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The Criminal Cases Settlement with Restorative Justice System **A Case Study of Decision Number 39/Pid.Sus-Anak/2021/PNSby**

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ABSTRACT

This research aims to analyze the legal regulation against children criminal act through restorative justice system. The settlement of child criminal cases against the law must be prioritized regarding the children principles and rights through the arrest, detention, and imprisonment as a ultimum remedium in a short time. This research is normative legal research since it analyze the law and regulation on children criminal act based on restorative justice, which means the solutions of the problems found in this research based on Indonesia Laws and literatures regarding the problems faced. The restorative justice is a method of resolving criminal cases that prioritizes recovery between the two parties concerned, then the retaliation does not occur in the future. Restorative Justice of Criminal Justice System in Indonesia is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, but it has not been implemented widely in its application. Since the community still needs time to adjust to applicable rules, the integrity of the facility can be fulfilled with the composition of law enforcement officials and experts who are specially trained to handle juvenile criminal cases.

Keywords: Child Criminal, Juvenile Justice, Restorative Justice

INTRODUCTION

In developing children's quality, adequate legal facilities and infrastructure are required when they encounter problems. Children have distinct characteristics compared to adults; one of them is their important rights that need to be prioritized, even though many adults still ignore them. Children must be protected from mistakes in the application of laws and regulations that could cause mental, physical, and social harm.

Nowadays, there are many criminal cases where the perpetrators are minors. When children face problems, they often deviate or violate the law because they cannot fully understand and protect themselves from negative influences in their environment. The resolution of criminal cases involving children should not be carried out by simply detaining them. Instead, the police have an obligation to recognize the position and role of children, which differ from those of adults when they become perpetrators of criminal acts.

Since children have unstable characteristics, an alternative solution when they commit crimes is to divert their perspective or place them outside the criminal justice system. This approach considers justice for children who have committed crimes by resolving cases through methods outside the court, known as Restorative Justice efforts. This method requires cooperation between the government, the community, and law enforcement officers to protect the rights of children in conflict with the law.

The role of Restorative Justice efforts does not imply that all cases should be punished. Instead, it is implemented through deliberation and consensus between the involved parties to seek the truth between the perpetrator and the victim. This effort can be carried out outside the court, with the child being re-educated by their parents. In cases where children have committed criminal offenses, the goal of Restorative Justice is to repair the harm caused and encourage positive character development, making children wiser and more considerate before taking actions. The objective is to ensure that all resolutions benefit the child, the victim, and the affected environment through rehabilitation and reintegration.

The Restorative Justice effort is implemented under Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) (Prakoso, 2013). The Juvenile Criminal Justice System respects the honor and dignity of children and is designed with a specific focus on their future and the well-being of society. Within this system, priority should be given to the Restorative Justice approach. The Juvenile Criminal Justice System consists of:

1. The prosecution and investigation of juvenile crimes conducted according to legal procedures.
2. Juvenile trials implemented within the general court system.

3. Children being given responsibility along with proper guidance and accompaniment during and after the implementation of the criminal justice process.

Based on the explanation above, the author has chosen to write an article entitled *The Settlement of Child Criminal Cases Through the Restorative Justice System (Case Study Decision Number 39/Pid.Sus-Anak/2021/PN Sby)*. This research aims to analyze the legal regulations regarding juvenile criminal acts through the Restorative Justice system.

LITERATURE REVIEW

The Definition of Children

A child is someone born from a male and female relationship. Meanwhile, the term "children" refers to individuals under a certain age who are not yet adults and have not married. The role of children is important for a country, which is why adults must be receptive in regulating child-related laws. Child development is a part of human development, a unique process for each child, aiming to integrate them into the society in which they live. It involves continuous changes in motor, psychological, cognitive, and language abilities, leading to progressively more complex functions in daily life (Souza, 2015).

However, the age limit for categorizing someone as a child varies according to legal definitions. For example, Article 45 of the Criminal Code (KUHP) states that a person is considered a minor if they are under 16 years old.

The Definition of Restorative Justice

Restorative justice is a legal approach that seeks to restore a person's situation to its previous state, benefiting all parties involved and ensuring that the offender does not become trapped in a formal legal process. In handling cases involving children who commit criminal acts, restorative justice prioritizes deliberation, making court proceedings unnecessary. If an agreement is reached between the concerned parties, the child's future becomes the main consideration.

Forms of Restorative Justice

The forms of restorative justice currently implemented include:

1. Victim Offender Mediation (VOM) – A method where the victim and perpetrator engage in discussions for reconciliation (Ariefianto, 2014).
2. Family Group Conferencing (FGC) – A method that involves both the perpetrator's and victim's families. The mediation process includes not only the parents but also other individuals connected to both parties.

3. Restorative Conferencing (RC) – This method extends mediation beyond just the perpetrator and the victim, involving people close to them.
4. Restorative Circles – A method that facilitates discussions involving family and close friends to help the perpetrator reintegrate into society.

RESEARCH METHODOLOGY

The research method is a scientific activity conducted methodologically, systematically, and consistently to obtain complete and legally valid material for the research objective. Based on its type, the research method is divided into two categories according to the characteristics and purpose of legal research: normative legal research and empirical legal research. According to Soerjono Soekanto, legal research is classified into normative legal research and sociological or empirical legal research (Suratman & Dillah P., 2015).

This research falls under normative legal research as it analyzes laws and regulations on children's criminal acts based on restorative justice. This means that the solutions to the issues identified in this research are based on Indonesian laws and relevant literature (Hartono, 2022). Normative legal research focuses on studying the law as an object while excluding any non-legal material from its scope (Wirianistiati, 2022).

RESULT AND DISCUSSION

Restorative Justice System Against Child Crime

Crimes committed by children remain their responsibility. When the defendant is a child, they cannot be separated from their parents, foster parents, or guardians. Children are held accountable for their crimes by undergoing investigation, prosecution, and trial in court. However, child criminal cases are not processed in the same manner as adult cases. Several principles apply in the investigation of children, such as:

1. The presumption of innocence principle during the investigation process.
2. A family-oriented approach.
3. The presence of parents, foster parents, guardians, or legal counsel during proceedings.
4. Arrest and detention as a last resort, with consideration of the detention record and separation from adults.

The Elements of Theft

Theft is defined as the act of moving an item unlawfully from one place to another. It involves taking someone else's property illegally and against the law. According to the Criminal Code (KUHP), theft is regulated under Article 362, which states:

“Whoever takes something, wholly or partly belonging to another person, with the intention of unlawfully possessing it, is subject to a maximum imprisonment of five years or a maximum fine of nine hundred rupiahs.” (Ahmad Muhajirin, 2020).

The elements of theft include:

1. Subjective elements: The intent to unlawfully possess an object.
2. Objective elements: The act of taking, the object itself, and the ownership of the object by another person.

To convict someone of theft, all elements outlined in Article 362 must be met.

The Classification of Theft in the Criminal Code

The Criminal Code (KUHP) classifies theft into several categories:

1. Common Theft (Article 362 of the Criminal Code)

Theft is generally regulated under Article 362, which states: "Anyone who takes goods, wholly or partly belonging to another person, with the intent of illegally possessing them, shall be punished with a maximum imprisonment of five years or a maximum fine of nine thousand rupiahs." (Moeljatno, 2016).

2. Aggravated Theft (Article 363 of the Criminal Code)

This includes:

- a. Theft of cattle.
- b. Theft during disasters such as fire, explosions, earthquakes, volcanic eruptions, shipwrecks, riots, rebellion, or war.
- c. Theft at night in a house or enclosed yard by an unknown person.
- d. Theft committed by two or more people in collaboration.
- e. Theft involving breaking, damaging, or other forms of forced entry.

3. Minor Theft (Article 364 of the Criminal Code)

Minor theft is regulated in Article 364, which states that theft described in Articles 362 and 363, under specific conditions, is punishable by a maximum imprisonment of three months or a fine of IDR 900,000,000.

4. Violent Theft

- a. Punishable by up to nine years if the theft involves violence or threats.
- b. Punishable by up to twelve years if committed at night, by multiple perpetrators, or using forced entry.
- c. Punishable by up to fifteen years if it results in serious injury.
- d. Punishable by death or life imprisonment if it results in death and is committed by multiple perpetrators.

Restorative Justice System Application for Children

Restorative Justice is based on the following principles:

1. Facilitating reconciliation between the perpetrator, victim, and their families outside the court.
2. Providing offenders with an opportunity for rehabilitation, with families taking responsibility for their child's actions by compensating the victim.
3. Allowing case resolution outside the court if both parties reach an agreement.

Restorative Justice aims to restore relationships and compensate victims, serving as a basis for judicial leniency. It includes restitution (compensating financial losses) and restoration (rebuilding trust and addressing psychological harm). Both the victim's and perpetrator's families must agree to the process, allowing the victim to express their losses while the offender takes responsibility.

Protection of Child Offenders in Conflict with the Law**Case Chronology**

On February 24, 2021, at midnight, a child saw a locked black Suzuki Shogun motorcycle parked on Jl. Kalimas Baru, Surabaya. The owner, witness Sakwan, was asleep in a nearby post. The child took the ignition key from the post, unlocked the motorcycle, and took it to Sampang, Madura, where it was sold for IDR 700,000. The theft resulted in an estimated loss of IDR 2,000,000 for the victim.

Indictment by the Prosecutor

The public prosecutor indicted the child, Mat Sholeh (Moch Mosleh bin Moch Suja'i Efendi), under Article 362 of the Criminal Code in conjunction with Law No. 11 of 2012 concerning the Juvenile Justice System.

Judge's Consideration

1. Element of "Whoever" – The defendant is legally recognized as the perpetrator.
2. Element of "Taking Another's Property" – The act of stealing and selling the motorcycle fulfills the criteria of theft.

The court found the child guilty and sentenced him to six months of guidance at the Special Child Development Institute (LPKA) Blitar. The period of detention already served was deducted from the sentence. Additionally, the child was ordered to pay court fees of IDR 2,000.

Analysis of the Judge's Decision

The sentencing considered:

1. Socioeconomic Background – The child had no prior criminal record.
2. Remorse and Behavior – The child admitted guilt and showed remorse.
3. Public Perception – Theft is viewed as disgraceful, and punishment serves as a deterrent.

The researcher believes that in cases involving child offenders, the focus should be on rehabilitation rather than retribution. Based on the absolute theory of punishment, the purpose of sentencing is not merely to retaliate but to reform the child into a better individual for the nation.

Case Verdict (Decision Number 39/Pid. Suspect children /2021/PN in Surabaya)

The court ruled:

1. The child was found guilty of theft.
2. The child was sentenced to six months of guidance at LPKA Blitar.
3. The time already served in detention was deducted from the sentence.
4. The child was to remain in detention.
5. The stolen motorcycle was returned to the rightful owner.
6. The child was required to pay court fees of IDR 2,000.

This analysis emphasizes that while child offenders must be held accountable, the justice system should prioritize their rehabilitation and reintegration into society.

CONCLUSION

According to Law No. 11/2012 concerning the Juvenile Criminal Justice System (SPPA), Restorative Justice focuses more on children than adults. In this system, children's rights are always considered, especially as criminal acts committed by minors have been increasing. Therefore, the Restorative Justice system provides an option to resolve issues through deliberation between the two concerned parties.

Regarding theft crimes committed by minors, the Criminal Code (KUHP) states that children under the age of 16 are subject to punishment by being returned to their parents. In deciding a criminal case involving a child related to theft under Article 362 of the Criminal Code (KUHP), a judge considers legal aspects, factual circumstances, and the final decision-making process.

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