

Restorative Justice Against Child Abuse

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Abstract

The crime of child molestation is interesting to study, especially regarding legal arrangements and countermeasures, when associated with efforts to apply the concept or restorative justice system (restorative justice system), which is a system developed in the concept of criminal law to resolve certain cases in the corridors of the criminal justice system (criminal justice system), both at the level of Investigation, investigation, prosecution and examination of court hearings. Based on this, the authors are interested in conducting research, namely to find out how the practice of examining cases of sexual abuse of minors in an effort to apply Restorative justice and also find out what factors hinder the practice of resolving cases of sexual abuse of minors through Restorative Justice. In this study, the type of research used is normative juridical research and empirical juridical research. Normative juridical research is research that comes from library data or secondary data, (primary legal materials and secondary legal materials), especially the provisions of legislation that have synchronization with the title and formulation of the problem. This study is expected as input in the framework of the development of criminal justice system policy (criminal justice system) in relation to aspects of legal protection against the crime of sexual abuse of minors as well as the process of resolving cases of sexual abuse.

Keywords: Restorative Justice, Law Enforcement, Children

1. INTRODUCTION

CRC by the Government of Indonesia was ratified by Presidential Decree No. 36 of 1990. Furthermore, in 2012 the government has also ratified 2 (two) Optional Protocols of the CRC, namely Law No. 9 of 2012 on the ratification of the "protocol of choice of the Convention on the rights of the child on the involvement of children in armed conflict" and Law No. 10 of 2012 on the ratification of the "protocol of choice of the Convention on the rights of the child on the sale of Children, Child Prostitution and child pornography".

With the ratification of the CRC and the two protocols stipulated in the CRC, the government of Indonesia is obliged to follow and implement it in all legal policies seriously and declare to all citizens the importance of protecting the rights of children, as stipulated in the provisions of Article 28b paragraph (2) of the Constitution of the Republic of Indonesia year 1945, that: "every child has the right to survival, growth and development and the right to protection from violence and discrimination".

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At the level of legal policy, the government then established a special law on child protection and juvenile justice, namely Law No. 23 of 2002 on child protection, as amended for the second time. The First Amendment to Law No. 35 of 2014 on amendments to Law No. 23 of 2002 on Child Protection. The Second Amendment is Law No. 17 of 2016 concerning the determination of government regulations in lieu of Law No. 1 of 2016 concerning the Second Amendment To Law No. 23 of 2002 concerning child protection. (Hereinafter referred to as the Child Protection Law), Law Number 11 of 2012 on the child criminal justice system, and Law Number 12 of 2022 on Sexual Violence Crimes (TPKS law).

The above legal arrangements, in principle, are aimed at protecting children in Indonesia from various kinds of discriminatory treatment, violence and crimes that can interfere with the growth and development of children as the next generation of the nation, which are obliged to be protected, as in the provisions of Article 1 Number (2) of the child protection law, it is stated that: "child, develop and participate optimally sesusi with dignity and human dignity, and get protection from violence and discrimination".

For this reason, the child protection law also expressly regulates the rights of children to obtain protection from : 1). Abuse of political power; 2. Armed conflict; 3). Social unrest; 4). Involvement in any event that mengandung elements of violence, 5). war, and 6). Sexual crimes.

The phenomenon of sexual violence against children is a contemporary reality. Almost every day from various online media news, TV, newspapers, always treated to news about violence against children, be it physical violence, sexual violence, sexual abuse, child victims of bullying, child victims of rape, child victims of sexual intercourse and molestation both occurring within the family, school and social interaction environment. Although the government has set quite severe criminal sanctions, cases of violent crimes against minors still occur.

Cases of sexual violence against minors from year to year is increasing. Data from the Ministry of PPPA, based on community reports for 2019 there were 11,057 cases, in 2020 there were 11,278 cases and 2021 there were 14,517 cases of Violence Against Children under general. of which 7004 cases were of sexual assault (rape, intercourse and molestation).²while, the data on violence against children handled by KPAI based on community complaints for 2021 there were complaints of 2,982 cases, which were divided into 6 (six) clusters, namely : 1). Child victims of physical and non-physical violence (phikis) totaled 1,138 cases; 2). Child victims of sexual crimes reached 859 cases; 3). Child victims of pornography and cybercrime as many as 345 cases; 4). Child neglect victims totaled 175 cases; 5). Child victims of economic exploitation totaled 147 cases and 6). Children face the law totaling 126 cases. Meanwhile, the highest complaints of sexual crimes

against children came from the type of child victims of abuse as many as 536 cases and the type of child victims of rape and intercourse as many as 285 cases.

2. RESEARCH METHOD

The research method used is normative research method, namely by examining the legal norms regarding the law of sexual violence in Indonesia and Malaysia. In this case, the research used is a study by comparing the laws between countries. In this comparing the similarities and differences of criminal sanctions against perpetrators of sexual violence in terms of the laws of Indonesia and Malaysia.

3. RESULT AND ANALYSIS

The Indonesian criminal law system is entering a new phase in its development. One form of reform that exists in the Indonesian criminal law is the regulation of criminal law in the perspective and achievement of justice to the improvement and recovery of the situation after the event and the criminal justice process known as restorative justice (restorative justice) which is different from retributive justice (emphasizing justice in retaliation) and restitutive justice (emphasizing justice in compensation).

When viewed from the development of criminal law and the nature of modern punishment, it has introduced and developed what is called a perpetrator-victim relationship approach or "Doer-Victims Relationship". A new approach that has replaced the approach of deeds or actors or "daad-Dader straftecht".

Jurists have introduced the formula of justice, but the law is not solely to achieve justice, the law must also provide humanity, legal certainty and most importantly the law must be able to provide and create peace in human life.

In general, the issue of solving criminal cases involving minors is still debated, especially minors who become other victims as well as children who have problems with the law or children as perpetrators of criminal acts, based on the Child Protection Law and the Juvenile Justice Law, the settlement of cases must be done with restorative justice and through the application of diversion.

Against children who are faced with the law, both as victims and children as perpetrators, according to the Child Protection Law must get special protection, as stipulated in Article 59, Article 64 of the Child Protection Law. One of the special protections for children who are confronted with the law is the "imposition of appropriate sanctions in the best interests of the child". The imposition of appropriate sanctions in the best interests of the child.

The process of solving cases of criminal abuse of minors with the application of the restorative justice system by the Biak Police General Criminal Investigation investigators is certainly based on fundamental reasons. Application of the concept of restorative justice in cases of criminal offenses against minors, in addition to the application of sanctions or penal punishment is expected to provide a deterrent effect against the perpetrators of criminal acts, but in practice as if the purpose of criminal law enforcement has absolutely no meaning.

The difference between the concept of retribution approach and the restorative approach, shows the side of the procedure different results, retribution crime is defined as violence against the state, focus only on blame and see the error at this time only, hostility is associated with normative processes, describing punishment as a deterrent to crime, the use of violence, retaliation. While restorative justice, crime is defined as violence against individuals with others, focusing on finding solutions (problem solving), responsibility and foresight of what will be done, problems are solved by dialogue and negotiation, justice is defined as a relationship of rights, emphasizing inclusion (open to all parties) balance of interests (victims, perpetrators and communities).

In a broader context, the settlement of a criminal case in an effort of restorative justice, in line with the legal objectives of the implementation of the criminal justice system proposed by Burt Galaway and Joe Hudsonyakni The aim of the criminal justice process should be to create peace in communities by reconciling the parties and repairing the injuries caused by the dispute, or the purpose of the criminal justice process should be to create peace in society, by means of reconciling all parties and replacing all the losses caused by the dispute.⁷ adapt cases of criminal acts committed by children, the restorative justice system at least aims to repair / restore (to restore) criminal acts committed by children with actions that are beneficial to children, it is the victim and his environment that involve them directly (reintegration and rehabilitation) in the resolution of the problem, and in contrast to the way adults are treated, which will then boil down to the goals of the criminal himself.

In the theoretical level of a legal concept, principles or principles of law, legal dogmas and/or teachings of legal science, of course, have their own meaning and meaning. However, whether the concept, principle or principles of law, dogma and/or scientific teachings of the law have meaning and significance, it needs to be tested in its correctness in practice directly in society. Similarly, with the concept of Restorative Justice System, in the settlement of cases of criminal violations against minors whether it can be run as it should need to be tested implementation. Because after all there are various factors that can be an obstacle in the application of this concept

to the practices of solving criminal acts by the police of the Republic of Indonesia

Restorative justice or restorative justice is one of the concepts of resolving a criminal case that is carried out in the corridors of the criminal justice system, and this is a formal procedure in criminal law. Contrast with the concept of settlement of cases outside the civil law system, better known as Alternative Dispute Resolution (ADR), which consists of negotiation, mediation, conciliation and arbitration.

Initially, before the concept of restorative justice was known and applied, various theories or concepts arose that adopted the concepts of ADR, among others, known as "penal negotiation" (negotiation in criminal law) and "penal mediation", "victim offender mediation" (settlement of criminal cases outside the court). Even in the study of Restorative justice theory, it is known by various terms including "communitarian justice", "positive justice", "relational justice", "reparative justice", and "community justice".

As already stated, the essence of rhetorical justice is "empowerment" or empowerment of all parties in resolving a criminal case peacefully, be it the victim/victim's family, the perpetrator/perpetrator's family and certain parties in society.

Empowerment as an act to conduct meetings, discuss and resolve criminal justice issues in order to meet the need for desire and reconciliation between the parties. Empowerment is the power for people to choose between the various alternatives available to solve their own problems, and the decision to choose is available in the Restorative Justice process.

Therefore, in the practice of solving a criminal offense in an effort to restorative justice, it must involve all parties, because if this is not done, efforts to resolve criminal cases with the application of restorative justice will not occur.

One example of a case, because in the practice of examining criminal acts of child abuse under the general, the victim often asks for a large enough fine, even up to tens of millions, so it is not uncommon for many parties pilaku criminal acts that can not afford to pay. Substantially, this settlement system is based on the values contained in a society characterized by the principle of kinship, magical religious, communal with a starting point not on the basis of individual justice, but Justice together, based on the dimension of dispute resolution that brings harmony, harmony, balance, togetherness and harmonization of the family environment.

However, again, for the police in the implementation of the settlement of criminal offenses using the concept of restorative justice, it all depends on the parties themselves. In addition, all assessments carried out by investigators are highly dependent on the seriousness of the parties whether

the settlement process will be carried out amicably or not, as well as the results of the settlement by investigators at the investigation level must obtain approval from the head of the Resort police (Kapolres), in accordance with the stages that have been determined.

4. CONCLUSION

Examination of cases of sexual abuse of minors by investigators in the Criminal Investigation Unit, especially in the women's and children's Protection Unit of the Biak Numfor Resort police in an effort to restorative justice only can be done based on the agreement of the parties, be it the victim/victim's family or the perpetrator/perpetrator's family. Without a peace agreement between the parties, restorative justice efforts will not be carried out. In practice, there are three factors that hinder the completion of the crime of sexual abuse of minors in the first restorative justice effort, the understanding of the concept of restorative justice, the second participation of victims/families of victims of sexual abuse and the determination of the amount of fines or substitute goods in the peace process between each party.

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