

Legal Reconstruction of the Prosecutor Authority in the Settlement of Juvenile Crime Based on Pancasila Restorative Justice

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Abstract

Oversight of the case settlement process using a restorative justice approach and the implementation of the resulting agreement rests with the direct supervisor of the responsible official at each level of examination. As long as the restorative justice process takes place and after restorative justice is carried out, social counselors are required to provide guidance and supervision. If the restorative justice agreement is not carried out within the time specified in the agreement, the social adviser immediately reports to the responsible official. The approach method used in this study is the juridical-normative research method, which is a research method that examines secondary data (data that has been documented). The results of this study are (1) Weaknesses of restorative justice policies in cases of children as perpetrators of crimes are Weaknesses in Legal Substance is Article 7 of the Juvenile Criminal Justice System Law which explains the implementation of diversion at the level of investigation, prosecution, and examination of child cases in District Court. The weakness of the legal structure is that law enforcement officials, especially the National Police, who are part of the criminal justice subsystem, are required to seek settlement of child cases as perpetrators of crimes through restorative justice. The weakness of the Legal Culture is the low level of public understanding in terms of understanding the investigation process through diversion, where often the parties (perpetrators and victims) ask for diversion even though the formal requirements for diversion are not fulfilled/the threat is more than 7 years and is a repetition of a crime. (3) Reconstruction of Article 140 (2) letter (a) by adding a termination of prosecution based on the concept of restorative justice.

Keywords: Legal Reconstruction, Prosecutor, Juvenile Crime, Restorative Justice.

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INTRODUCTION

Social facts that have recently occurred in social life are problems related to children, whereas in social life which is heavily influenced by these various factors, we are faced again with the problem of handling children who are suspected of committing crimes. Starting from this matter, in essence, the arrangement regarding children has been strictly regulated in the Indonesian constitution, namely relating to the arrangement of Human Rights regulated in Article 28 B Number 2 of the 1945 Constitution of the Republic of Indonesia which regulates the right to grow and develop children and to obtain protection.

Every child is protected from inside the womb to become an adult. Children also have specific rights different from adult people. Physically, the condition of children and their mental states are unstable, making

their ability to act and be responsible for their actions different from that of adults. The court process can cause the psychological impact of harming children. Therefore, the action in juvenile court conducted by policemen, attorneys, judges, or other officers should be based on the principle of children's welfare and interest (Rochette and Pujiyono, 2018).

Other laws and regulations that have been made by the Indonesian government to provide protection for the rights of children include Law Number 4 of 1979 concerning Child Welfare, Law Number 39 of 1999 concerning Human Rights, Law Number 3 of 1997 concerning Juvenile Courts, Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 concerning Child Protection, where in substance the Act regulates the rights of children in the form of the right to life, the right to a name, the right to

education, the right to health basic rights, the right to worship according to one's religion, the right to expression, to think, to play, to be creative, to rest, to socialize and the right to social security.

Child delinquency or in foreign terms is called juvenile *Delinquency*, discussed in the United States Judiciary to establish a Juvenile Justice Act. Two things are the main topics of discussion, namely the aspect of violation of the law and the nature of the child's actions whether they have deviated from the prevailing norms and violated the law or not. *Juvenile Delinquency* is an act or act of violating norms, both legal norms and social norms committed by young children (Soetodjo, 2004).

The punishment that is commonly applied under the Criminal Code does not educate children to be better, but rather worsens conditions and can increase the level of child crime. This is suspected by the paradigm of law enforcement officials who still regard delinquent children not as victims but as perpetrators, thus hindering the psychological development of children to change when they have to be held accountable for their criminal actions based on legal provisions like adults.

While naughty children, especially those who are under 12 years old, can still change their behavior. Frequent physical and social relationships between delinquent children and adults in correctional institutions will further distance the child's hope of changing for the better, even if there is a change for the child it is a behavior change that mimics his immediate environment, namely the behavior of adults who conflict with the law.

In juvenile cases, the diversion process must be put forward for the resolution of the crime, to realize the spirit of Restorative Justice in handling child cases because diversion aims to achieve settlement of criminal cases involving children as actors outside the judicial process. The definition of Diversion is contained in Article 1 section 7 of law No. 11 of 2012 concerning the Juvenile Criminal Justice System which reads; "Diversion is the transfer of settlement of child cases from the criminal justice process to processes outside the criminal justice (Aksar, Dinata, and Manik, 2022).

The Concept of Restorative Justice (*Restorative Justice*) emerged more than twenty years ago as an alternative settlement of juvenile criminal cases. The United Nations (UN) Juvenile Justice Working Group defines restorative *justice* as a process in, which all parties related to certain crimes sit together to solve problems and think about how to overcome the consequences in the future. This process is carried out through discretion (policy) and diversion (the transfer from the criminal court process outside the formal

process to be resolved by deliberation). Settlement through deliberation is not a new thing for Indonesia, even customary law in Indonesia does not distinguish between the settlement of criminal and civil cases, all cases can be resolved by deliberation to get a balance or restoration of the situation.

The application of restorative justice in resolving cases in non-penal efforts. Restorative justice is an alternative settlement of criminal cases focused on punishment which is transformed into a dialogue and mediation process involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly create an agreement on the settlement of the case fair and balanced punishment for victims and perpetrators by prioritizing restoration to its original state and restoring good relations in society (Kencana, Edy, and Nadirah, 2023).

In the criminal justice system, sentencing is not the final goal nor is it the only way to achieve criminal goals or the goals of the criminal justice system. Many ways can be taken, can use criminal law or by means outside the criminal law or the court. In general, criminal law functions to regulate and organize community life to create and maintain public order. This is because penitentiaries are not a way to solve children's problems and are prone to violations of children's rights.

In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System there are several new terms including diversion and restorative *justice*. According to Article 1 number 7 of Law Number 11 of 2012 Diversion is the transfer of settlement of child cases from the criminal justice process to processes outside the criminal justice. Temporary *restorative justice* which in Law number 11 of 2012 is known as justice restorative is the settlement of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation.

In Indonesia through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is possible to resolve juvenile criminal cases using diversion (diversion). This means that the settlement of juvenile criminal cases seeks to be diverted outside the formal criminal justice pathway to non-formal justice. One alternative form of settlement of cases is through non-formal justice channels, namely "penal mediation" (Fitrayadi, Haris, and Handrawan, 2020).

According to Muladi, the Juvenile Justice System (*juvenile justice*) must utilize a Balanced approach (*The Balance Approach*) that can meet the needs of society for a). Punishment based on accountability actions that seek to recover victims' losses from criminal acts committed by perpetrators as a

consequence of criminal acts; b). Rehabilitation and reintegration of perpetrators of criminal acts; and c). Strengthen public safety and security. This is an articulation step that connects the interests of 3 (three) customers (*client/customers*) in the criminal justice system, namely: victims, perpetrators of crimes, and society; This balanced approach simultaneously emphasizes the values associated with each client, namely: the value of accountability (*accountability*) towards victims and society to be fulfilled; the value of competency development (ability) (*competency development*) for perpetrators (children) who after going through the process restorative expected to be more able to integrate with society than before; and community protection value (*community protection*), because of the justice system *restorative* responsible for protecting society from criminal acts of children through peaceful means (*peacefully resolved*) (Muladi and Arief, 1984).

Settlement of child criminal cases can be carried out through processes in court or outside the court. Settlement of child cases through court proceedings which will lead to punishment is used as a last resort, so that settlement out of court is prioritized as long as the crime committed by the child is not a serious crime. Splitting the case file is usually used by the Prosecutor for cases where the crime is committed jointly.

Diversion aims so that child cases can be resolved peacefully so that children do not need to undergo punishment through the courts. The application of diversion can be carried out at all levels of examination, namely investigation, prosecution, and examination of child cases in court. The rules for diversion according to Law Number 11 of 2012 in Article 6 of the Law on the Juvenile Criminal Justice System are as follows:

1. Achieving peace between victims and children;
2. Resolving child cases outside the judicial process;
3. Prevent children from deprivation of independence;
4. Encouraging the community to participate and;
5. Instill a sense of responsibility in children (Annisa and Elly, 2021).

Restorative justice is implemented in Law Number 11 of 2012 concerning the juvenile justice system which upholds the dignity of the child. The purpose of this article is to explain the settlement of criminal acts of theft by minors according to the principles of restorative justice. The application of Restorative Justice is known for the process of mediation, and negotiations between perpetrators of crimes, victims, families of perpetrators and victims, communities, and law enforcement. More effective and efficient for criminal acts, where through mediation and negotiation processes they unite (perpetrators, victims,

families of victims and perpetrators), communities directly affected by the crime, and involve neutral parties to mediate between perpetrators and victims to obtain a mutual agreement, sanctions based on agreement jointly against the perpetrators of the crime of theft committed by minors can be in the form of returning goods or social work by a mutual agreement as compensation for their actions (Maemunah, 2019).

Supervision over the process of resolving matters with a justice approach restorative and the implementation of the resulting agreement rests with the direct supervisor of the responsible official at each level of inspection. During the justice process, restorative takes place and after restorative justice is carried out, social advisers are obliged to provide guidance and supervision.

In terms of fairness deals restorative not carried out within the time specified in the agreement, the social counselor immediately reports to the responsible official. The responsible official is obliged to follow up on the report. For children whose whereabouts of parents or guardians are unknown, their upbringing becomes the responsibility of the Ministry that administers government affairs in the social sector and social services or agencies. The care is carried out in a social welfare organization recommended by the ministry that administers government affairs in the social sector and social services or agencies.

This problem is what urges the author to study it further in research with the following issues:

1. What are the current weaknesses in the Prosecutor's authority regulations in resolving child cases collectively *Restorative Justice*?
2. How is the reconstruction of the regulation of the prosecutor's authority in resolving criminal acts committed by children? *restorative justice* based on Pancasila values of justice?

METHOD OF RESEARCH

This study uses a legal research approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivism paradigm, the social reality observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of the:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Legislation relating to the practice of medicine and health.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Regarding secondary data, the search for general truths will be carried out using deductive logic, especially during the initial analysis (the use of theories), but it is also possible to carry out an analysis using inductive logic for cases of election dispute resolution after the election and vote counting. Has been documented in the form of study results, records, and research results. And in this study, the researchers used deductive and inductive analysis so that the data obtained could be processed optimally (Hardiyanti *et al.*, 2022).

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses Arising from the Prosecutor's Authority Regulations in Completion of Children in Restorative Justice

Weaknesses in the regulation of the authority of prosecutors in resolving child cases in restorative justice can be viewed from the Theory of the Legal System according to Lawrence M. Friedman which consists of Legal Substance, Legal Structure, and Legal Culture.

a. Weaknesses in Legal Substance Aspects of Prosecutor's Authority Regulations in Settlement of Child Cases

Legal protection in the process of investigating children against criminal acts that they commit is a form of attention and special treatment to protect the interests of the child. Special attention and treatment are in the form of legal protection so that children do not become victims of the wrong application of the law which can cause mental, physical, and mental suffering. social.

Article I point 8 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System confirms that Investigating officials are Child Investigators. Investigators who can carry out investigations on children who are suspected of committing certain crimes are investigators who specifically can only be carried out by Child Investigators. Child Investigators in this case are

investigators appointed based on the Decree of the Head of the National Police of the Republic of Indonesia or other officials appointed by the Head of the National Police of the Republic of Indonesia.

Article 18 Law no. 11 of 2012 states that the investigation process carried out on children who commit crimes must pay attention to the best interests of the child and try to maintain a family atmosphere. This provision requires that the examination be carried out effectively and sympathetically. Effective means that the examination does not take long, use words that are easy to understand, and invite the suspect to provide clear information. Sympathetic means that during the examination, the investigator is kind and friendly and does not frighten the suspect. The goal is updos so that the examination runs smoothly because a child who feels afraid when facing an investigator will have difficulty expressing information that is correct and as clear as possible.

Article 29 paragraph (1) of Law no. 11 of 2012 states that the first thing to do in the process of investigating a delinquent child who is reported or is accused of committing a crime is that the investigator must seek diversion first, provided that the crime committed:

- 1) Threatened with imprisonment under 7 (seven) years, and
- 2) Not a repetition of a crime

The diversion of the juvenile justice process or what is known as a diversion (a form of exercising discretion in investigations) is useful to avoid the negative effects of subsequent judicial processes in the administration of juvenile justice, for example, labeling as a result of convictions and sentencing.

Community research on children needs to be carried out so that the resulting decisions have a positive impact on delinquent children as well as on the aggrieved party, as well as to uphold law and justice. Based on the results of the Community Research, the Child Investigator can consider whether the case file/Inspection Minutes can be forwarded to the prosecutor's office or not.

Diversion efforts According to the provisions in Article 29 paragraph 1 (one) investigators are required to seek diversion within a maximum period of 7 (seven) days after the investigation begins. and paragraph 2 (two) the Diversion process referred to in paragraph (1) is carried out no later than 30 (thirty) days after the start of the Diversion. This law also regulates the Identity of the Child as contained in Article 19 (1) and (2) which reads: the identity of the child, child victim, and/or witness must be kept confidential in reporting in print or electronic media. The identity referred to in paragraph (1) includes the name of the child, the name of the victim's child, the name of the

witness' child, the name of the parent, address, face, and other things that can reveal the identity of the child, child victim, and/or child witness. the decision itself in court according to Article 61 paragraphs (1) and (2) is carried out in a trial that is open to the public and may not be attended by children and the identity of the child, child victim, and/or child witness must still be kept secret by the mass media as referred to in Article 19 by only using initials without pictures.

a. Weaknesses in Legal Structure Aspects of Prosecutor's Authority Regulations in Settlement of Child Cases

The competencies of investigators, prosecutors, and judges do not all have certification. At the National Police itself, not all child investigators have a decree as child investigators and are still general investigators.

The functions of institutions such as Correctional Centers, Correctional Institutions, and the Indonesian Child Protection Commission have not been optimal in terms of less proactive coordination, not all regencies in Central Java have Temporary Child Placement Institutions so detentions are still carried out in the respective Polres detention centers. The office of the Indonesian Child Protection Commission is only at the provincial level, while at the district/city level, there is not yet.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System provides conditions for investigators, public prosecutors, and judges who resolve child cases which include:

- 1) Has experience as an investigator, public prosecutor, and judge;
- 2) Having interest, attention, dedication, and understanding of children's problems;
- 3) Has attended technical training on juvenile justice.

Based on data from the Semarang Polrestabes Protection Unit for Women and Children for 2014-2020, it is stated that criminal acts are still being committed by children. Each case has P.21, is in the investigation stage, diversion has been carried out, and has even been completed. What is interesting is that diversion efforts have been made, although they are still relatively small, namely what happened in 2014 participating cases, 2 cases of theft in 2015, cases of physical violence against children in 2017, and 2 cases of physical violence against children in 2018.

The process of achieving diversion carried out at Polrestabes Semarang in 2014 was 8.33%, in 2015 it was 14.3%, in 2016 it was 33.33%, in 2017 it was 0%, in 2018 it was 66.66%, and in 2019-2020 it was 0% because during that period the Indonesian nation was hit by the Covid-19 pandemic.

However, from the findings of this diversion effort, 2 (two) things should be a concern that diversion is carried out with a threat of under 7 years, the second thing is that this juvenile crime is not a repetition.

Based on the data above, it shows that the achievement of diversion in the last 2 (four) years at the Semarang Polrestabes is not optimal, especially for children with legal problems.

b. Weaknesses in the Cultural Aspect of the Prosecutor's Authority Regulation in Settlement of Child Cases

Legal culture is the attitudes, values, expectations, and opinions held in society about law, the legal system, and its various parts. With this definition, it is the legal culture that determines when why, and where people use the law. legal institutions, or legal processes, and when they use other institutions or do nothing (Rahardjo, 2012)

Legal culture refers to two different sets of attitudes and values, namely the set of general public values (lay culture) and the set of values of lawyers, judges, and professionals (internal legal culture). These five factors are closely related because they are the essence of law enforcement, as well as a benchmark for the effectiveness of law enforcement. Legal culture for children can be carried out as an effort to protect the law against various freedoms and children's human rights. Protection of children also includes interests related to the welfare of children. The protection of children in conflict with the law is a joint responsibility of law enforcement officials. Not only children as perpetrators but also children who are victims and witnesses. Law enforcement officials involved in handling children in conflict with the law should not only refer to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System or other laws and regulations related to handling children in conflict with the law but prioritize peace rather than the formal legal process that has come into force 2 years after the Law on the Juvenile Criminal Justice System was promulgated on August 1, 2014 (Article 108 of Law No. 11 of 2012).

According to Supreme Court Regulation 4 of 2014 Diversion Deliberations are deliberations between parties involving children and their parents/guardians, victims and/or their parents/guardians, Community Counselors, Professional Social Workers, representatives, and other involved parties to reach a diversion agreement through a restorative justice approach. Meanwhile, the Facilitator is a judge appointed by the Head of the Court to handle the child's case. Diversion is a long and very rigid process of resolving child cases. Mediation or dialogue or deliberation is an integral part of diversion to achieve restorative justice.

Punishment for perpetrators of child crimes does not then achieve justice for victims, considering that on the other side, it still leaves its problems unresolved even though the perpetrators have been punished. Seeing the principles of child protection, especially the principle of prioritizing the best interests of the child, it is necessary to process child cases outside the criminal mechanism or commonly called diversion. Punishment institutions are not a way to solve children's problems because they are prone to violations of children's rights.

Therefore, an event and procedure are needed in the system that can accommodate the settlement of cases, one of which is by using a restorative justice approach, through a legal renewal that does not merely change the law but also modifies the existing criminal justice system, so that all objectives are met. what is required by law is achieved. One form of mechanism restorative justice This is a dialogue which among Indonesian people is better known as "*deliberation for consensus*". So diversion, especially through the concept of restorative justice, becomes a very important consideration in resolving criminal cases committed by children.

If the diversion agreement is not fully implemented by the parties based on a report from the Correctional Center's Social Counselor. then the Judge continues the examination of the case by the Law on Juvenile Criminal Justice Procedures. The judge in making his decision must consider the implementation of some of the diversion agreements.

In Supreme Court Regulation No. 4 of 2014 explains that Diversion is applied to children who are 12 (twelve) years old but not yet 18 (eighteen) years old or 12 (twelve) years old even though they have been married but are not yet 18 (eighteen) years old, who suspected of committing a crime (article 2). This PERMA also regulates the stages of diversion deliberations. where the facilitator appointed by the Chief Justice is obligated to provide an opportunity to:

- 1) Children to hear information about the charges
- 2) Parents/Guardians to convey matters relating to the child's actions and the expected form of settlement
- 3) Victims/Child Victims/Parents/Guardians to provide feedback and the expected form of resolution.

2. Reconstruction of Prosecutor Authority Regulations in Settlement of Criminal Acts Committed by Children in Restorative Justice based on Pancasila Values of Justice

Children can enter the space of the criminal system when they become victims of criminal acts, witnesses in criminal acts, and when they become perpetrators of criminal acts. The Criminal Code

regulates crimes committed by those under 16 years of age. The variations of punishment given by the Criminal Code for children under 16 years old are:

- 1) Returned to his parents without any crime;
- 2) Handed over to the Government (State Education House) without any crime;
- 3) Criminal.

The Indonesian Criminal Law System has entered a new chapter in its development. One form of renewal that exists in Indonesian Criminal Law is regulation regarding criminal law in the perspective and achievement of justice to improve and restore conditions after events and criminal justice processes known as restorative justice. (*restorative justice*) which is different from retributive justice (emphasizing justice on retribution) and restitutive justice (emphasizing justice on compensation).

Restorative Justice is a concept of sentencing, but as a concept of sentencing is not only limited to the provisions of criminal law (formal and material).⁵ This is emphasized by the term integrated justice, namely justice for the perpetrators, justice for victims, and justice for the community. The characteristics of restorative justice are the Just Peace Principles or justice based on peace between perpetrators, victims, and the community. This principle is based on the idea that peace and justice are inseparable. Peace without justice is oppression, justice without peace is a new form of persecution or oppression (Satriadi, 2022).

Diversion policies toward children as perpetrators of criminal acts should be able to provide legal certainty. Legal certainty is a question that can only be answered normatively, not sociologically. Legal certainty normatively is when a regulation is made and promulgated with certainty because it regulates clearly and logically. Clear in the sense that it does not cause doubts (multi-interpretation) and logical in the sense that it becomes a system of norms with other norms so that they do not clash or cause a conflict of norms. Norm conflicts arising from rule uncertainty can take the form of norm concessions, norm reduction, or norm distortions. Legal certainty refers to the implementation of clear, permanent, consistent, and consequential laws whose implementation cannot be influenced by subjective circumstances. Legal certainty will be achieved if the law is as much as possible in the law. The law contains conflicting provisions (the law is based on a logical and practical system). Laws are made based on legal *reality* (serious legal situations) and in the law, there are no terms that can be interpreted in different ways.

Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 42 paragraph (1): The Public Prosecutor must seek Diversion no later than 7 (seven) days after receiving the case file from the Investigator. Paragraph

(2) Diversion as referred to in paragraph (1) is carried out no later than 30 (thirty) days. Paragraph (3) If the Diversion process succeeds in reaching an agreement, the Public Prosecutor submits the minutes of the Diversion along with the Diversion agreement to the head of the district court for a decision to be made. Paragraph (4) If the Diversion fails, the Public Prosecutor is obliged to submit the minutes of the Diversion and submit the case to the court by attaching a report on the results of the social research.

Article I point 24 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that Correctional Institutions, which are then directed by Bapas, are correctional technical implementation units that carry out tasks and functions of community research, guidance, supervision, and assistance.

The concept of diversion namely; ideas, thoughts if with consideration of proper gangs to avoid stigma (evil label) on children, then at any time in the stages of the juvenile justice system, law enforcement officials of the juvenile justice system (police, prosecutors, courts and supervisors of correctional institutions) given the authority to divert the judicial process to forms of activity such as the transfer of guidance to parents/guardians, warnings; imposition of fines, restitution, guidance by the social department or social institutions as well as counseling on the concept of diversion as outlined in *United Nations Standar Minimum Rules for the Administration of Juvenile Justice* or *The Beijing Rules* (UN General Assembly resolution 40/33 of 29 November), in which diversion (*Divertion*) is listed in Rules 11.1, 11.2 and Rule 174. The basic substance of this diversion or diversion is to avoid the negative effects of conventional juvenile justice trials on children, both the negative effects of the judicial process and the negative effects of the stigma (bad brand) of the judicial process, conventional examinations are diverted and investigations are terminated by law because diversion has been achieved. between the victim and the accused child, because the law should have required that.

In terminating the prosecution, based on restorative justice it must be carried out by taking into account the interests of the victim and other protected legal interests, avoidance of negative stigma, avoidance of retaliation, response and harmony in society, obedience, decency, and public order taking into account the subject, object, category, and threat of crime, the background of the occurrence of a crime, the level of accuracy, losses or consequences arising from the crime, *cost and benefits* case handling, restoration back to normal and reconciliation between victims and perpetrators.

Prosecutor Regulation No. 15 of 2020 stipulates the conditions for cases and perpetrators so that the prosecution can be stopped based on restorative

justice. The requirements regarding the person or perpetrator are: the suspect is the first time to commit a crime. Then, there are two conditions regarding the crime. First, the crime committed is only punishable by a fine or punishable by imprisonment for not more than five years. Second, the crime is committed with the value of evidence or the value of the losses incurred as a result of the crime of no more than 2.5 million rupiahs.

To stop the prosecution, the prosecutor needs to consider several things, such as subject, object, category, and threat of crime; background of the occurrence of the crime; level of disgrace; losses or consequences arising from criminal acts; as well as *cost and benefits* case handling.

The cost of handling a case is very large, so law enforcement officials need to consider the effectiveness of handling it in court. Cases that are actually "*light*" actually burden the state budget if they have to be continued through all processes of the criminal justice system, up to execution. Implementing a stoppage of prosecution based on restorative justice is one solution to reduce the budget burden.

Fulfillment of the conditions for termination of prosecution based on restorative justice is used as a consideration for the Public Prosecutor to determine whether or not the case file can be transferred to the court. In peace procedures, the public prosecutor (in this case the prosecutor) offers peace efforts to victims and perpetrators without any pressure, coercion, or intimidation from other people. The reconciliation efforts were carried out at the prosecution stage, namely at the time of handing over responsibility for the suspect and evidence.

Reconstruction of Article 140 paragraph (2) of the Criminal Procedure Code letter (a) which explains that "*In the event that the public prosecutor decides to stop the prosecution because there is insufficient evidence or the event turns out to be not a crime or the case is closed for the sake of law, the prosecutor the general public stated this in a stipulation.*"

The weakness in Article 140 paragraph (2) letter of the Criminal Procedure Code letter is that it has not yet been regulated regarding the authority to stop prosecution with a Restorative Justice approach. So that the recommendations given in reconstructing the article are: It is necessary to add that the public prosecutor decides to stop the prosecution with the concept of restorative justice.

So that it reads if the public prosecutor decides to stop the prosecution because it is not there is sufficient evidence or the event does not constitute a crime or the case is closed by law, and the termination of prosecution is based on an approach to restorative

justice the public prosecutor stated this in a letter of determination.

Article 40 of the newly passed Criminal Code states: Article 40 Criminal liability cannot be imposed on children who are not yet 12 (twelve) years old at the time they commit a crime. This is by the concept of ending the prosecution of children in conflict with the law based on the approach to restorative *justice* that researchers do. In terminating the prosecution, based on restorative justice it must be carried out by taking into account the interests of the victim and other protected legal interests, avoidance of negative stigma, avoidance of retaliation, response and harmony in society, obedience, decency, and public order taking into account the subject, object, category, and threat of crime, the background of the occurrence of a crime, the level of accuracy, losses or consequences arising from the crime, *cost, and benefits case* handling, restoration to its original state and peace between victims and perpetrators.

CONCLUSION

Based on the discussion of the problems above, it can be concluded that:

1. Policy weaknesses in *restorative justice* in the case of children as perpetrators of criminal acts are:

- a. The weakness of legal substance is that Article 7 of the Law on the Juvenile Criminal Justice System explains that the implementation of diversion at the level of investigation, prosecution, and examination of child cases in district courts requires diversion. Diversion as referred to in paragraph (1) is carried out in terms of a criminal act committed; punishable by imprisonment under 7 years and is not a repetition of the crime. However, in practice, the diversion requirements are not fulfilled.
- b. The weakness of the legal structure is that law enforcement officials, especially the National Police, are part of the mandatory criminal justice subsystem in seeking to resolve cases of children as perpetrators of criminal acts through diversion. Law Enforcement Officials in the process of investigating children, where at the National Police itself there are no specific technical guidelines in the diversion process including the functions of institutions such as Correctional Centers, Correctional Institutions, and the Indonesian Child Protection Commission are still not optimal in handling Children in Conflict with the Law.
- c. The weakness of the Legal Culture is the low level of public understanding in terms of understanding the investigation process through diversion, where often the parties (perpetrators and victims) ask for diversion even though the formal requirements for

diversion are not fulfilled/the threat is more than 7 years and is a repetition of a crime.

2. The reconstruction of Article 140 (2) letter (a) of the Criminal Procedure Code needs to be added, the public prosecutor decides to stop the prosecution with the concept of restorative *justice*. Fulfillment of the conditions for termination of prosecution based on restorative justice is used as a consideration for the Public Prosecutor to determine whether or not the case file can be transferred to the court.

REFERENCES

- Nur Rochaeti, P. (2018). Implementation Study of Restorative Justice for Juvenile Criminal Justice System by Customary Court in Mainland Sulawesi. *IOP Conference Series: Earth and Environmental Science*, 156. 012044. 10.1088/1755-1315/156/1/012044.
- Wagiaty, S. (2004). *Hukum Pidana Anak*. Bandung: PT Refika Aditama Bandung, P.11.
- Umar Dinata, A., & Saut, M. (2023). Prinsip Restorative Justice Dengan Keseimbangan Orientasi Pada Penyelesaian Tindak Pidana. *UIR Law Review*, 6, 41-48. 10.25299/uirlrev.2022.vol6(2).11865.
- Galuh Kencana, Triono Eddy, & Ida Nadirah. (2023). *Penerapan Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Pencurian Ringan (Studi Kejaksaan Negeri Binjai)*. Syntax Literate; Jurnal Ilmiah Indonesia. p. 8. 841. 10.36418/syntax-literate.v8i2.11340.
- Fitriyadi., Oheo, H., & Handrawan. (2020). Mediasi Penal Sebagai Bentuk Penanganan Perkara Anak. *Halu Oleo Legal Research*, 2, 281. 10.33772/holresch.v2i3.15435.
- Muladi., & Barda, N. A. (1984). *Teori-Teori Dan Kebijakan Pidana*. Bandung: Alumni. p. 110.
- Syarah, A., & Elly, S. (2021). Penyelesaian Tindak Pidana Penganiayaan yang Dilakukan oleh Anak Melalui Diversi. *PAMPAS: Journal of Criminal Law*, 2, 25-36. 10.22437/pampas.v2i3.16329.
- Maemunah. (2019). *Penyelesaian Tindak Pidana Pencurian oleh Anak Dibawah Umur Menurut Asas Restorative Justice*. CIVICUS: Pendidikan-Penelitian-Pengabdian Pendidikan Pancasila dan Kewarganegaraan, 7(1). 10.31764/civicus.v7i2.1094.
- Faisal. (2010). *Menerobos Positivisme Hukum*, Rangkang Education, Yogyakarta.
- Marzellina, H. (2022). Urgensi Sistem E-Voting dan Sirekap dalam Penyelenggaraan Pemilu 2024. *Journal Equitable*, 7(2). <https://doi.org/10.37859/jeq.v7i2.4257>.
- Sajipto, R. (2012). *Ilmu Hukum*, Bandung: Citra Aditya Bakti, P. 152.
- Satriadi. (2022). Restorative Justice the Limitations of Authority of Police and Prosecutors in the Criminal Justice System. *Al-Bayyinah*, 6, 11-21. 10.35673/al-bayyinah.v6i1.2594.