



Restorative Justice In Handling Cases Of Children As Perpetrators Of Criminal Acts

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ABSTRACT

This writing aims to see and understand about the perpetrators of crimes or criminal acts that can be convicted. Then also want to see how important it is regarding a child who commits a crime or a criminal offense is solved through justice restorative approach. The normative juridical research method through the approach of library studies by collecting secondary data. After the data is collected, the data is processed and analyzed so that conclusions can be drawn from the questions posed in the formulation of the problem. The results showed that those included in the perpetrators of criminal acts are those who do, instruct, advocate and participate. Besides, there are also those who give promises, opportunities, facilities and information. In terms of the importance of a child committing a crime or criminal act being resolved through justice's restorative approach, this is the best alternative that can be done. With this concept, it is expected that all parties can jointly solve the problem by involving victims, perpetrators, including families.

INTRODUCTION

For those who study criminal law, it is certain that they can understand that the scope of their duties and functions provide protection for public interests that are violated. In providing legal protection to the public interest, the criminal law contains a provision that explains and determines what actions are prohibited, who can be convicted, what conditions a person can be punished and how long the punishment for the perpetrator of the crime. In addition, there are other things that are also regulated in criminal law such as reasons that abolish criminal, reduce criminal, to the reasons that incriminate criminal. There is also a matter of parades, inclusion, trial, assistance and so forth. As the law contains a whole set of regulations, determining which criminal acts or acts are punishable, the punishment given to the perpetrator is clearly based on the existing regulations. For this reason, it requires that every individual or citizen

wherever, whenever, both men and women understand and comply with all regulations that have been made by the state. In this case, the state has the authority and obligation to apply the law to anyone who does not heed the regulations that have been made with legal sanctions. It can even go up to life imprisonment and capital punishment.

Therefore, criminal law contains norms in which there is a necessity and a prohibition accompanied by legal sanctions, then in fact the legal sanctions are given so that there is a deterrent effect for perpetrators of criminal acts, so that certainty and a sense of community justice can be realized. This is the true purpose of criminal law. Providing protection for the interests of the sense of Justice of individuals and groups based on the principles of human rights and legal sepremasi. In the rule of law, the law should not be distinguished from its

enactment. Therefore, if the rule of law is neglected, injustice will be difficult to achieve.

Injustice in the field of law is caused because the suppression of the law is not enforced. This is reflected in the discrimination of legal decisions that do not favor the weak and always favor the strong. The importance of a sense of justice can be seen from the existing legal aspects. The legal aspect is one of the aspects that can give rise to legal justice. Criminal law has found its importance in the discourse of Indonesian law in the form of woe, by providing threats of punishment in its rules. Not wrong then, criminal law is considered a law that is heavy in providing sanctions. In various literature on criminal law, there have been many opinions that place criminal law in its own repertoire in legal Systematics. Because indeed in the realm of criminal law norms are not placed alone, but must always exist to strengthen the norms that live in other communities.

The existence of legal sanctions in criminal law, it is certain that every criminal will receive his reward with a crime during the time specified in the provisions of the criminal law legislation. No criminal can escape from legal sanctions for actions that have been done. The legal sanction that will be given to the perpetrator of this crime is a form of accountability for his actions. All criminal acts must be punished without exception. As long as there is an error in the act and there is an element against the law. The culprit may be held criminally liable.

Although in the context of the study of criminal law, all acts that have elements against the law and the existence of errors will be held accountable for the crime, but the concept of this kind of punishment seems to or even does not provide protection for the interests of the parties in this case the perpetrators and victims. Conventional sentencing to enforce material criminal law seems to ignore the interests of both.

Reflecting and listening to various kinds of handling of cases on a criminal event that occurred during this time, where the examination process takes a very long time. Sometimes the process of examining criminal events does not provide a certainty for the victim and even the perpetrator. And in fact, when the examination of conventional criminal cases has been carried out, and then it is agreed that there is peace between the perpetrator and the victim. This means that the victim has apologized to the perpetrator, but the criminal case process carried out will continue and in the end the perpetrator receives criminal sanctions. In the end the concept of restoring the relationship of the offender and the victim is not achieved. Based on this, it is necessary

to present the concept of criminal investigation with the presence of the concept of restorative justice, which is more carrying the concept of restoring the relationship between the perpetrator and the victim that can be done directly to solve the problem.

Restorative justice in the view of Eva Achjani Zulfa is a thought that is conceptualized how to respond to efforts in developing the justice system, in this case the focus is more on the involvement of victims who have not received attention in the existing judiciary. Even the man himself gave his eyes. According to him, the arrangement of the punishment system must be done more equitably, not only for victims and perpetrators, but also the community as a whole.

We all believe that the concept of restorative justice has created a new order in the legal system. Especially in the realm of criminal law, this course enters a new chapter in its implementation. Including regarding the Justice of the child. The achievement of justice based on respect for the rights of children and victims is more highlighted in the perspective of recovery after a criminal event occurs. The relationship between the perpetrator and the victim is a new concept in solving criminal events. So far, criminal cases have been resolved more oriented towards retaliation against criminals. Restorative justice comes as a new approach that emphasizes the harmonization of the relationship between the perpetrator and the victim. Where the concept offered in this case is the recovery to the victim because of a crime that occurred. More than that, there is a peace process that involves the community fairly and wisely.

METHOD

As befits a scientific writing, this research is a normative juridical approach through the study of literature. Due to the library-based study, then in this writing used secondary data obtained from various books, journals, and related legislation. Secondary Data consists of secondary, primary and tertiary legal materials. After the data is collected, the data is processed and analyzed so that conclusions can be drawn from the questions posed.

RESULTS AND DISCUSSION

A. Convicted As A Criminal

The science of criminal law is the science of crimes and offenses. Regarding the crime has been described by the criminal law materil. As one of the positive laws, Criminal Law explains the perpetrators, actions and criminal provisions.

Criminal law as a tool of public order defines what is meant as a criminal. That the perpetrators of crimes are those who commit acts against the law. The perpetrator's actions have fulfilled the elements of the offense and have been declared as a person who committed a prohibited and unlawful act. Every act that is prohibited is against the law. Therefore, if these unlawful elements do not exist, then the defendant certainly cannot be held criminally liable or punished. "According to Frans Maramis, in a criminal act, there is a link between the perpetrator and the act he did. In the study of criminal law, an act has been clearly formulated. However, it is important to consider a mental and psychological condition of the perpetrator. This psychological condition and inner attitude is important to note because, although it is in accordance with the formulation, there is still the possibility that the perpetrator cannot be held criminally liable or he is not convicted due to severe psychiatric disorders.

"In Supriyadi's view, criminal acts are a form of deviant behavior found in society. The perpetrator of a criminal offense in the formulation of the law is intended as anyone. That is, those who have committed the crime. In addition, the formulation of the law also explains that the perpetrator is said to have committed a crime intentionally or not.

If we read from the formulation of Article 55 (1) of the Criminal Code (KUHP), then there is explained about who is called the perpetrator of a crime. Among them are those who do, order to do, those who participate in an act. In addition, there are also those who in this case have given or promised a thing by abusing a power that is in it or dignity, with violence, threats or misdirection. Or give the opportunity, means or information, deliberately encourage others to do the action.

In the realm of criminal law, intentionality is distinguished from; first, intentionality as a purpose or goal that wants to realize actions, does not do (shirk obligations) and wants the consequences of his actions. Second, deliberate as certainty that the awareness of an effect must occur because of the actions. So certain actions are realized that the intended consequences will arise, but the actions are also carried out, so that there is purposefulness as a certainty.

From the description of the perpetrators of criminal acts, it becomes very clear that in criminal law all acts that contain elements against the law and for the perpetrators there is an error according to the law, criminal liability can be requested. Criminal liability is one of the ways criminal law performs its function in maintaining order in society by punishing criminals. All these evildoers are called bad people.

For committing a criminal act, whether he did, ordered, participated, helped or just advocated.

From the description of the perpetrators of the crime above, it becomes very clear that in criminal law the so-called perpetrators are people who commit evil deeds. The word "evil" contains the presence of unlawful elements of the offender for his actions. In addition, there are errors according to the law. Regarding the offender, it can be adults and also include children. In the context when children commit crimes, the Act also violates the rules and norms and more importantly harms the growth of the child and society. In the realm of criminal law, the child as the perpetrator of a crime is called a delinquency child or juvenile delinquency.

"According to Sudarsono, regarding community involvement in tackling delinquency children, it can be done by: first, directly children can be given advice, in order to abandon all what is done that is contrary to the norm. Second, it can also be through parents, then find a solution to sensitize children. Third, it takes the role of the community to be willing to participate and cooperate with the authorities, about the delinquency act, to then be able to do prevention actions as a whole." "Another opinion says that juvenile delinquency is the behavior of children under 18 years of age (unmarried), where the child's actions become a violation of applicable norms, this will harm the child."

Equally, we understand that the perpetrator of a crime is a person or legal entity that has been fulfilled against the law for his actions that have been formulated according to the Criminal Code. The act either intentionally or not has caused an effect that is not desired by a regulatory provision. Thus, whoever is the perpetrator, both adults and children, as long as the act is classified as a criminal act in which there is an element against the law, then according to the provisions of normative law the perpetrator can be given and sentenced to legal sanctions. It's just that the trial process is carried out in accordance with the nature of the perpetrator. This means that there is certainly a difference between juvenile justice and adults.

B. Restorative Justice Approach To Children As Perpetrators Of Criminal Acts

Talking about the problem of crime certainly does not belong only to the modern century. The rapid development of culture, including new discoveries in the field of Science and technology, but regarding social issues, crime has always been a problem inherent in human life. This is natural because talking about evil as long as the world has not ended will still exist.

Crime that occurs within the scope of human life is a form of violation that is not only against existing laws, but crime also ignores social norms and social order of people's lives. If crime continues to occur in the social environment of the community, it will certainly interfere with the sustainability of the social life of the community.

In the life of society, the existence of the function of Criminal Law, of course, can create a safe, orderly and peaceful situation. However, when viewed in the context of social life, the function of criminal law carried out by law enforcers will always be challenged so extraordinary. Because the characteristics of crime have differences from each other. Supposedly, with the function of criminal law carried out by the criminal justice system, the community can be a good life and far from all actions that can be categorized as criminal acts. Necessary role of society in addressing the phenomenon of crime. People can react to various crime events that occur. Moreover, the completion of the crime in the realm of criminal law is not in accordance with the legal justice of society.

The reaction of society is nothing but a response to crime. Where the reaction is many kinds, and the high and low reaction of the community depends on the quantity and quality of the crime that occurred. Thus, efforts to overcome the problem of evil behavior, although many variations of the reaction of society, but for a while these variations range between reactions that are treatment.

There is a reaction from the community on a crime event that occurs in the environment, making crime eradication efforts more focused on prevention. Therefore, it is important that the community is involved in crime prevention efforts as a rational effort to react to emerging crimes. When there is a crime, the legal process carried out can use the harmonization approach of the relationship between the perpetrator and the victim. In an event of a crime that occurs, there is a victim who must be protected by his rights as a subject of law. Currently, the existing criminal justice system, victims are not given special attention. And in every crime that occurs, there is a loss suffered by the victim. The state focuses more on the presence of suspects to be given legal sanctions.

The concept of criminal justice that exists today is more oriented to the imposition of sanctions on criminals. In the current judicial process tends not to consider the aspect of the victim's harm from a crime. This is a criminal justice system with the principle of retributive justice with the aim of retaliation and distancing efforts to recover losses from victims. A victim is a person who has been

directly deprived and harmed by his rights and interests. In the event of a crime, the interests of the victim will be directly represented by the state. Where the state has the role of carrying out legal proceedings for suspects. The legal process carried out aims to provide protection to the victim, namely by imposing punishment on the perpetrator. Although actually, the verdict handed down to the perpetrator is not necessarily fair. Because it could be that the sentence or verdict given is not balanced or in accordance with existing legal provisions. So that justice becomes unfulfilled. In general terms, the law has not given a sense of justice to society.

The field of law and justice is an area that is targeted by the community in accessing justice. Achieving access to justice can be done by analyzing six approaches, namely: First, the elements of norms. Second, the element of legal awareness. Third, the appropriate dispute resolution forum elements. Fourth, the effectiveness of community complaints handling. Fifth, the element of satisfaction in the restoration of rights. Sixth, the problem of poverty.

Fair in the sense of balance, where justice is synonymous with conformity. Justice not only gives a person his rights, but in the context of the implementation of Criminal Law, Justice is something very expensive and valuable for society. Because one of the objectives of the law is the achievement of real justice in accordance with principles of law and existing legislation.

In reality the law is intended so that there is justice. In the criminal justice system, midwifery is not the ultimate goal. In this case, not all criminal cases that occur must lead to the provision of punishment to the perpetrator. There are other concepts of justice that can be done besides retributive justice. The concept of justice is restorative justice. This concept is a mechanism for resolving criminal cases outside the court based on the principles of justice, the orientation of punishment is more aimed at harmonizing the relationship between the perpetrator as the party being held accountable and the victim.

In terms of restorative justice, the regulation is regulated in SE Kapolri No. SE/8/VII / 2018 Year 2018 on the application of restorative justice (restorative Justice) in the settlement of criminal cases; Kapolri Regulation No. 6 of 2019 on Criminal Investigation; and prosecutor's Regulation No. 15 of 2020 on termination of prosecution under Restorative Justice. Followed by the issuance of the decision of the Director General of the Supreme Court No. 1691 / DJU/SK / PS.00/12/2020 on the

implementation of guidelines for the implementation of Restorative Justice on December 22 2020.

"According to Hadi Siupeno, in Indonesian society restorative justice has long existed and practiced. Especially in communities that hold strong cultures and Customs. This is seen in the case of dispute resolution by Indigenous Peoples by not involving the state. Therefore, justice is not punished by imprisonment, but by forgiveness. This method has succeeded in maintaining harmony in society.

Protection of victims from a crime is more oriented to the provision of Rights, where rights can be used during the judicial process as a respect for the contribution of victims in the judicial process to obtain a material truth. The existence of a process involving all parties, both perpetrators and victims in a criminal event, are ways to produce a restorative justice. That way, there is a solution to a problem together and then find a solution to the solution. The implementation of a restorative justice is carried out in the form of mediation activities of victims and perpetrators. There are ways that can be done by deliberation between the families of both parties by prioritizing the goal of recovery for the perpetrator and the victim.

"According to Sari Mardiana, in restorative justice, there is a form of explanation given to the perpetrator about his actions that are not allowed. Therefore, in restorative justice, perpetrators and victims are always involved in every settlement of a criminal case. Together, the parties seek a just settlement by emphasizing reinstatement and not retaliation. ." Retribution in criminal law has made criminals suffer and mourn. Criminal is a punishment in criminal law. By Simons, criminal is said to be a special pity, because criminal punishment is a punishment that is generally considered a more severe punishment compared to punishment in the Civil field and punishment in the field of administrative law.

"In Rena Yulia's view, restorative justice has differences with retributive justice. Retributive justice makes retaliation part of the process of punishment to be imposed." As stated above, criminal law has found an important meaning and position in the realm of law enforcement. This is at least seen from the emergence of the concept of restorative justice which is full of meaning to the approach to the relationship between perpetrators and victims. Because in principle, restorative justice has become a concept that focuses more on the needs of perpetrators and victims as well as the wider community. The concept of restorative justice seeks the creation of a peaceful and just society, where the criminal case process carried out is not

solely aimed at punishing. So far, the state punishes through a retributive approach, it has actually triggered people to commit crimes again.

In the application of the concept of restorative justice in criminal justice for children, of course, it is the right concept to apply. Because after all there are specific goals to be achieved in dealing with the child for the benefit of his future. That way there is a separation of the judicial process for children and adults.

Therefore, if there is a child who commits a crime, the trial process is carried out by Juvenile Justice. It is set up specifically and differently. If we consider the redaction of the provisions of the regulation on juvenile justice, there is explained that restorative justice focuses more on the involvement between victims and the community. All this time, as if the victim is set aside in the process of criminal cases. Therefore, the presence of the concept of restorative justice will be able to provide the rights of victims of a crime. The child will be protected legally. Because the law is a guarantee for child protection activities.

"According to Lilik Purwastuti Yudaningsih, when a child as a criminal is then faced with the law, his handling needs to consider his existence with a distinctive nature. Here it is no longer seen whether his actions are based on his thoughts, feelings and will. More important to look at are the various things that can influence the child to commit crimes. The parties concerned in resolving the child's case must pay attention to the child's condition. In this case, between the child and the adult is certainly different. The child is still unstable, the child needs protection. Therefore, in dealing with children's cases can be done with the settlement of " best for children " while considering justice for the victim. This is called restorative justice. So not all children's cases must be resolved through a court decision by considering several things such as in the case of the first-time child, still in school and the crime committed is not the existence of a lost life, decency and serious injuries.

With the concept of restorative justice, efforts to pay attention to the interests of the child's future will be carried out properly. Law enforcement is obliged to seek settlement through the concept of restorative justice at all stages of the legal process carried out. Transferring retributive justice criminal proceedings to restorative justice criminal proceedings is the best alternative for handling cases of children who are tripping over legal problems. Then the judge is obliged to seek diversion by mutual agreement. For this reason, the district and High Courts are required to always

supervise and report on the implementation of restorative justice in their legal areas.

Once again, the settlement of children's cases facing the law is time to be transferred from the retributive justice criminal process to the restorative justice criminal process, because this will be a good step in restoring the relationship between the perpetrator and the victim. It is the duty of the judge to seek diversion by mutual agreement. If it is not reached, then the matter is continued after the trial.

CONCLUSION

When it comes to criminals, it can be explained as follows, namely for those who do, Order, who participate. There are also those who give promises by abuse of power, by violence, threats, providing opportunities, means, information and also encouraging others to commit a criminal act. In the context when children commit crimes, it is called a delinquency or juvenile delinquency, where the actions are categorized as deviant acts. The perpetrator is a violation of the provisions of the rules there are, which ultimately harm the development of the child. In terms of the importance of a child committing a crime or criminal act being resolved through justice's restorative approach, this is the best alternative that can be done. With this concept, it is expected that all parties can jointly solve the problem by involving victims, perpetrators, including families. All together resolve cases involving children fairly with a good relationship approach in order to achieve a recovery to the initial condition and not by punishing the child as has been done. All of this is certainly aimed at the future of children in the future.

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