

IMPLEMENTATION OF RESTORATIVE JUSTICE ON CRIMINAL ACTS OF PARENT ABUSE AGAINST BIRST CHILDREN

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IMPLEMENTATION OF RESTORATIVE JUSTICE ON CRIMINAL ACTS OF PARENT ABUSE AGAINST BIRST CHILDREN

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Abstract--The criminal justice system in Law Number 11 of 2012 concerning the Juvenile Justice System is required ⁷ to prioritize a Restorative justice approach. So in criminal law, there is a system called Restorative Justice or diversion. Restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a just settlement by emphasizing restoration to its original state and not retaliation. The system is more child-friendly. Because with that, children will be free from bad stigma if they have undergone criminal justice.

The phenomenon of disputes between parents and children in the timeline is increasingly showing an increasing number of violence perpetrated by parents against children, so that children become potential victims of violence committed by anyone, including parents who are supposed to protect their children from ⁶ verbal and other forms of violence. Restorative justice is an approach to resolving conflicts outside the court that focuses on the interests of the victims and perpetrators, as well as the people involved, not implementing the principle of imposing criminal sanctions on perpetrators which do not have any effect or benefit.

Keywords--Implementation, Restorative Justice, Crime of Persecution

I. INTRODUCTION

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Child Protection aims to ensure the fulfillment of children's rights so that children can live by the contents of Law Number 23 of 2002 concerning Child Protection, grow and develop and

participate optimally by human dignity. This law also aims to protect children to get protection from violence and discrimination, for the realization of quality, healthy, intelligent, noble and prosperous Indonesian children. ³ A child based on the definition in Article 1 point 1 of Law Number 23 of 2002 concerning Child Protection, is "a person who is not yet 18 years old and even still in the womb". The process of child development consists of several phases of growth that can be classified based on the parallels of the child's physical development with the child's mental development.

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In the criminal justice system, the protection of children cannot be separated from justice. Justice that must be upheld to ensure the fulfillment of children's rights. In addition, law enforcers must also have a sense of justice. Because it is law enforcers who examine cases and determine what sanctions will be imposed on children. If justice and legal protection are connected properly, good legal protection will be created for children in the form of guaranteeing the rights of the child.

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The criminal justice system in Law Number 11 of 2012 concerning the Juvenile Justice System must ⁷ prioritize the Restorative justice approach. So in criminal law there is a system called Restorative Justice or diversion. Restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state and not retaliation. The system is more child-friendly. Because with that, children will be free from bad stigma if they have ever undergone criminal justice.

Restorative justice efforts are useful for finding the best way for both of them so that they are not harmed as a result of a long criminal process. The

application of restorative justice efforts carried out by investigators such as providing open mediation facilities for perpetrators and victims, especially for children who report their parents in criminal cases, does not seem to have been fully implemented, especially at the regional level with minimal knowledge of law enforcement human resources.[2]

II. TYPES AND RESEARCH METHOD

The urgency in legal instruments and optimizing the role of legal considerations, it is better to consider the condition of the perpetrators who are still minors, this of course requires special forms of rehabilitation and guidance for perpetrators to be able to develop self-control and to avoid negative influences on children, namely mental stigma and depressed behavior in a prison environment.

III. RESULTS AND DISCUSSION

Restorative justice is inseparable from a theory called progressive law, which is born in a situation where Indonesia is still experiencing stagnant law. At that time, legal thought efforts were still at a dead end in finding the ideal legal discovery. One of the ideas of thought that is important in this sphere is progressive law. The important thinker behind these big ideas and ideas cannot be separated from the big name Satjipto Rahardjo, a professor at Diponegoro University, Semarang.[3]

Satjipto Rahardjo said that "the progressive legal point of view does not assume a legalistic-dogmatic, analytical positivistic direction, but rather leads to a sociological one. The law is not always guided by positive law or statutory law, but the law can also be guided and look at non-formal principles.[4] Thus a change in the legal point of view has occurred, namely, the legal center no longer has to refer to regulations only, but is in the sociological aspect of humans. So it is not surprising that then the progressive legal point of view is more directed toward legal justice which is substantial, rather than emphasizing procedural legal justice.[5]

The concept of restorative justice has a simple premise. So far, in the context of realizing justice,

it must be based on appropriate retaliation from the victim to the perpetrator, namely by applying imprisonment for the perpetrators; however, all these concepts were changed by providing moral and material support to victims and requiring perpetrators to be held accountable, with family and community assistance when needed. Restorative justice itself contains a definition of the form of settlement that is carried out by prioritizing justice involving perpetrators, victims, families and other parties who are victims and are involved in a crime and jointly seek solutions to the settlement of criminal acts and the most important end goal is restoration of return state.[6] Restorative justice itself is a process of transferring from a formal to an informal criminal process as the best alternative for handling children in conflict with the law with all parties involved in a particular crime together solving problems to deal with the consequences of children's actions in the future.[7]

The application of restorative justice in criminal cases has the following requirements:[8]

1. There must be an intention or intention from the parties including the community. This intention arises from the conscience to forgive the perpetrators of the crime. Without the intention of all parties, restorative justice is impossible to realize;
2. The perpetrators of the crime are truly sorry and promise not to repeat their actions. The perpetrator in this case must apologize to the victim and his family;
3. The form of peace runs in a balanced way so that the victim or her family will no longer sue the perpetrator;
4. The form of settlement between the perpetrator and the victim or his family can be accepted by the community.

The basis for investigators to apply a restorative approach is Law Number 11 of 2012 Article 7 paragraph 2 that the criminal penalty is under 7 years and is not a repeat of a crime (recidivism) and therefore investigators apply restorative justice. The police, especially the PPA Unit, have implemented the provisions contained in Article 5 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which requires

prioritizing restorative justice in resolving criminal cases with child offenders.[9]

This repressive effort is the first step in taking action against the perpetrators of exceptions if the perpetrators are still minors, of course we as investigators will refer to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which in this case the emphasis on restorative justice is very possible, will However, if the perpetrator is an adult, the treatment is different from the subject who did it, if the perpetrator is not related to the same family or blood, the investigator will impose a penalty according to the scope of the crime. by the Law of the Republic of Indonesia Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law.

A process in which the interested parties between the perpetrator and the victim meet to solve the problem together so that from the meeting a common point is found for how to resolve the consequences of the violation in the interests of the future of each party. Currently, in Indonesian law, it has begun to lead to the adoption of the concept of restorative justice. However, for the time being, the pattern of application is more focused on matters relating to children's problems.

IV. CONCLUSIONS AND SUGGESTION

The implementation of restorative justice in cases of parental abuse of biological children shows that none of the law enforcement officers in Lampung has implemented restorative justice in cases of parental abuse of biological children, considering that law enforcement officers cannot tolerate such actions. All forms of violence involving children as well as child perpetrators, of course, the police and the law have a special mechanism to solve it, namely by taking restorative justice efforts, namely taking steps for the best interests of both the perpetrator and the victim so that they are not equally harmed, different the case with the perpetrators involved in this case are parents and child victims, because so far there has been no mandate by law or any international convention that mandates the settlement of cases where the

perpetrators are adults and parents can be carried out with restorative justice.

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