

The Handling for the Children who Committing the Crime by the Police through Restorative Justice in Indonesia

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DOI: [10.36348/sijlcrj.2020.v03i12.001](https://doi.org/10.36348/sijlcrj.2020.v03i12.001)

| Received: 05.11.2020 | Accepted: 19.11.2020 | Published: 05.12.2020

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Abstract

Children, as the criminal in the juvenile justice system in Indonesia, are treated specifically, because children are the asset to the future of the Indonesia. In this connection, the purpose of this research is to analyze the role of the police in dealing with children as criminal through restorative justice. This research uses a normative legal research type, with the statutory analysis approach and the conceptual approach. All research materials used are primary research material in the form of the Law on the Indonesia Juvenile Justice System and secondary material is scientific writing relevant to this research issue. The result shows that the police has the important role in handling cases of children as perpetrators of the crime through Restorative Justice, namely handling cases of children with the mental guidance approach involving all components of the society.

Keywords: Children in the Criminal, The Police, Restorative Justice.

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INTRODUCTION

Indonesia has enacted the Law of 11 of 2012 on the Juvenile Justice System. This law is the guideline for criminal law enforcement in Indonesia against children criminal cases in Indonesia, whether children are victims of crime or as perpetrators of crimes. This law is expected to place the children's position as a human whose dignity must be maintained. Children are assets for Indonesia's future, so they need to get special protection, especially in the criminal justice system in Indonesia. In this regard, the reality of criminal cases in Indonesia since the millennium with the rapid advancement of information and technology, has involved children both as criminals and victims of crime. The phenomenon of Indonesian children, as criminals, is an important theme that is interesting to study. Moreover, according to the report of the Indonesian Child Protection Commission [1], from 2014 to 2015, children as perpetrators of crimes have increased to 103 cases in Indonesia.

This data is a phenomenon of bad portrait of Indonesian children who are involved in crime. This is of course interesting to examine, especially in relation to the role of police as investigator in cases of crime involving children. This study aims to determine the issue of research on the handling of children who are involved as perpetrator of crime using the *Restorative*

Justice approach. This research issue is important to be studied carefully, because the handling of children as criminal in Indonesia no longer places criminal sanction on children as perpetrator of crime as *ultimum remedium*, but criminal sanction for children are part of the mental development effort for children. In connection with the concept of *Restorative Justice* which is the focus of this research, it is important that the role of the Indonesia police be examined regarding the existence of the police as the guardian of the community in Indonesia, including the role of the police as investigator in the criminal cases involving children as perpetrators.

THE RESEARCH METHOD

Based on the issue of legal research in this study, this type of research refers to normative legal research. Characteristic of normative legal research, namely seeking the truth of coherence. According to Peter Mahmud Marzuki [2], legal research is the process of finding legal rules, legal principles, and legal doctrines in order to answer legal issues. This is in accordance with the prescriptive character of law science. Normative legal research, does not aim to seek empirical data, because normative legal research analysis is based on legal argument guided by written legal rules and legal doctrine [2].

The legal material in this research is in accordance with normative legal research, consisting of primary and secondary legal materials. Primary legal materials include, among others, all written laws and regulations concerning children as perpetrators of crime in Indonesia. This research also uses secondary legal materials, in the form of law books, legal theses and dissertations, law journals, law dictionaries. Legal materials were collected using snow ball theory, inventoried and identified, then used to analyze the results of this research. Inventory of legal materials, used a card system which is done critically, logically, and systematically. The processing of the analysis of legal materials for research is carried out qualitatively on the content of legal materials [3].

RESULT AND DISCUSSION

Children as the Criminal in the Indonesia Criminal Law System

The definition of a child according to Indonesian law is defined as someone who is not yet mature (*minderjaring* or *person under age*), or someone who is still underage (*minderjaringheid* or *inferionity*) or also a child who is under the supervision of a guardian (*minderjarigeid onvervoodij*) [4]. Internationally, there seems to be no uniform definition of the age of a person who is categorized as a child. According to Paulus Hadi Suprpto [5], various countries in the world have different age levels for a person who can be categorized as a child.

Indonesian regulations also vary in determining the age limit for a person to be categorized as a child. According to the Law of 11 of 2012 on the Criminal Justice System for Children in Article 1 formulates a definition of a child, that a child is someone who has not reached the age of 18 years. It is different according to the Law of 4 of 1979 on Child Welfare, that what is meant by a child in Article 1, is someone who has not reached the age of 21 (twenty one) years and has not been married.

In fact, there are children in Indonesia who commit crimes. In Indonesian criminal law, children who commit crimes are called "children who are in conflict with the law". Authors in Indonesia, have also defined the legal terminology of "children in conflict with the law", including Apong Herlina [6], which defines children in conflict with the law as follows: Suspected, charged, or found guilty of violating the law; or Have seen, heard, felt or known a violation of the law. Apong Herlina then categorized "children in conflict with the law" as children who were found proven to have violated the law and needed legal protection. According to Apong Herlina, the term "conflicted with the law" means a child who is in trouble with the law or a child who is suspected of committing a crime. According to Romli Atmasasmita [7], "a child in conflict with the law" is a child involved

in juvenile delinquency or what is called juvenile delinquency.

The Concept of Restorative Justice In The Indonesia Law System

The concept of Restorative Justice according to the theory of justice in the Indonesia legal system, is to emphasize the recovery of losses caused by criminal act. The best solution is to bring victim and criminal actor to decide how to resolve criminal cases cooperatively. The settlement of the case is integrated through the transformation of the relationship between the community and the police. According to Tony Marshall [8], the settlement of criminal case based on Restorative Justice is very appropriate to be applied in the juvenile justice system, because this model can provide better legal protection for child in criminal, because it integrates community participation as parties who participate in child development. Community participation is important in the process of law enforcement against child in criminal, as a guide for children. Do not make children as the criminal.

Handling of Children In The Crime by The Police With Restorative Justice in Indonesia

Everyone agrees that any form of crime must be behavior which disturbs the community and is the threat to peaceful life. The Indonesian government, has stipulated various regulations in the form of laws as well as the Criminal Code which is the concordance of *Wetboek van Koophandel* as the legacy of the Dutch colonialism. The purpose of implementing the law is to prevent crimes of any kind.

The police in Indonesia as investigator has the authority to carry out investigation against criminal in Indonesian territory. This provision is regulated in Article 16 of Law of 2 of 2002 on the Police. Investigations in juvenile criminal cases, the Indonesian police, can collect evidence as determined by the Criminal Procedure Law, as stipulated in Article 29 of Law of 21 of 2007. The concept of Restorative Justice in Indonesia, which is a concept of justice-based criminal case resolution which accommodates the interests of parties, perpetrators and victims, through outside the formal court procedure, which emphasize more on recovering losses caused by the crime, where the mechanism for resolving the case is through method the best way by bringing together the parties for the solution to the case, so as to create a transformative society [9, 10].

The handling of children criminal by the Indonesian police, using Restorative Justice, is in accordance with the Law of 11 of 2012, the goal is that the treatment of children as perpetrators of crime is humane according to the children's age. Through the concept of Restorative Justice, community participation is strengthened with the police when handling children criminal. The involvement of the community and other

law enforcement apparatus in handling children criminal is the mandate of the law on juvenile justice in Indonesia. The Indonesian juvenile justice law states that *Restorative Justice* for children criminal is the settlement of criminal case by involving perpetrators, crime victims, families, and other related parties to jointly seek the fair solution for the perpetrator of crimes.

According to the Indonesia juvenile justice system law, the handling of children in the criminal in the concept of Restorative Justice, it can guarantee justice in the context of the children legal protection. The concept of Restorative Justice allows the involvement of the community and all parties in the supervision of the handling of children in the criminal by the police. The benefits are as follows:

- 1) The Involvement of Community can reduce children's concerns that they will be ostracized or ridiculed by the community;
- 2) The community can directly monitor the process of handling children in crime, so that it runs professionally;
- 3) Community involvement resulted in strong understanding and its support for the professional juvenile justice system;
- 4) The Involvement of Community in ensuring accountability for children's deviant behavior, it can help to affirm what societal norms must become standards of behavior;
- 5) The Involvement of Community can increase awareness in the dangers of crime and mutual understanding for tackling crime by the children;
- 6) The Involvement of Community can create relationship in the community as support for children during the coaching period;
- 7) Community in the support is very important for the recovery of the children in the crime, who are under police surveillance;
- 8) Social sanction provides effectiveness for the parent or guardian of the children in the criminal to be more stringent in supervising their children so that they do not get involved in the crime.

The concept of Restorative Justice which is integrated with the handling by the police of children in the criminal. The handling is not carried out as if placing the children in the status of the criminal. Police, both of arrest and detention of the children, must be in the framework of mental education for children. To that end, the law on juvenile justice in Indonesia sets out guidelines for the handling of child criminals. The handling of child perpetrators of crimes by the Indonesia police must not be in the same manner as criminal in general, such as handcuff, even the police is not allowed to wear police official when arresting children of criminal, as Article 22 of Law of 11 of 2012 states that investigator Prosecutor, Judge, Prison Officer

and Advocate examines children perpetrator of the crime, of the Children Victim, and the Children as Witnesses in the court, not permitted to wear official attributes as law enforcers.

The success of the Restorative Justice concept, in dealing with crime in the children as perpetrator, is fundamentally determined by the synergy between institutions, including the community in the juvenile criminal justice process, investigation to education. Not only synergy, but the child is not intimidated, so that the child is traumatized in the police investigation.

Closing

The existence of the police in the law enforcement process in the juvenile justice system in Indonesia, the police as investigator in the children crime, plays an important role, normatively, according to Law of 11 of 2012, the children should not be treated as perpetrators of criminal act, but children are treated as human who need education and mental guidance. The police, in dealing with children as perpetrator of the crime, should be related to Restorative Justice as mandated by the Law of 11 of 2012. It means that, restorative Justice is the handling of children who prioritize human values and justice according to the children's mental development and age by integrating the participation of the community and other parties who pay attention to the mental development and future of children.

REFERENCES

1. Education News Monitoring Service. (2015). "The Trend of Children as Perpetrators of Crime Rise", December 31 2015, <https://acdipindonesia.wordpress.com/2015/12/31/tr-en-anak-sebagai-pelaku-kejahat-naik/>, accessed on 4th March 2018.
2. Peter, M. M. (2013). *The Legal Research*, Revised Edition, 8th Printing, Publisher Kencana Prenada Media Group, Jakarta.
3. Johny, Ibrahim. (2006). *The Normative Law Research Theory and Methodology*, Bayu Media Publishing, Malang.
4. Lilik, M. (2005). *The Juvenile Court in Indonesia, Theory, Practice, and Problems*, Mandar Maju, Bandung.
5. Paulus, H. S. (1997). *Juvenile Delinquency Understanding and Overcoming It*, Citra Aditya Bakti, Bandung.
6. Apong, H. (2014). *Protection of Children in Confrontation with the Law*, Pocket Book for Police, UNICEF, Jakarta.
7. Romli, A. (1977). *Juvenile Justice in Indonesia*, Mandar Maju, 1977.
8. Marlina. (2010). *Introduction to the Concept of Diversion and Restorative Justice in Criminal Law*, USU Press, Medan.
9. Yut, A. Y. (2013). "Analysis of the Concept of Restorative Justice through the Diversion System

- in the Child Criminal Justice System in Indonesia",
Journal of Rechtsvinding, 2(2).
10. Education News Monitoring Service. (2015). "The
Trend of Children as Perpetrators of Crime Rise",
December 31,
[https://acdpinonesia.wordpress.com/2015/12/31/tr
en-anak-sebagai-pelaku-kejahat-naik/](https://acdpinonesia.wordpress.com/2015/12/31/tr
en-anak-sebagai-pelaku-kejahat-naik/), accessed on
4th March 2018.