

RESTORATIVE JUSTICE AGAINST CHILDREN AS CRIMINAL ACTORS

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Abstract

In applying the concept of restorative justice, especially in juvenile criminal justice, the Government and the DPR need to prepare a legal umbrella. Currently, Law no. 3 of 1997 concerning Juvenile Court has not accommodated the principles of restorative justice. In the international world, there are many references that can be used. Apart from the Convention on the Rights of the Child, there are also the Beijing Rules (UN Standard Minimum Rules for the Administration of Courts for Children, 1985); Havana Rules, Tokyo Rules (UN Standard Minimum Rules for Non-Custodial Measures, 1990), and Riyadh Guidelines (United Nations Guidelines on the Prevention of Delinquency in Children, 1990). The absence of a law does not actually leave judges with no ground at all. The Supreme Court is the party that signed the Joint Decree with five other state institutions on 22 December 2009 concerning the Handling of Children in Conflict with the Law (ABH). This is to create integration in efforts to resolve cases of ABH handling which are carried out in a coordinated manner by law enforcement officials and all related parties.

Keywords: Restorative Justice, Children, Crime

A. INTRODUCTION

Indonesia as a rule of law emphasizes the existence of government activities carried out in accordance with the provisions of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (as amended), sovereignty is in the hands of the people and implemented according to the Basic Law.¹ Furthermore, according to the provisions of Article 1 paragraph (3) having a Child Public Prosecutor, because none of them have fulfilled the specified requirements, or because of a transfer / transfer, the task of prosecuting the child of the Naughty Child is borne by the Public Prosecutor who carries out the task of prosecuting the criminal act committed by adults. When viewed from the aspect of child protection, it can be said that children are not protected. If the prosecution of naughty children is not carried out by the prosecutor of children, it is feared that the targets of child protection will be ignored. The Public Prosecutor concerned does not understand the problem of children. It is feared that the legal actions taken in the prosecution do not reflect the principles of child protection. If the Child Public Prosecutor is transferred, a replacement is prepared beforehand and if there is no substitute, the Child Public Prosecutor concerned will be sent back to be transferred / transferred.

In the 1945 Constitution of the Republic of Indonesia, the state of Indonesia is a constitutional state. This means that the governing system of the Republic of Indonesia must be based on the principle of people's sovereignty and the principle of a rule of law.² Based on these principles, all forms of decisions and actions of government administrators must therefore be based on the sovereignty of the people and the law,³ and not based on the power inherent in the position of the government administering apparatus itself.

This research examines restorative justice in cases of children dealing with the law⁴. Whereas the criminal guidelines provide and function as a catalyst to become a "safety valve" for judges in handing down crimes against defendants so that judges can render decisions in a more just, wise, humane and relatively adequate manner against the wrongs that have been committed by the accused. Therefore, with the existence of such criminal guidelines, it is hoped that in addition to finding justice that can be accepted by all parties, it is also reflected in the value of legal certainty (*rechts-Zekerheids*) imposed by the judge in his decision. With such benchmarks, the essence of "punishment philosophy" is also oriented towards the "justice model" to be achieved in a Criminal Justice System. Concretely, how judges as controllers of applicable policies in terms of making decisions are also oriented to the theoretical dimension and must also refer to the values of justice that all parties want to achieve. Furthermore, this element is said by Sue Titus Reid as follows:

"According to Sue Titus Reid, the" model of justice "is a modern justification for punishment. This model is called justice approach or model Just desert (wedge in kind), which is based on two theories (purpose) of punishment, ie prevention(prevention)and service charges(Retribution).The basis for retribution assumes that offenders will be judged with the sanctions they deserve in view of the crimes they have committed. It is also assumed that proper sanctions will prevent the pre-criminal from committing crimes again and also prevent other people from committing crimes ".

If a "red thread" is drawn against the "justice model", the "justice model" is reflected and implicit in the existence of a "criminal philosophy" in it. Basically, the "justice model" correlates with the theory of punishment where this dimension also has a "criminal philosophy" orientation in it.

Restorative justice⁵ is an approach to justice that focuses on the needs of victims, perpetrators and the people involved, rather than satisfying abstract legal principles or punishing perpetrators. Victims take an active role in the process, while perpetrators are encouraged to take responsibility for their actions, "to fix the things that harm them, done - by apologizing, returning stolen money, or serving the community."

¹ Munir Fuady, *Teori Negara Hukum Modern*, Refika Aditama, Jakarta, 2009, p. 1.

² Marwan, Kamus Hukum, *Dictionary Law Complete Edition*, Reality Publisher, Surabaya, tt., p. 450. A rule of law is a state whose actions are based on laws that can formally regulate rules and regulations.

³ Lawrance M. Friedman, *Sistem Hukum, Perspektif Ilmu Sosial*, Terjemahan, M. Fauzin, Nusa Media, Bandung, 2011, p. 23. Law is also defined as an allocation system. Every function of law whether it is general or specific is allocative. Why is that? In a broad sense, law is a means of bringing justice. What kind of justice is the legal system trying to produce? This concept, of course, cannot be defined and has been the subject of extensive philosophical literature. But the duty of law is to distribute justice.

⁴ Maidin Gultom, *Perlindungan Hukum Terhadap Anak*, Refika Aditama, Bandung, 2010, p. 110-111.

⁵ John Rawls, *Teori Keadilan*, Pustaka Pelajar, Yogyakarta, 2006, p. 3-4.

Restorative Justice involves both victims and perpetrators and focuses on their personal needs. Apart from that, it also provides a form of assistance for offenders to avoid future violations. It is based on a theory of justice that considers crimes and offenses to be offenses against individuals or society, not the state. Restorative justice that encourages dialogue between victims and perpetrators shows the highest levels of victim satisfaction and perpetrator accountability.

A broad term that includes social movements that have developed to institutionalize a peaceful approach to no harm, problem solving against law and human rights violations. This ranges and international peace courts like South Africa. Truth and Reconciliation for innovation in juvenile criminal justice systems, schools, social services and communities.

Rather than privileging law, professionalism and the state, restorative resolutions are more towards justice solutions that involve aggrieved people, offenders and affected communities to find solutions that promote betterment, reconciliation and rebuilding of relationships. Restorative justice seeks to build partnerships to rebuild shared responsibility for a constructive response to correct mistakes in the community itself.

A restorative approach seeks an approach that is balanced with the needs of evil, victims and society through a process that preserves the security and dignity of all parties. Restorative justice is very different from either adversarial litigation or civil litigation. J. Braithwaite wrote, "Court-annexed ADR (alternative dispute resolution) and restorative justice cannot be philosophically further apart", since the former seeks to address only legally relevant issues and to protect the rights of both parties, whereas "Restorative justice" seeks to extend issues beyond those that are legally relevant, particularly into the underlying relationships.

Related to the purpose of criminalizing children⁶ is to create justice, both justice for the perpetrator and justice for the victim. This is what is called restorative justice. John Rawls stated that Justice is the main virtue in social institutions, as truth in the system of thought. A theory, however elegant and economical, must be rejected or revised if it is not true; likewise laws and institutions, no matter how efficient and neat, must be reformed or abolished if they are unfair. Everyone has honor based on justice so that even the whole society cannot cancel it. On this basis justice denies that the loss of liberty for some can be justified by a greater gain for others. Justice does not allow the sacrifices imposed on the few to be weighed down by most of the benefits enjoyed by many. Therefore, in a just society the freedom of the citizen is considered established; the rights guaranteed by justice are not subject to political bargaining or social interest calculations. The only thing that allows us to accept a false theory is the absence of a better theory; analogically, injustice can be tolerated only when it is necessary to avoid the greater injustice. As the main virtues of humankind, truth and justice are inviolable.

The restorative justice approach is assumed to be the most recent shift from the various models and mechanisms that work in the criminal justice system in handling criminal cases at this time. The United Nations, through the basic principles, which he has outlined, assesses that the restorative justice approach is an approach that can be used in a rational criminal justice system. This is in line with CP Hoefnagels' view which states that criminal politics must be rational (a rational total of the responses to crime).

In this research which will be the main problem is:

1. What is the concept of restorative justice in the criminal law system in Indonesia?
2. How is the implementation of restorative justice in cases of children in conflict with the law?

B. RESEARCH THE RESEARCH

Methodsmethod used in this writing uses 7 descriptions as follows:

1. Form of

Research This research is included in the form of normative juridical research, namely research that emphasizes the use of legal norms in writing. What is meant by legal norms here are written rules regarding the provisions of Law Number 11 Year 2012 concerning the Criminal Justice System for Children.

2. Type of Research This

Type of research is prescriptive because it describes the prevailing laws and regulations and is associated with legal theories in practice related to the problem, as well as describes / describes the facts that actually occur as a reflection of the implementation of the regulations. legislation which in this case is child criminalization.

⁶ M. Nasir Djamil, *Anak Bukan Untuk Dihukum*, Jakarta: Sinar Grafika, 2013, p. 43.

3. Types of Data

Types of data are secondary data obtained directly through literature searches or official documents, namely criminal law books. This is important for the writer to sort out and then analyze the laws / regulations. This secondary data consists of three legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials which are supported by interviews of resource persons.

4. Types of Legal Materials

While the types of legal materials are:

a. Primary Legal Materials

Namely the source of law that becomes the binding / legal basis for it is Law Number 11 Year 2012 concerning the Criminal Procedure System for Children and Law Number 16 Year 2004 concerning the Prosecutor's Office.

b. Secondary Legal Materials

Namely materials that provide an explanation of primary legal sources, such as materials in the form of books, diaries / magazines and scientific papers on criminal law and child protection law.

c. Tertiary Legal Materials

Are materials that provide guidance on primary and secondary sources of law such as encyclopedias and bibliographies. The encyclopedia used here is Encyclopedia Americana.

5. Data Collection Tools Data

Collection tools use the (Library Research Library Research). In this literature study, what is done is studying and reading books on criminal law, legal theory, legal philosophy, legal discovery, legal interpretation, and case construction methods.

6. Data Analysis Methods

In an effort to be able to answer or solve the problems raised in this study, qualitative data analysis methods are used, because the data obtained is of quality not quantity. After data collection, analysis is carried out so that conclusions can be drawn that can be scientifically justified.

7. Form of Research Basil The

Form of research results in accordance with the type of research is prescriptive, namely describing / describing the facts that actually occurred as a reflection of Law Number 11 of 2012 concerning the Criminal Justice System for Children.

D. DISCUSSION

1. The Concept of Restorative Justice in the Criminal Law System in Indonesia

a. The concept of Restorative Justice

Restorative justice is seen by many people as a philosophy, a process, an idea, a theory and an intervention.⁷ Restorative justice is a court that emphasizes reparation for losses caused or related to criminal acts. Restorative justice is carried out through a cooperative process that involves all parties (stakeholders). Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal bras. It is best accomplished through cooperative processes that include all stakeholders. The definition put forward by Dignan is as follows:

Restorative justice is a valued-based approach to responding to wrongdoing and conflict, with a balanced focus on the person harmed, the person causing the harm, and the affected community.

Restorative justice is an alternative or other way of criminal justice by prioritizing the integration approach of the perpetrator on the one hand and the victim / community on the other hand as a unit to find solutions and return to the pattern of good relations in society.

The key word for restorative justice is "empowerment", even this empowerment is the heart of the restorative ideology, therefore the success of restorative justice is determined by this empowerment.⁸ In the traditional concept, victims are expected to remain silent, accept and not

⁷ Darrell Fox, "Social Welfare and Restorative Justice", Journal Kriminologija Socijalna Integracija Year 2009 Vol 17 Issue 1 Pages record No. 55-68, 2009, London Metropolitan University Department of Applied Social Sciences, p. 56

⁸ C. Barton, Empowerment and Retribution this is Criminal Justice. In: H. Strang, J. Braitwaite (eds), "Restorative Justice: Philosophy to Practice". TEMIDA Mart Journal 2011. Aldershot: Ashgate / Dartmouth, p. 55-76.

interfere in the criminal process. Fundamentally, the idea of restorative justice is to reorganize the role of such victims, from initially being passive waiting and seeing how the criminal justice system handles "their" crimes, empowered so that victims have the personal right to participate in the criminal process. In the literature on restorative justice, it is said that "empowerment" relates to parties in a criminal case (victims, perpetrators and society).

Concretely, empowerment or empowerment in the context of restorative justice is a meeting process in this case between the perpetrator and the victim or the community to discuss and actively participate in the resolution of the criminal matter. This is an alternative or other choice of the effect of the response to crime.

The response to crimes was initially carried out by holding criminal justice by the state to find fault with the perpetrator, followed by the imposition of sanctions to denounce and impose suffering or sorrow on him, which in principle is isolation / disintegration. Restorative justice, on the contrary, carries the philosophy of integrated solution, each party plays an active role in solving problems. Therefore, the concept of restorative justice can be said to integrate the principle of deliberation in the settlement of criminal cases.

The concept of theory restorative justice offers answers to important issues in the settlement of criminal cases, namely: first, criticism of the criminal justice system which does not provide opportunities especially for victims (criminal justice system that disempowers individuals); second, eliminating conflicts, especially between perpetrators and victims and the community (taking away the conflict from them); third, the fact that feelings of helplessness experienced as a result of criminal acts must be overcome in order to achieve reparation.

The programs contained in restorative justice in an effort to overcome crime problems are as follows. First, restorative justice is an expansion of the concept of thought as social developments shift (to institutionalize peaceful approaches to institutionalize peaceful approaches) to losses due to criminal acts, problem solving, and violations of law and human rights; second, restorative justice seeks / builds partnerships (ex to build partnerships) to reaffirm mutual responsibility to respond constructively to criminal acts that occur in society; third, restorative Justice seeks a balanced approach (seek a balanced approach) to the needs of victims, perpetrators and society through a process that maintains security and dignity for all parties (that preserves the safety and dignity of all).⁹

Practices and programs are Restorative justice reflected in the objectives of addressing criminal acts by: first, identifying and taking steps to repair harm (identifying and taking steps to repair loss / damage); second, involving all stakeholders (involving all interested parties) and; third, transforming the traditional relationship between communities and their governments in responding to crime. Transforming the traditional relationship, namely the transformation from a pattern in which society and the state face offenders with the imposition of criminal sanctions into a pattern of cooperative relations between the perpetrator on the one hand and the community / victim in solving problems caused by crime.

Restorative justice in this case changes the paradigm from a face-to-face pattern between the perpetrator and the victim and the state into a cooperative or integrated pattern, the issue of crime as an act by the perpetrator against individuals or society, not against the state. Restorative Justice is commonly known as a theory of criminal justice that focuses on crime as an act by an offender against another individual or community rather than the state.

There are several basic principles that stand out from restorative justice regarding the relationship between crime, perpetrators, victims, society and the state. First, crime is positioned as a symptom that is part of a social act and not just a violation of criminal law; second, restorative justice is a criminal justice theory that focuses on the view that crime is an act by the perpetrator against another person or society rather than against the state. So it emphasizes more on how the relationship / responsibility of the perpetrator (individual) in solving the problem with the victim and / or the community; third, crime is seen as an act that harms people and damages social relations. "This is clearly different from criminal law which has drawn crime as a state problem, only the state has the right to punish"; fourth, the emergence of the idea of restorative justice as a criticism of the application of the criminal justice system with imprisonment which is considered ineffective in resolving social conflicts.

Identification of several characteristics / typical of programs or results (outcomes) of restorative justice include: victim offender mediation (mediation between offenders and victims), conferencing

⁹ Ivo Aertsen, et.al, "Restorative Justice and the Active Victim: Exploring the Concept of Empowerment", TEMIDA Journal, Mart 2011; p. 8-9

(bringing the parties); circles (mutual support); victim assistance (helping victims); ex-offender assistance (helping people who have committed crimes); restitution (paying compensation / heal); community service.

b. Basic Principles of Restorative Justice

There are three basic principles to establish restorative justice, that there be a restoration to Reviews those who have been injured, the offender has an opportunity to be involved in the restoration if they desire and the court system's role is to preserve the public order and the community's role is to preserve a just peace. Thus, the keywords for the three basic principles of restorative justice are: there is recovery for those who have suffered losses due to crime; actors have the opportunity to be involved in restoration of the situation (restoration); and the judiciary's role is to maintain public order and society's role to preserve just peace. Justice in restorative justice requires efforts to recover / restore losses or consequences caused by criminal acts, and the perpetrator in this case is given the opportunity to be involved in the recovery effort, all in order to maintain public order and maintain a just peace. In other words, these three principles contain the following elements. First, justice requires that we work to restore those who have been injured; second, those most directly involved and affected by crime should have the opportunity to participate fully in the response if they wish; and third, overnment's role is to preserve a just public order, and the community's is to build and maintain a just peace. Justice Peace in restorative justice is pursued by "restorative conferencing", which is bringing together the perpetrator-victim and the community to seek or decide the best way to deal with the impact or consequences of crime (decide how best to repair the harm). In addition, conferencing is also intended to: provide an opportunity for the victim to face the perpetrator to express his feelings, ask questions and convey his wishes; perpetrators can hear firsthand how their behavior or actions have resulted in impacts / losses on other people; the perpetrator can then apologize by repairing the damage or loss resulting from his actions, correcting the mistake and agreeing to financial compensation or performing service work.

Understanding restorative justice will undoubtedly find more enthusiasm in solving problems between parties in social relations rather than promoting the application of rules / laws that confront the perpetrator and government officials. The spirit contained in it includes: search solutions ; repair (repair); reconciliation (peace); and the rebuilding of relationships . The spirit of restorative justice then raises the following program standards. First, encounter, which is creating opportunities for victims, perpetrators and members of the public who wish to do so to meet to discuss the crime and how it will follow; secondly amends, namely expecting the perpetrator to take steps to repair the losses they have caused, including the provision of compensation; third, reintegration, namely both the victim and the perpetrator are both healed / healed / repaired, as well as contributing as members of society; fourth, inclusion, which is to give an opportunity to all stakeholders participate in finding solutions to problems.

Compared to retributive courts which are punishing, restorative justice has differences in the following basic questions. Retributive Justice (our current justice system) asks: What laws have been broken? (What law has been broken); Who did it? (Who did it); What do they deserve? (What they deserve / deserve). Restorative justice requires that we (community) ask: Who has been hurt? (Who has been hurt / injured / harmed); What do they need? (What they need); Who has the obligation and responsibility to address this hurt and meet these needs? (Who has the obligation and responsibility for loss recovery and fulfillment of these needs); What can we as a community do to make sure this does not happen again? (What can we do as members of the community to make sure that this doesn't happen again).

Braithwaite argues that the concept of Shaming and Reintegration or 'reintegrative shaming' is a core aspect of theory, restorative justice namely the connection with the perpetrator to help victims and other community members in their accountability for unacceptable behavior. Reintegrative shaming in which perpetrators accept responsibility for their actions (shame) and try to make amends (reintegration) to victims and sometimes society. The method used in restorative justice is clearly in contrast to the handling of criminal acts that have been committed so far, as stated by Morris as follows: This process is in stark contrast to the established way of addressing crime which are seen as offenses committed against the State, rather than on the actual victim and community where it occurred.

Restorative justice is more about positioning the parties together rather than putting them apart, it is more to re-establish a relationship / harmony than to divide, more trying to create wholeness rather than being divided. The problem-solving approach aims to unify and combine the views of all individuals or groups who have an interest in the crime, whether this is a welfare issue or a criminal problem. The virtues and guiding principles that follow in restorative justice must be viewed not as linear or hierarchical (which is the way of the modern system) but as a whole of interconnected parts.

c. The Perspective of Restorative Justice in Judiciary in Indonesia

The existence of the process restorative justice as an alternative to the settlement of criminal cases is largely determined by the awareness and knowledge of the community itself, including law enforcement officials. The understanding of the judiciary that only puts forward the application of rules to prove the wrongdoers and then punishes them will not accept this concept.

For him, the judiciary is the right of the state to impose sanctions on its citizens who have violated the rules. Determination and / or rehabilitation is a very populist factor in it, the attention of the judiciary is dominated by the interests of the perpetrators, society and the state. Restorative justice is more about solving problems between parties in social relations rather than confronting the perpetrator and government officials. The philosophy is just peace principle integrated with the process of meeting, discussing and actively participating in the resolution of the criminal matter. Integration of perpetrators on the one hand and victims, society on the other hand as a unit to find solutions and return to the pattern of good relations in society. This paradigm shift in thinking needs to be supported by national legislative policies and an understanding of scientific developments in the world of justice. In Brazil this restorative model of settlement is built through social education (socio-pedagogical). This means that the model is 'restorative circles' built from a social-pedagogical point of view or through a social education view that the cause and effect of the crime problem is a social problem.

The international community has provided guidelines on criminal justice on innovative, comprehensive and integral approaches to strategies by increasing the use of restorative justice programs. Evaluation to redesign the implementation of the judiciary more effectively needs to be done in Indonesia, and the UN Congress is sufficient to be an aspiration to build or update / reform judicial policies towards a model restorative justice.

2. The implementation of Restorative Justice in Cases of Children Facing the Law

Children as the potential and successor to the ideals of the nation's struggle, must receive priority treatment and special protection that is different from adults so that children can exercise their rights and obligations, both protection obtained from both people, old, society and country¹⁰. The existence of children as human resources who are the potential and successors of the ideals of the nation's struggle, it is appropriate that children receive special treatment to provide protection and assurance for their future continuity. This special treatment is of course also related to children who have special behavior. Deviant behavior that leads to criminal activity. In the preamble to the Juvenile Court Law states that the definition of children is part of the younger generation as one of the human resources who are the potential and successor to the ideals of the nation's struggle, which has a strategic role and has special characteristics and characteristics, requires full physical, mental and social development. harmonious, harmonious and balanced.¹¹

Behavior that violates the norms and laws committed by Indonesian children is still a social phenomenon and has caused concern among parents in particular and society in general. Lots of children's behavior that is not in accordance with legal norms and social norms such as brawls, drug abuse, motorcycle gangs involving children and others. This social phenomenon that occurs today requires a proportional understanding of children's deviant behavior, what is more important is the efforts to overcome it in society.

Talking about the prevention of crime in general and the delinquency of children in particular, led to the discussion of criminal policy (criminal policy). Criminal policy as a rational effort by society to tackle crime, in its operational movement, is directed at two lines of penal and criminal policies on the Non-Penal route. More roughly, it can be distinguished that efforts to combat crimes through the penal line emphasize more on the "repressive" nature (eradication / eradication / repression) after the crime has occurred, while the effort to overcome crime through the non-penal route focuses more on "preventive" (prevention / deterrence / control) before the crime occurs.¹²

A criminal act committed by a child, in the occurrence of an act that is against the law or a criminal act can be committed by anyone who does not know the age, gender, etc., one of which is an

¹⁰ Abintoro Prakoso, *Pembaruan Sistem Peradilan Pidana Anak*, Yogyakarta: Laksbang Grafika, 2013, p. 143.

¹¹ Nandang Sambas, *Pembaruan Sistem Peidanaan Anak di Indonesia*, Yogyakarta: Graha Ilmu, 2010, p. 79.

¹² Maulana Halan Wadong, *Pengantar Advokasi dan Hukum Perlindungan Anak*, Jakarta: Gramedia Widlaurana Indonesia, 2000, p. 24.

immature person / child either as a perpetrator, witness or victim criminal act.¹³ Children as the buds, potential and young generation who are the successors of the ideals of the nation's struggle, have a strategic role and have special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future.¹⁴ That children are part of the younger generation as one of the human resources who are the potential and successor to the ideals of the nation's struggle, which have a strategic role and have special characteristics and characteristics, need guidance and protection in order to guarantee physical, mental and social growth and development as a whole, harmoniously and balanced. That children are a mandate and a gift from God Almighty who has dignity as a whole human being and to protect their dignity, children have the right to special protection, especially legal protection in the judicial system.¹⁵

In the 1945 Constitution in Article 28B Paragraph (2) it is stated that every child has the right to survive, grow and develop and have the right to protection and violence and discrimination. The international community has recognized the strategic role of children as the successor to the ideals of the nation's struggle to give birth to a convention that essentially emphasizes the position of children as human beings who must receive protection for their rights. This is marked by the issuance of the *Convention on the Rights of the Child*. The ratification of the was carried out by Presidential Decree No. 36 of 1990 concerning *Convention on the Rights of the Child* Ratification of the *Convention on the Rights of the Child*. Furthermore, in the context of implementing the convention, the government took the initiative to issue several laws and regulations for child protection, including Law Number 3 of 1997 concerning Children's Courts as amended by Law Number 11 of 2012 concerning the Child Criminal Justice System.

According to Gordon Bazemore, the main points of thought in the *restorative paradigm areas* follows:

a) Purpose of Imposing Sanctions

There is an assumption that in achieving the goal of imposing sanctions, victims should have the right to be actively involved in the judicial process. Indicators of achieving the goal of imposing sanctions are achieved by looking at whether the victim has been restored, the victim's satisfaction, the amount of compensation, the perpetrator's awareness of his actions, the number of repair agreements made, the quality of work services and the overall process that occurs.

The forms of sanctions are restitution, victim-perpetrator mediation, victim service, community restoration, direct service to victims or restorative fines. In imposing sanctions, actively involve the perpetrators, victims, communities and law enforcers. The perpetrator works actively to restore the victim's loss, and face the victim / victim's representative. Victims are active in all stages of the process and will assist in determining sanctions for the perpetrator. The community is involved as a mediator, helps victims and supports the fulfillment of the perpetrators' obligations. Law enforcers facilitate the mediation.

b) Rehabilitation of Perpetrators

The main focus of restorative justice is for the benefit and to develop positively, so that children and families are the main sources. Children are considered competent and have positive abilities, are preventive and proactive in nature. For the purposes of the perpetrator's rehabilitation, a change in the attitude of social institutions and adult behavior is required. Rehabilitation of actors is carried out with actors who are *learning by doing*, counseling and therapy to motivate active involvement of the parties.

Rehabilitation goals are achieved, seen in the condition whether the perpetrator has started new positive things, whether the perpetrator is given the opportunity to practice and demonstrate norm-compliant behavior, whether stigmatization can be prevented, whether there has been a development of self-image in the perpetrator and *public image* and increased attachment to society. Rehabilitation of actors in the form of practical activities so that children gain work experience, and children are able to develop their own cultural projects.

In this aspect of rehabilitation, together it requires the roles of perpetrators, victims, communities and law enforcers in synergy. The actor is active in developing self-quality in people's lives. The victim provides input on the rehabilitation process. The community develops

¹³ Barda Nawawi Arief, *Perlindungan Hukum terhadap Anak dalam Proses Peradilan, dalam Bunga Rampai Kebijakan Hukum Pidana*, Bandung: Citra Aditya Bakti, 2002, p. 129

¹⁴ Mukadimah Undang-undang Nomor 23 Tahun 2002 tentang Perlindungan Anak Lembaran Negara Republik Indonesia Tahun 2002 Nomor 109.

¹⁵ Onneri Khairoza, dkk, *Kajian Hukum Mengenai Prospek Penerapan Restoratif Justice Dalam Hukum Nasional*, Badan Diklat Kejaksaan RI, Jakarta, Oktober 2012, p. 29.

opportunities for children to make productive contributions, develop competence and a sense of belonging. Juvenile justice law enforcers develop a new role for child offenders to practice and demonstrate their competence, access and build partnership with the community.

c) Community Protection Aspects

Assumptions in justice *restorative* regarding the achievement of community protection by collaborating efforts of the judicial system and society to develop prevention. Confinement is limited to a last resort. The community is responsible for actively supporting the implementation of restoration.

Indicators of achieving community protection if the recidivist rate falls, while the perpetrator is under community supervision, the community feels safe and confident in the role of the juvenile justice system, involving schools, families and social institutions in preventing crimes; increased social ties and reintegration. To improve the protection of the community, the role of perpetrators, victims, the community and juvenile justice professionals is expected. Actors must be involved constructively in developing competency and restorative activities in the program in a balanced manner, developing internal control and commitment with peers and children's organizations.

Victims provide useful input to continue the mission of protecting society from fear and the need for monitoring offenders, and protecting victims of other crimes. The community provides guidance to perpetrators, and acts as a mentor and provides input to the judiciary regarding background information on crimes.

Juvenile justice professionals develop incentive scales and ensure fulfillment of offender obligations with supervision, assisting schools and families in their efforts to supervise and keep perpetrators in the community.

Indicators in restorative juvenile justice can be seen from the roles: Perpetrators; Victim; community and juvenile justice professionals. Each role is as follows:

1. Perpetrator: active actor to restore losses to victims and society. He must face the victim / victim's representative;
2. Victims: actively involved in all stages of the process and played an active role in mediation and helped determine sanctions for the perpetrators;
3. Community: involved as a mediator in developing community services and providing job opportunities for perpetrators as a form of reparative obligation, helping victims and supporting fulfillment of the perpetrators' obligations;
4. Professionals: facilitate mediation, provide restorative assurance, develop creative / restorative community service options, involve community members in the process, educate the community.

As mentioned earlier, in restorative justice there are also terms of penal mediation and diversion.¹⁶ In Indonesia, the concept of restorative justice, more specifically penal mediation, has been applied by a number of forward-thinking judges. In practice, the concept of restorative justice cannot be applied to all kinds of criminal acts. In general, the application of the concept of restorative justice in Indonesia, many juvenile justice judges have implemented the concept of restorative justice through penal mediation. However, in general there are not many judges in Indonesia who have the courage to apply this restorative justice concept, they are still shackled by the concept of imprisoning offenders of criminal offenses, both those involving child crimes and those involving crimes committed by adults.¹⁷

Currently, more and more countries are implementing restorative justice, but this model of settlement does not apply to all types of non-criminal. For example, New Zealand, Canada, the Philippines, Wales and England are more applying it to criminal cases committed by children. Meanwhile, South Africa has applied the concept of restorative justice to acts of violence in the apartheid regime.

The application of the concept of restorative justice which is not yet (comprehensive), especially in juvenile criminal justice, is not without reason, because there is no legal umbrella yet. To be able to apply the concept of restorative justice, especially in juvenile criminal justice, the Government and the DPR need to prepare a legal umbrella. Currently, Law no. 3 of 1997 concerning Juvenile Court has not accommodated the principles of restorative justice. In the international world, there are many references that can be used. Apart from the Convention on the

¹⁶Setya Wahyudin, *Implementasi Ide Diversi dalam Pembaruan Sistem Peradilan Pidana Anak di Indonesia*, Yogyakarta: Gentha Publishing, 2011, p. 38-40.

¹⁷Marlina, *Pengantar Konsep Diversi dan Restorative Justice Dalam Hukum Pidana*, Medan: USU Press, 2010.

Rights of the Child, there are also the *Beijing Rules* (UN Standard Minimum Rules for the Administration of Courts for Children, 1985); *Havana Rules*, *Tokyo Rules* (UN Standard Minimum Rules for Non-Custodial Measures, 1990), and *Riyadh Guidelines* (United Nations Guidelines on the Prevention of Delinquency in Children, 1990).

The absence of a law does not actually leave judges with no ground at all. The Supreme Court is the party that signed the Joint Decree with five other state institutions on 22 December 2009 concerning the Handling of Children in Conflict with the Law (ABH). This is intended to create integration in efforts to resolve cases of ABH handling carried out in a coordinated manner by law enforcement officials and all related parties. One of the needs for a restorative justice approach is used as the basis for implementing an integrated criminal justice system for ABH.

In brief, the handling of children in conflict with the law intends and aims to:

- a. Realizing coordination and integration of Law Enforcement Officials and related parties in handling children in conflict with the law.
- b. The same perception among networks in handling children in conflict with the law.
- c. Increasing the effectiveness of handling children in conflict with the law. systematically, comprehensively and continuously.
- d. Guaranteed special protection for children through coordination and cooperation in handling children in conflict with the law.

D. CONCLUSION

The concept of restorative justice as an alternative to solving criminal cases is very much determined by the awareness and knowledge of the community itself, including law enforcement officials. The understanding of the judiciary that only puts forward the application of rules to prove the wrongdoers and then punishes them will not accept this concept. For him, the judiciary is the right of the state to impose sanctions on its citizens who have violated the rules. Determination and / or rehabilitation is a very populist factor in it, the attention of the judiciary is dominated by the interests of the perpetrators, society and the state. *Restorative justice* is more about solving problems between parties in social relations rather than confronting the perpetrator and government officials. The philosophy is *just peace principle* integrated with *the process of meeting, discussing and actively participating in the resolution of the criminal matter*. Integration of perpetrators on the one hand and victims, society on the other hand as a unit to find solutions and return to the pattern of good relations in society. This paradigm shift in thinking needs to be supported by national legislative policies and an understanding of scientific developments in the world of justice. In Brazil this restorative model of settlement is developed through social education (socio-pedagogical). This means that the 'model is restorative circles' built from a *social-pedagogical point of view* or through a social education view that the cause and effect of the crime problem is a social problem.

Restorative justice is also known as penal mediation and diversion. In Indonesia, the concept of restorative justice, more specifically penal mediation, has been applied by a number of forward-thinking judges. In practice, the concept of restorative justice cannot be applied in all kinds of criminal acts. In general, the application of the concept of restorative justice in Indonesia, many juvenile justice judges have implemented the concept of restorative justice through penal mediation. However, in general there are not many judges in Indonesia who have the courage to apply this restorative justice concept, they are still shackled by the concept of imprisonment for criminal offenders, both concerning child crimes and those involving crimes committed by adults.

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