvenile justice is based on the assumption that responses to juvenile delinquent behavior are ineffective without the cooperation and involvement of victims, offenders and the community. The underlying principle is that justice is best served when each party receives fair and balanced attention and is actively involved in the judicial process. Helen Cowie and Dawn Jennifer as cited by Hadi Supeno, identified the main aspects of restorative justice as follows:

- a. Rectification is not about gaining victory or accepting defeat, recriminations, or revenge, but about justice.
- b. Rapprochement, is not about punishing criminals for taking responsibility for wrongdoing and making things right in some way, but through a process of open and direct communication, between victims and criminals, which has the potential to change the way we relate to each other.
- c. Reintegration, at its broadest level, provides an arena where children and parents can have a fair process. The intent is that they learn about the consequences of violence and crime and understand the impact of their behavior on others.

The restorative justice model generally lies in efforts to restore the relationship between the perpetrator and the victim, for example, someone steals a professor's book, the justice process is how to proceed and what steps to take so that the problem can be resolved so that the good relationship between the person and the professor lasts as before without anyone being harmed. In retributive justice, the community is not involved because they are represented by lawyers, while in restorative justice the community is involved.

METHODS

This research is a descriptive research. Descriptive research aims to accurately describe the characteristics of an individual, situation, symptom or certain group, to determine whether there is a relationship between a symptom and other symptoms in society. Descriptive research is research that merely describes objects or events without any intention of drawing generally applicable conclusions. This research aims to determine the efforts of the Langkat Police Criminal Investigation Unit's PPA Unit in resolving criminal cases committed by children using a restorative justice approach. This type of research is included in qualitative

research, namely research that seeks to discover legal symptoms that develop in a community. This research tries to describe the efforts of the Langkat Police Criminal Investigation Unit's PPA Unit in resolving criminal cases committed by children using a restorative justice approach.

This type of research is empirical juridical research. The problems that have been formulated in this research will be answered or solved using an empirical juridical approach method. Juridical approach (law is seen as a norm or *das sollen*), because in discussing the problem this research uses legal materials (both written and unwritten laws or primary legal materials and secondary legal materials). Empirical approach (law as social, cultural or *das sein* reality), because in this research primary data was used obtained from the field, namely about how the Langkat Resort Police Criminal Investigation Unit's PPA Unit attempts to resolve criminal cases committed by children through a restorative Justice approach .

The data collection method in this research uses library research and field research methods. The library method is used when prospective researchers look for answers to problem formulations in reading sources (references), such as book literature, magazines, journals, the internet and so on. Field research was carried out through interviews with competent parties or representatives of the Langkat Resort Police Criminal Investigation Unit, in this case interviews were held with Bripka Novalita Simanjuntak and Aipda Hasiholan, S.H.

RESULTS AND DISCUSSION

The Benefits of Resolving Cases of Children in Conflict with the Law

According to Muladi in Romli Atmasasmita, the model of criminal justice system that is suitable for Indonesia is a model that refers to: "*daad dader strafrecht*" which is called the balance of interest model. This model is a realistic model that takes into account the various interests that must be protected by criminal law, namely the interests of the state, public interests, individual interests, the interests of the perpetrators of criminal acts and the interests of victims.

Based on the opinion expressed by Muladi above, related to the application of restorative justice in the settlement of minor criminal cases is a form of criminal justice system that is applied based on the balance and interests of the parties, namely the interests of victims and perpetrators. The settlement of criminal cases using the restorative justice method provides many benefits, in addition to benefits for victims and perpetrators, it is also beneficial for law enforcement officials. The benefits of resolving criminal cases through the restorative Justice approach for victims are that the settlement through the restorative Justice approach will be more beneficial for victims, because the case can be completed quickly, so that victims do not have to go to the Police Station or Court to be examined as victim witnesses.

In addition, the settlement of minor criminal cases through the restorative Justice approach will pay more attention to the rights of victims, namely the recovery of victims which can be in the form of fulfillment of compensation by the perpetrator.

The settlement of criminal cases through the restorative Justice approach will create a sense of responsibility from the perpetrator to repair the harm caused by his actions. For

victims, the emphasis is on the recovery of asset losses, physical suffering, security, dignity and satisfaction or a sense of justice. Thus, it can be understood that the settlement of traffic accident cases using the restorative justice method provides many benefits, especially for the perpetrators and victims. On the other hand, the settlement of cases of children in conflict with the law through the restorative justice approach also provides benefits for law enforcers, case settlement through the restorative justice approach will accelerate the process of case settlement and avoid the accumulation of cases, both at the level of investigation and examination before the court.

Examined from a juridical aspect, the settlement of cases of children in conflict with the law through a restorative justice approach is more likely to realize the ultimate goal of the law itself, namely achieving justice. Gustav Radbruch suggested that the three concepts of legal objectives are certainty, justice and expediency. Ideally, these three legal objectives must be achieved and in line. However, the reality is that the three elements of legal objectives often clash with each other, legal certainty sometimes clashes with justice as well as a clash between legal certainty and expediency, or between justice and legal certainty.

The occurrence of conflict between the three concepts of legal objectives, then in the application of Gustav Radbruch's law is based on a priority scale. If you want to uphold justice, then of course expediency and legal certainty must be sacrificed. Based on the priority scale, justice must be prioritized in law enforcement, then expediency, and finally legal certainty. The premise of justice based on equality before the law is in accordance with the view of justice put forward by Jhon Rawls.

Legal expediency, based on the idea that law is for humans, then the implementation of law or law enforcement must provide benefits or uses for the community. Law is not synonymous with justice, because the law is general, binding on everyone, is generalizing. Whoever steals must be punished, where everyone who steals must be punished, without discriminating who steals. Legal certainty is very identical to the understanding of legal positivism, where the only source of law is the law, while the judiciary means merely the application of the law to concrete events.

In positivist thinking, the law and the law are identified, so that the Judge can be said to be the mouthpiece of the law. This means that every legal event that occurs in society must have a means or law that regulates it, so that the event can have legal force and obtain legal protection. The development of law that occurs today, puts the law not only aims to realize legal certainty and legal justice, but also to realize legal expediency. Therefore, in law enforcement, the benefits of the law itself must also be considered.

Obstacles Investigators on PPA Sat Reskrim Polres Langkat

Soerjono Soekanto, explains that the effectiveness of law enforcement in overcoming and enforcing laws against crimes that occur in society can be influenced by various factors. These factors can have a negative impact and also positive. The factors that influence the effectiveness of law enforcement according to Soerjono Soekanto include: legal factors, law enforcement factors, facilities and infrastructure factors, community factors and cultural factors or legal culture.

The five factors that influence law enforcement described by Soerjono Soekanto above, greatly affect the effectiveness of the settlement of cases of children in conflict with the law through a restorative justice approach. Analysis of the problems regarding obstacles to the settlement of cases of children in conflict with the law through a restorative Justice approach can be done by using the concept of law enforcement put forward by Soerjono Soekanto.

Soerjono Soekanto, where there are several factors that affect the effectiveness of the application of restorative Justice in resolving cases of children dealing with the law. Based on the factors that influence law enforcement put forward by Soerjono Soekanto, obstacles to the application of restorative justice in resolving cases of children dealing with the law can be influenced by the following factors:

Legal factors

The concept of law enforcement put forward by Soerjono Sokeno, the effectiveness of law enforcement is influenced by legal factors themselves or what is called legal substance. Legal substance is the main and most important factor in law enforcement efforts, because the lack of clarity or absence of legal rules causes law enforcement officers to experience obstacles in carrying out law enforcement against criminal incidents that occur in people's lives. The legal substance referred to in this case is all products of statutory regulations, such as; decisions, new rules that have just been drafted which regulate how to handle children in conflict with the law, including what is produced by people who are in the legal system.

A very determining factor in implementing restorative justice in cases of children in conflict with the law is the legal substance factor, this is due to the provisions governing restorative justice and diversion which are mandated in the 1989 Convention on the Rights of the Child, the 1985 Beijing Rule, and the Law. Number 11 of 2012 concerning the Juvenile Criminal Justice System, apart from these provisions, the Criminal Procedure Code (KUHP) which applies in general is still in force. This causes the application of formal law contained in Law Number 11 of 2012 to not be fully implemented considering that general formal law can still be applied, this can result in the deprivation of children's rights during the criminal justice process.

In practice, the implementation of the Criminal Justice System Law still has multiple interpretations, so a comprehensive understanding is needed from law enforcement officials. For example, Article 7 of the Criminal Justice System Law stipulates that diversion can be carried out for criminal acts that carry a sentence of less than 7 (seven) years. If a child commits a violation of Article 81 paragraph (2) of the Child Protection Law, then the threat of imprisonment is a maximum of 15 (fifteen) years, linked to Article 79 of Law Number 11 of 2012 which determines that the criminal restriction of freedom imposed on a child is a maximum of ½ (one-half) of the maximum prison sentence threatened against an adult, then the criminal threat for a child in conflict with the law is 7 (seven) years and 6 (six) months for article 81 paragraph (1) of the Protection Law Child.

CONCLUSIONS

Based on the results of research and discussion, it is concluded as follows: The application of restorative justice in resolving cases of children in conflict with the law is influenced by several factors, namely: the criminal act committed by the child, the child's age, the results of social research and the support of the family and community environment. The lighter the criminal threat from criminal acts committed by children, the greater the opportunity for diversion to occur. Likewise, considering the age of the child, the younger the child, the greater the opportunity for diversion. A factor that is no less important and very determining in the application of restorative justice in resolving cases of children in conflict with the law is the support of the victim and/or the victim's family, namely the victim's willingness to carry out a deliberative settlement. The responsibility of Langkat Police Satreskrim PPA investigators in carrying out restorative justice in resolving cases of children in conflict with the law cannot be separated from the implementation of the role of PPA Investigators in carrying out their duties and functions in accordance with the authority specified in the law. The Juvenile Criminal Justice System Law determines that diversion is implemented in resolving juvenile cases dealing with the law is mandatory (imperative). Thus, investigators have an obligation to seek diversion by prioritizing solutions based on restorative justice while always prioritizing the best interests of the child. The obstacle for investigators at the Langkat Police Criminal Investigation Unit PPA Unit in implementing restorative justice in resolving cases of children in conflict with the law is the difficulty of balancing the various interests of the parties, namely the perpetrator, the victim and the community . Efforts that can be made are to facilitate meetings between perpetrators and victims in the context of holding deliberations and improving the quality of Human Resources from Langkat Police PPA investigating personnel through training and legal education.

REFERENCE

1. Arief, Nawawi Barda, 2002, Beberapa Aspek Kebijaksanaan penegakan dan pengembangan Hukumpidana, Citra Aditya Bakti, Bandung.
2. Asikin, Zainal dan Amiruddin, 2014, Pengantar Metode Penelitian Hukum, Rajawali Pers, Jakarta.
3. Aspan, h., sipayung, i. M., muharrami, a. P., & ritonga, h. M. (2017). The effect of halal label, halal awarness, product price, and brand image to the purchasing decision on cosmetic products (case study on consumers of sari ayu martha tilaar in binjai city). *International journal of global sustainability*, 1(1), 55-66.
4. Aspan, h. (2017). "good corporate governance principles in the management of limited liability company. *International journal of law reconstruction*, volume 1 no. 1, pp. 87-100.
5. Aspan, h. (2017). "peranan polri dalam penegakan hukum ditinjau dari sudut pandang sosiologi hukum". *Prosiding seminar nasional menata legislasi demi pembangunan hukum nasional*, isbn 9786027480360, pp. 71-82.
6. Effendy, Marwan, 2016, Teori Hukum, dari Perspektif Kebijakan, Perbandingan Dan Harmonisasi Hukum Pidana, ME Center Group, Jakarta.

7. Fatoni, Syamsul, 2016, Pembaharuan Sistem Pemidanaan, Perspektif Teoritis Dan Pragmatis Untuk Keadilan, Setara Pers, Malang.
8. Fikri, r. A. (2018). Analisis yuridis terhadap tindak pidana pembunuhan berencana yang dilakukan oleh anak dibawah umur menurut undang-undang nomor 11 tahun 2012 tentang sistem peradilan anak. Jurnal abdi ilmu, 11(1), 158-168
9. Gultom, Maidin, 2006, Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia, Refika Aditama, Bandung.
10. Herlina, Apong, et.al. 2004, Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum, PT. Raja Grafindo Persada, Jakarta.
11. Ketaren, a. H. S. (2018). Analisis yuridis tindak pidana cybercrime dalam perbuatan pidana pencemaran nama baik ditinjau dari undang-undang no. 8 tahun 2011 tentang informasi transaksi dan elektronik dan hukum pidana
12. Mamudji, Sri dan Soekanto Soerjono, 2013, Penelitian Hukum Normatif, Suatu Tinjauan Singkat, Rajawali Pers, Jakarta.
13. Marlina, 2009, Peradilan Pidana Anak di Indonesia, Pengembangan Konsep Diversi dan Restorative Justice, Refika Aditama, Bandung.