

Restorative Approach Resolution Mecanism For Victims of Crimes Committed by Children

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Abstract: *Restorative-approach resolution mechanisms are especially important when the offender is a child because they focus on repairing harm rather than simply punishing. restorative mechanisms give victims a meaningful voice, promote genuine accountability from children, and foster a safer, more cohesive community. This research is normative empirical research in conducting research, the author conducts field research by choosing the research location of Pinrang Police, Pinrang District Attorney. The results showed that 1) Restorative justice or justice or deliberation-based justice is a process of Diversion, where all parties involved in a criminal offense must jointly overcome problems and create an obligation to make things better by involving victims, children, and the community in finding a solution to repair, reconciliation, and reassurance that is not based on retaliation. The criminal justice process carried out by law enforcement officials if the child offender is proven guilty, ideally and should be sentenced to return to parents. Efforts to implement the law's order that imprisonment of children is the last resort (ultimum remedium) should also be in line with the understanding that the best decision is the action to return the child offender to his parents to be educated and fostered properly. 2) The application of restitution through restorative justice in the Juvenile Justice System is determined by the agreement of the parties to achieve peace. After compensation is paid, the criminal case committed by the child is truly declared over, as evidenced by a certificate signed by the parties. In the process of deliberation or mediation on behalf of witnesses or relatives, but in its implementation there are often obstacles due to law enforcement factors and community factors. For this reason, it is necessary to have specific legal arrangements in the legislation regarding the amount of compensation that is the obligation of children as perpetrators of criminal acts against victims by adjusting the hierarchy of punishment imposed in order to ensure legal certainty.*

Keywords: *Diversion; Restorative Justice; Compensation.*

1. Introduction

Children are an integral part of human survival and the sustainability of a nation and state. With this important role of children, children's rights have been explicitly stated in Article 28 B paragraph (2) of the constitution, that the state guarantees every child the right to survival, growth and development and the right to protection from violence and discrimination. The best interests of the child should be realized as the best interests of human survival. Therefore, we all always strive to prevent children from becoming victims of violence, or children from committing evil deeds or other disgraceful acts.

Juvenile delinquency is always increasing every year, therefore, various efforts to prevent and overcome juvenile delinquency need to be encouraged again. One of the efforts to prevent and overcome juvenile delinquency (juvenile criminal politics) is

currently carried out through a separate justice system that is separate from justice in general, namely the juvenile criminal justice system. The purpose of organizing a juvenile justice system is not merely to impose criminal sanctions on juvenile offenders. However, the rationale for the imposition of sanctions is also focused on the means of supporting the welfare of children who commit criminal offenses. The rationale or starting point of this principle is a distinctive feature in the implementation of the juvenile criminal justice system. With this characteristic in the implementation of the juvenile criminal justice process, the examination activities carried out by the police, prosecutors, judges and other officials do not leave the aspects of guidance and protection, and are based on the principle of the best interests of the child or see what criteria are best for the welfare of the child concerned, without reducing attention to society.

the purpose of the juvenile criminal justice system is to promote the welfare of children and pay attention to the principle of proportionality. The goal of promoting the welfare of children is the main priority or focus, meaning avoiding the use of criminal sanctions that are solely punitive in nature. The goal of the proportional principle, because it curbs the use of sanctions that are mostly expressed in the limits of rewards that are commensurate with the severity of the violation of the law, but also pay attention to the consideration of personal circumstances.¹ Criticisms of the implementation of the juvenile criminal justice system continue to flow. Many have stated that the implementation of the juvenile criminal justice system is still far from being able to support the realization of the goals of child welfare and the best interests of the child. Several studies on the implementation of juvenile criminal justice have found that the criminal court process for children has a negative impact on children. Imprisonment for children shows a tendency to be detrimental to the child's mental development in the future. Currently, the majority of children in conflict with the law, especially those brought to the criminal justice system, the judge imposes a sentence of deprivation of liberty. If children are in prison, many of their rights guaranteed by the Child Protection Law are not fulfilled. In addition, with the limited number of detention centers and juvenile correctional institutions, children are often combined with adult prisoners.

The punishment that is often imposed on adult offenders is imprisonment, unlike a child who commits a criminal offense. imprisonment is the last resort given as a form of punishment. Because in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, diversion is known as an effort to resolve criminal cases outside the criminal justice system, it's just that diversion can only apply to children and with the provisions that have been regulated in the applicable laws and regulations, while adults cannot be tried for diversion as a criminal settlement process.

The increasing number of crimes that occur and the process of resolving legal problems that focus on imprisonment have resulted in the Prison Institution (Lapas) being full. Correctional Institution is an institution that executes imprisonment in Indonesia with correctional system. The existence of correctional system provides an important meaning for the development of criminal law system in the field of criminal execution in Indonesia.

¹ Muladi dan Barda Nawawi Arief, 1992, *"Perlindungan Hukum Terhadap Anak Dalam Proses Peradilan"*, Refika Aditama, Bandung, hlm. 113.

Correctional system is a series of unity of criminal law enforcement. Therefore, its implementation cannot be separated from the development of the general conception of the punishment system.²

Restorative justice is a model of approach in resolving criminal cases where it emphasizes the direct participation of perpetrators, victims, and the community in the process of resolving a criminal case. The restorative justice approach is considered the most up-to-date of all models and working mechanisms in the criminal justice system in handling criminal cases. The mechanism of the restorative justice approach places the community in a broader role to monitor the implementation of the results of the settlement of a criminal case, which is expected that by applying a restorative justice approach, recovery for victims can be realized, as well as community involvement can be achieved and the purpose of punishing the perpetrator can be carried out properly. In general, restorative justice in Indonesia is only applied in juvenile crimes whose concept prioritizes the future of the perpetrator, then tries to find a middle ground solution (winsolution) to find a joint problem solving. That way there will be something else as a deterrent effect without having to go through prison sentences.

A criminal act is a crime that is not only capable of being committed by adults who are legally capable, but also by minors, so it is a dilemma and challenge for the state to deal with these conditions. Children are a gift from God, as well as a national asset that is expected to be the spearhead of change for the successor of a country's ideals so that their rights must be protected, in the process of growth and development and get the same legal protection. As stated in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, "Every child has the right to survival, growth and development and the right to protection from violence, discrimination".³

What has been described in the article has the same perception as the quoted opinion of Barda Nawawi Arief, who said that children are given legal protection with the aim of protecting their independence and human rights "human rights and freedoms of children" as well as various aspects concerning the future of children and their welfare.⁴

Problems in children are complex and crucial problems that are difficult for the state to solve, children are a generation that needs to be fostered in the process of their future development, especially for a child in conflict with legal problems (ABH), with the aim of creating a lesson related to law enforcement itself, namely through a special handling, specializing here means paying attention to all the processes and stages that should be applied or not to a child so that legal protection is highly upheld in children. It can be seen from the SPPA Law in Article 1 number 3 that "Children in conflict with the

² Dwidja Priyatno, 2013, *Sistem Pelaksana Pidana Penjara di Indonesia*, Refika Aditama, Bandung, hlm 103.

³ Yul Ernis, *Diversi Dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak Di Indonesia (Diversion And Restorative Justice In Case Settlement of Juvenile Justice System In Indonesia)*, Jurnal Ilmiah Kebijakan Hukum 10, No. 2, 2016, hlm. 164

⁴ Arief Barda Nawawi, 1998, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Citra Aditya Bakti, Bandung, hlm. 156.

law, hereinafter referred to as Children, are children who have reached the age of 12 (twelve) years, but not yet 18 (eighteen) years old who are suspected of committing a criminal offense") the process of these stages is carried out from the level of investigation, prosecution to the judicial process.⁵

The establishment of the SPPA Law, which contains the concept of restorative justice through the Diversion system, has a goal to seek a peaceful decision between the perpetrator and the victim. The substance that forms the basis of the Law is that there are rules related to the basic purpose of restorative justice through diversion is to prevent a child who is still a minor from following the judicial process in general, with the hope of avoiding the adverse effects that a child will experience due to his experience in terms of mental and social pressure in the community, so that the child can return to mingle with children in general.⁶

Criminal problems in a child by way of diversion are followed by all parties involved as well as assistance from other parties who have competence in the matter, deliberating to be able to produce an agreement that can be fair to both parties, so that balance is also prioritized so that there is no inequality with each other, the justice obtained will create a recovery back to the initial state, so that the resolution of a conflict is not applying a punishment or retaliation, but peace. This is in accordance with the rules of Article 7 of the SPPA Law.⁷

Comparing Law No. 11 of 2012 on Juvenile Criminal Justice System with Law No.3 of 1997 on Juvenile Court, Law No. 11 of 2012 on Juvenile Criminal Justice System is more comprehensive in placing the position of children in the law. Compared to Law No.3 of 1997 concerning Juvenile Courts, it only protects children as victims and not for perpetrators, as perpetrators are sometimes positioned the same as adult perpetrators, this is the weak point of the old Legislation, as a result of which there are many disadvantages for both the defendant and the judiciary. Thus, the development of Law No. 11/2012 on the Juvenile Criminal Justice System has undergone many changes, including in terms of the definition of children becoming broader and leading to the criminal justice system. And in terms of institutions, there are institutions that can guarantee the rights of children in undergoing the justice system. And also in terms of principles, it is also clear that the rights of children are upheld in the law. Likewise, in terms of criminal sanctions against children, there is an expansion that previously tended to follow the Criminal Code, now it is more towards the expansion of the criminal sanctions themselves. So it can be analyzed that the implementation of the criminal provisions does not exist in the old law in Law No. 3 of 1997. So based on the implementation of the new Law, namely Law No.11 of 2012, so that it can be the basis for implementing the punishment system in Indonesia for children, not

⁵ Ernis Yul, *Loc. Cit*

⁶ Ni Luh Wira Pramesthi Cahyani dan I Dewa Gede Dana Sugama, *Pemenuhan Hak Korban dalam Penerapan Diversi Ditinjau dari Undang-Undang Sistem Peradilan Pidana Anak*, Jurnal Kertha Wicara Vol.11 No.03 Tahun 2022, hlm. 659-669.

⁷ *Ibid*

only through imprisonment but also through the application of restorative justice is more appropriate to be implemented.

However, in the settlement of criminal offenses committed by children as perpetrators, there are still many that are followed by the criminal process, one example of unsuccessful diversion is Decision Number 8/Pid.Sus-Anak/2023/PN Pinrang regarding the crime of theft with the following chronologis: That on Saturday, July 15, 2023 at approximately 00.30 am or at least at some time in July 2023 or at least at some time in 2023 at Jl. Landak Kel. Benteng Sawitto Kec. Paletang Kab. Pinrang Child S, Child G, and Child R committed the crime of theft by entering the apiah shop then taking cash stored in the cashier's drawer and taking several items belonging to the apiah shop. That the children had taken cash amounting to Rp. 12,567,000.00 (twelve million five hundred sixty seven thousand) or at least in that amount, 2 (two) pieces of black t-shirts, 1 (one) piece of purple hoodie jacket, 1 (one) piece of beige hoodie jacket, 1 (one) piece of black sandals, 1 (one) black bag, and 1 (one) gray bag without the permission and knowledge of the shop owner.

In this case, investigators at the Women and Children's Services Unit had attempted to conduct diversion, but the victim submitted a condition, namely if there was a payment of compensation experienced by the victim, but the parents of ABH were unable to make the payment of compensation so that the case proceeded to the prosecution stage.

In resolving a child's case, of course, it uses a different systematic from the judiciary in general, because it uses a Diversion system. Law enforcers must always strive for Diversion at every stage of the justice system. Because the soul of Diversion is restorative justice, namely resolving a case by emphasizing restoration to its original state (restorative justice), and not retaliation, the form of settlement of a case is not punishment but by deliberation between the parties involved so as to produce an agreement between the victim and the perpetrator. The things that must be emphasized from this form of agreement are balancing the rights of all parties to the perpetrator, victim and local community, restoring or repairing the adverse effects that have been caused, the perpetrator must remain responsible for what he has done by paying attention to the rights of the victim himself, this is also done in an effort to avoid recidivist perpetrators. Seeing from these efforts, the victims and perpetrators get the same justice which is a win-win solution. However, the victim, who is the most disadvantaged party, certainly has the right to obtain compensation for the actions of the perpetrator, but in reality the victim encounters an obstacle in obtaining justice in accordance with the victim's sense of justice.⁸

2. Method

The type of research used in this research is Normative Empirical research. Normative legal research is a research that examines positive legal provisions, legal principles, legal principles and legal doctrines in order to answer the legal issues at hand. While empirical legal research is a legal research method that functions to be able to see the law in the community. Legal materials obtained both primary and secondary are processed first and then analyzed using a qualitative descriptive method, namely researchers explain, describe,

⁸ Ibid

and describe in accordance with the problems that are closely related to this research, then draw a conclusion based on the analysis that has been done.

3. Results and Discussion

Mechanism of Compensation for Victims of Crime in SPPA Law through restorative justice approach in Juvenile Justice System.

The history of modern legal development in the application of restorative justice begins with the implementation of a traditional community out-of-court settlement program called victim offender mediation which began in the 1970s in Canada. This program was initially implemented as an alternative measure in punishing juvenile offenders, where before the punishment was carried out the offender and victim were allowed to meet to develop a legal proposal which became one of the many considerations of the Judge. The development of the concept of restorative justice in the last 20 years has developed very rapidly in several countries such as Australia, Canada, England and Wales, New Zealand and several other countries in Europe and the Pacific region..⁹

The concept of restorative justice has actually emerged for quite a long time, approximately twenty years ago as an alternative to solving criminal cases, especially children, with various considerations. As stated by John Braithwaite, restorative justice is a new direction between "justice" and "welfare model", then between "retribution" and "rehabilitation".¹⁰

The original concept of restorative justice practices comes from the peacekeeping practices used by the Maori people (the indigenous people of New Zealand). Where conflict arises, restorative practices address the perpetrators, victims, and stakeholders.¹¹ Jeff Christian, an expert from Canada's International Correctional Institute, argues that restorative justice has been practiced by many communities thousands of years ago, long before the birth of the formal state law that is now called modern law.¹² In its development, the growth and spread of restorative justice has been supported by the United Nations (UN). At the 5th Five Year Congress in Geneva in 1975, the UN began to pay attention to restitution for victims of crime, as an alternative to retributive criminal justice.¹³ In North America, Australia, and parts of Europe, restorative justice has been

⁹ Lidya Rahmadani Hasibuan, dkk., Restorative Justice Sebagai Pembaharuan Sistem Peradilan Pidana Berdasarkan UU NO.11 TAHUN 2012 Tentang Sistem Peradilan Pidana Anak, USU Law Journal, Vol.3.No.3 (November 2015), hlm. 3

¹⁰ John Brithwaite, Restorative Justice and Responsive Regulation (University Press, Oxford, 2002).

¹¹ Hadi Supeno, 2010 *Kriminalisasi Anak, Tawaran Gagasan Radikal Peradilan Anak Tanpa Pemidanaan*, Gramedia, Jakarta, hlm. 196.

¹² *Ibid.*

¹³ Septa Candra, Restorative Justice: Suatu Tinjauan Terhadap Pembaharuan Hukum Pidana Di Indonesia (Restorative Justice: a Review of Criminal Law Reform in Indonesia), Jurnal Rechts Vinding, Vol. 2 No. 2, Agustus 2013, hlm. 269-270

applied at all stages of the conventional criminal justice process: investigation and prosecution, adjudication, and execution.¹⁴

The restorative justice approach according to Howard Zehr and Barb Toews is not intended to ignore the formal role of the criminal justice system or the enforcement of other formal legal fields. Instead, this approach requires a case settlement that is complemented by efforts to restore or repair the negative impact of the crime and return to the original state of the relationship between the victim and the perpetrator of the crime, thus opening up opportunities for the victim to accept the responsibility and apology of the perpetrator.¹⁵

Basically, the restorative justice approach has long been practiced by Indonesian indigenous peoples, such as in Papua, Bali, Toraja, Minangkabau and other traditional communities that still strongly hold their culture. In the event of a criminal offense by a person (including unlawful acts committed by children), dispute resolution is resolved in the customary community internally without involving state apparatus in it. The measure of justice is not based on retributive justice in the form of revenge or imprisonment, but on conviction and forgiveness.¹⁶

Therefore, based on the above description, the concept of restorative justice is essentially a concept that has lived in the life of society and has been practiced for a long time. This is because it is very close to customary law that always grows and develops in social life. In principle, the provisions of Restorative Justice above regulate the qualifications of criminal offenses that can be resolved through Restorative Justice mechanisms. Of course, the terms and conditions have been regulated in such a way that the parties involved in it also give great heart in living it.

Basically, the qualifications of criminal offenses that can be resolved through the mechanism of restorative justice are the types of criminal offenses that are qualified as minor crimes (tipiring), then the legal implications arising from the criminal acts and most importantly the perpetrators of criminal acts are not recidivists.

Basically, restorative justice involves three stakeholders, namely, victims, perpetrators, and civil society or the community in determining the resolution of juvenile cases. Through restorative justice, there is an effort to bring together victims and perpetrators with the aim of seeking recovery for victims. On the other hand, child perpetrators, despite their status as perpetrators, but children who become perpetrators are also victims. who are also entitled to get recovery and even socialize the child perpetrator, not by way of retaliation. This is in accordance with the formulation of Article 1 number 6 of the Juvenile Justice System Law, which regulates restorative justice, following the full formulation: "Restorative justice is the settlement of criminal cases by involving

¹⁴ Eriyantouw Wahid, 2009, *Keadilan Restoratif dan Peradilan Konvensional dalam Hukum Pidana*, Universitas Trisakti, Jakarta. hlm. 1

¹⁵ Howard Zehr dan Barb Toews (2004). *Critical Issues in Restorative Justice*. New York: Criminal Justice Press. h. 194 dan 385.

¹⁶ Ds.Dewi, *Restorative Justice, Diversionary Schemes And Special Children's Courts In Indonesia*, www.wordpress.com. Diakses pada hari Jum'at 02 Desember 2022, Pukul 15.08 Wita

perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retaliation."

Restorative justice can be formulated as a thought that responds to the development of the criminal justice system by emphasizing the need for community involvement and victims who feel excluded by the mechanisms that work in the current criminal justice system. In addition, restorative justice can be used as a framework that can be used in responding to a criminal offense for law enforcement. In various principles and models of restorative justice approach, the dialog process between the perpetrator and the victim is the basic capital and the most important part of the application of this justice. Direct dialogue between the perpetrator and the victim allows the victim to express what he/she feels, express hope for the fulfillment of rights and desires from a criminal case settlement. Through dialogue, the perpetrator is also expected to be moved to correct himself, realize his mistakes and accept responsibility as a consequence of the criminal act committed with full awareness. From this dialogue process, the community can also participate in realizing the results of the agreement and monitoring its implementation. Therefore, basically restorative justice is also known as case settlement through mediation (penal mediation). Penal mediation in criminal law has a noble goal of resolving criminal cases that occur in society. Conceptually, said by Stefanie Trankle in Barda Nawawi Arief, the penal mediation developed was based on the following ideas and working principles:¹⁷

1. Conflict handling (Conflicttbearbeitung): The mediator's task is to make the parties forget the legal framework and encourage them to engage in a communication process. This is based on the idea that crime has created interpersonal conflict. It is this conflict that the mediation process addresses.
2. Process orientation (Prozessorientierung): Penal mediation is more oriented towards the quality of the process rather than the outcome, i.e.: making the perpetrator of the crime aware of his guilt, solving conflict needs, calming the victim from fear.
3. Informal process (Informal Proceedings/Informalität): Penal mediation is an informal, non-bureaucratic process, avoiding strict legal procedures.
4. There is active and autonomous participation of the parties (Active and autonomous participation/Parteiautonomie/Subjektivierung): The parties (perpetrators and victims) are not seen as objects of criminal law procedures, but rather as subjects who have personal responsibility and the ability to act. They are expected to act of their own free will.¹⁸

Therefore, in penal mediation as well as in restorative justice, the concept of dialogue process mediation is known as a communication medium which is the main capital in the implementation of mediation institutions. The whole process can be found in

¹⁷ Barda Nawawi Arief, 2012, *Mediasi Penal Penyelesaian Perkara Di Luar Pengadilan*, Pustaka Magister, Semarang: hlm. 4-5.

¹⁸ Barda Nawawi Arief, 2012, *Mediasi Penal Penyelesaian Perkara Di Luar Pengadilan*, Pustaka Magister, Semarang: hlm. 4-5

the model of organizing restorative justice, as said by DS. Dewi and Fatahillah A. Syukur, as follows:¹⁹

- a. Victim Offender Mediation (VOM: Mediation between offenders and victims) is a forum that encourages meetings between offenders and victims with a mediator as the coordinator and facilitator of the meeting.
- b. Conferencing is a forum similar to VOM, but in this form there is a difference, namely the involvement of the settlement not only involves the perpetrator and the direct victim (primary victim), but also indirect victims (secondary victim), such as family or close friends of the victim and family and close friends of the perpetrator. The reason for involving these parties is because they may be directly or indirectly affected by the criminal offence or they have a high level of concern and interest in the outcome of the deliberation and they can also participate in seeking the success of the process and its ultimate goal.
- c. Circles is a model of restorative justice that involves the most extensive involvement compared to the previous two forms, namely forums that are not only victims, perpetrators, families or mediators but also members of the community who feel interested in the case. The three basic models of the implementation of the restorative justice approach are basically variations of the dialogue model which is the implementation of deliberation and consensus. It is from this basic value that restorative justice as an implementation of the basic values that exist in Indonesian society has a strong value foundation.

In positive law, the stages of the juvenile criminal justice process through restorative justice (diversion) are regulated in Article 52 of the Juvenile Criminal Justice System Law. For more details, the following is the full formulation:

- a. Paragraph (1) The President of the court shall appoint a Judge or Panel of Judges to handle a juvenile case no later than 3 (three) days after receiving the case file from the public prosecutor.
- b. Paragraph (2) Judges shall seek Diversion no later than 7 (seven) days after being appointed by the District Court as a Judge c. Paragraph (3) Diversion as referred to in paragraph (2) shall be implemented for a maximum of 30 (thirty) days. d. Paragraph (4) The Diversion process may be conducted in the mediation room of the District Court
- c. Paragraph (3) Diversion as referred to in paragraph (2) shall be implemented for a maximum of 30 (thirty) days.
- d. Paragraph (4) Diversion process may be conducted in the mediation room of the District Court.
- e. (5) In the event that the Diversion process succeeds in reaching an agreement, the Judge shall submit the Diversion minutes along with the Diversion agreement to the President of the District Court for a stipulation to be made.
- f. Paragraph (6) In the event that Diversion is not successfully implemented, the case shall proceed to the trial stage.

¹⁹ D.S. Dewi dan Fatahillah A. Syukur, 2011, *Mediasi Penal: Penerapan Restorative Justice Di Pengadilan Anak Indonesia* Indi Publishing, Bandung, hlm. 9.

- g. According to Article 1 point (7) of Law Number 11 Year 2012, Diversion is the transfer of the settlement of juvenile cases from the criminal justice process to a process outside the criminal justice.

Of course, the stages or processes described above will not run optimally if the resolution of juvenile criminal cases is oriented towards the interests of juvenile offenders as the purpose of the restorative justice approach, due to the lack of understanding and unification of the vision or purpose of the restorative justice approach. Prioritising or paying attention to the interests of children as perpetrators is even reaffirmed in the provisions of Article 10 paragraph (1) of the Covenant on Civil and Political Rights which guarantees that every person deprived of his freedom must be treated humanely with respect for his inherent dignity. Restorative justice is an effort to treat children in conflict with the law in accordance with their dignity.

The criminal justice process carried out by law enforcement officials if the child offender is proven guilty, ideally and should be sentenced to return to parents. Efforts to implement the law's order that imprisonment of children is the last resort (*ultimum remedium*) should also be in line with the understanding that the best decision is the action to return the child offender to his parents to be educated and fostered properly. The juvenile justice system itself is already good, but a good system must be accompanied by an attitude that is imbued with a desire to see and believe that the world is always getting better. A view that is actually broader and further horizon than what people are arguing about. In addition, the principle of the best interest of the children should always be prioritised when dealing with children in conflict with the law.

James Dignan offers five approaches to implementation for restorative justice to be successful. First, court based restitutive and reparative measures. This model was first implemented in the UK. Second, victim offender mediation programmes. This approach was implemented in North America. Third, conferencing initiatives (initiating meetings between offenders and victims). This model is implemented in the New Zealand-New Zealand region. Fourth, community reparation boards and panels. Applied in Scottish communities. Fifth, healing a sentencing circles, used by indigenous Canadians.²⁰

Dewi Setyowati explores the model of restorative justice implementation as follows²¹:

a). Offender mediation

This mediation was introduced in 1970 and is widely used in criminal justice in European countries. Offender mediation is a meeting between the victim and offender facilitated by a trained third party to discuss the impact of the offence and find a solution to the problem. In this process the offender and victim begin with separate facilitated meetings with the victim and offender to assess the suitability of the case and to ensure that the offender is willing to take responsibility for the harm. From this model, it can be seen

²⁰ Hariman Satria, *Loc.cit.*, hlm. 118.

²¹ Dewi Setyowati, *Memahami Konsep Restorative Justice sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan*, Jurnal Padecta, Volume 15 Nomor 1 ,2020, hlm. 129-130.

that in the enforcement of restorative justice, the emphasis is on negotiation and the willingness of the offender to compensate for the harm suffered by the victim. Konferensi

The conferencing model has been widely used for juvenile cases and because it has been found to be effective, it is now often used for adult crimes as well. Conferencing is a process that involves a wider circle of participants than just the offender and victim, such as family members, friends and community representatives..²²

b). Circle process

The circle process plays a greater role in decision-making processes guided by values such as respect, honesty, trust and equality. The process was developed in Canada and later in the United States to deliver an alternative process to the trial process and reduce over-incarceration of Indigenous offenders. In Australia, circle sentencing is used in some Indigenous Courts, which were established to provide a culturally appropriate alternative to criminal courts and involve Indigenous people in court sentencing. The main focus is offender rehabilitation, they cannot be considered as fully restorative, but include restorative elements.

c. Community panels or boards

This model usually requires the offender to be accountable to a representative group of the aggrieved. This process is intended to place the burden on the offender to be accountable to a specific group so that restorative conditions can be created. In this process, the role of the community board or panel is essential to determine the appropriate sanction that enables the offender to restore the conditions that existed before the offence was committed..²³

b). Victim substitution programme

In this process the victim is replaced by a representative who has been appointed for the restorative process. This usually happens because for some reason the victim cannot deal directly with the perpetrator of the crime and therefore needs to be represented. The substitute victim acts on behalf of the victim to represent the needs of the victim who has been harmed by the criminal offence committed by the offender..²⁴

The mechanism for implementing diversion is regulated in Article 8 paragraph (1) of the Juvenile Criminal Justice System Law, namely:

The Diversion process is carried out through deliberation by involving the Child and his/her parents/guardians, victims and/or parents/guardians, Community Counselors, and Professional Social Workers based on the Restorative Justice approach.

Therefore, restorative justice or justice or deliberation-based justice is a Diversion process, where all parties involved in a criminal act must jointly overcome problems and create an obligation to make things better by involving victims, children, and the community in finding a solution to repair, reconciliation, and reassurance that is not based on retaliation, one of which is discussing compensation experienced by victims of criminal

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

acts. Deliberation-based justice and diversion in the SPPA Law are important and are the main substance of the SPPA Law.²⁵

As mentioned in the Elucidation of the SPPA Law, the most fundamental substance in this Law is the explicit regulation of Restorative Justice and Diversion which is intended to avoid and keep children away from the judicial process so as to avoid stigmatisation of children in conflict with the law and it is hoped that children can return to their social environment reasonably. Therefore, the participation of all parties in order to realise this process must aim at the creation of Restorative Justice, both for the child and for the victim.²⁶

The Application of Restorative Justice in the Juvenile Justice System.

The practice of criminal justice in Indonesia confirms that the interests of victims, which include loss and suffering from criminal offences experienced, are often not considered. Victims of crime are placed only as evidence, namely only as witnesses, so that the possibility for victims to obtain discretion in fighting for their rights is small. The interests of victims, who have been represented by the Public Prosecutor, in an effort to prosecute the perpetrators of criminal offences, have been considered as an effort to protect the law for victims and the wider community. In reality, the losses suffered by victims are neglected. In the conventional criminal justice process, restitution or compensation for victims is known. Restitution is compensation given to victims or their families by perpetrators or third parties, which can be in the form of returning property, paying compensation for loss or suffering, or reimbursing costs for certain actions. Restitution is in accordance with the principle of restoration in the original state (*restitutio in integrum*), which is an effort that victims of crime must be restored to their original condition before the crime occurred even though it is based on the idea that it will not be possible for victims to return to their original condition. This principle emphasises that the form of restitution to the victim must be as complete as possible and cover various aspects of the consequences of the crime. With restitution, victims can be restored to their freedom, legal rights, social status, family life and citizenship, return to their place of residence, restore their employment, and recover their assets.²⁷

Article 90 of the Law on Juvenile Justice System stipulates that child victims and child witnesses are entitled to medical rehabilitation and social rehabilitation efforts, both inside and outside institutions, safety guarantees, both physical, mental and social, ease in obtaining information about the progress of the case. In Government Regulation No. 43/2017 on the Implementation of Restitution for Children who are Victims of Crime, restitution is the payment of compensation imposed on the perpetrator based on a court decision with permanent legal force for material and/or immaterial losses suffered by victims or their heirs. Restitution for children who are victims of criminal offences (Article

²⁵ *Yul Ernis, Op. Cit.*

²⁶ *Ibid.*

²⁷ Marasabessy, Fauzy, 2015, Restitusi bagi Korban Tindak Pidana: Sebuah Tawaran Mekanisme Baru, *Jurnal Hukum dan Pembangunan Tahun ke-45 No.1*: 55

3) is in the form of: a) compensation for loss of wealth; b) compensation for suffering as a result of the criminal offence; and/or c) reimbursement of treatment and/or psychological costs. Restitution will be a point that can push towards diversion, but on the other hand it can also hinder the application of diversion because in current practice, there is no guarantee that restitution can be paid immediately to the victim, which usually happens that the perpetrator does not want to pay and is unable to pay. The SPPA Law states that if the perpetrator of a criminal offence denies the payment of restitution agreed upon in the diversion process, the denial carries the consequence that the case will be continued using the criminal justice system.

Based on the results of interviews the author conducted with police assistant investigators, cases that succeeded in reaching peace or diversion were cases of violence committed by children. This is possible because if the victim has forgiven the perpetrator then the peace process can occur. In terms of the mechanism, it is usually carried out by deliberation by bringing together both parties and community leaders, so that the peace process can be carried out smoothly, and if an amicable agreement is reached, it will be outlined in a deed of peace and an order to stop the investigation and a letter of determination to stop the investigation will be issued and then sent to the prosecutor's office.²⁸

In addition, it was also explained that compensation for the criminal case in relation to the investigation process, if it turns out that there is indeed a loss, usually the victim will provide additional information about the loss suffered. This is then linked to the investigation process. The investigator usually makes suggestions for the perpetrator to compensate the victim, as long as the perpetrator is deemed capable. In such cases, peace can usually be made between the perpetrator and the victim. However, it is not the police or the investigator who makes the peace, but the peace arises from the will of the perpetrator and the victim. If this happens, the investigator allows it and usually with the consideration that the case is not disturbing and does not attract public attention, the investigation is not continued. To protect each of the parties, usually an agreement or statement is signed by both parties. The contents of the statement include a statement that the victim has reconciled so that the victim's report is revoked. In carrying out their duties in the field, the police feel that they must be flexible, meaning that they are not too fixated on the provisions of existing laws, because if they are too fixated on the rules of invitation, they often face difficulties. However, attention to the victim is also still prioritised, because it is the victim who knows the case, which is indispensable in uncovering a criminal offence.²⁹

The consequence of unsuccessful diversion is that the file is sent to the prosecutor's office and the judicial process is still carried out using the juvenile criminal justice system.³⁰ Diversion carried out by the police is more than diversion carried out by

²⁸ Interview with the Assistant Investigator at the Women and Children Service Unit (PPA) Pinrang Police (M. Rofi Wicaksono) October 20, 2023

²⁹ *Ibid.*

³⁰ *Ibid*

the prosecutor's office, this is based on several advantages that will be obtained if diversion is carried out at the investigation stage by the police, namely³¹:

- 1) The police are the only law enforcement agency in the criminal justice sub-system that has a network up to the sub-district level. Thus, structurally, the police are the only law enforcement agency that is closest and most accessible to the community. With such an institutional portrait, the police are the most likely law enforcement agency to have a network down to the lowest level (village level);
- 2) In terms of quantity, police officers are far more numerous than other law enforcement officers, although it is also recognised that not every police officer is committed to handling crimes committed by children, but the availability of adequate personnel will also greatly assist the process of resolving crimes committed by children.

The quantity of police officers is far greater than other law enforcement officers, although it is also recognised that not every police officer is committed to handling criminal offences committed by children, but the availability of adequate personnel will also greatly assist the process of resolving criminal offences committed by children at the police level means providing guarantees to children to avoid contact with the criminal justice process as early as possible. Thus, the negative impact of children coming into contact with law enforcement officials can be minimised.

Barriers to the Implementation of Restorative Justice in the Juvenile Justice System

1. Law Enforcement Factors (Legal Structure)

In the settlement of children's cases, law enforcement officials have been determined who can handle children's cases. In implementing diversion, what must be understood by law enforcers is that children are perpetrators of criminal offences as a result of environmental conditions and technological developments. Criminal offences committed by children, either directly or indirectly, are a result of actions and actions taken by adults in contact with children or as part of the process of children's interaction with their environment, where children are not yet able to respond. This paradigm must be instilled in the community and law enforcement officials in dealing with children suspected of committing a criminal offence.³²

The obligation to implement diversion starts from the Investigation by the Investigator, if it is unsuccessful then it is carried out at the prosecution level by the Public Prosecutor, if it is also unsuccessful then it is carried out at the trial. Article 7 of the UUSPPA contains an obligation for Investigators, Public Prosecutors and Judges to conduct diversion. Because diversion is an obligation for Investigators, Public Prosecutors and Judges, diversion must be carried out in children's cases handled, so that if it is not implemented, these law enforcement officials can be held accountable.

The implementation of diversion by law enforcement can basically be divided into the following stages:

³¹ Koeno Adi, 2009, *Diversi Sebagai Upaya Alternatif Penanggulangan Tindak Pidana Narkotika Oleh Anak*, UMM Press, Malang, hlm. 111

³² Jurnal Kertha Patrika, Vol. 40, No. 2 Agustus 2018 , hlm. 76

- (1) Attempts at diversion;
- (2) Deliberation on diversion;
- (3) Diversion agreement;
- (4) Implementation of the diversion agreement;
- (5) Supervision of the implementation of diversion;
- (6) Case termination.

The actions of law enforcers as mentioned above are what law enforcers should do in the practice of law enforcement of juvenile cases.

Based on the results of the interview, the lack of implementation of diversion in the Pinrang District Attorney's Office is due to the lack of prosecutors who meet the requirements to become public prosecutors in juvenile cases, one of which is to have attended technical training on juvenile justice, which in the Pinrang District Attorney's Office itself lacks training in the form of internal or integrated training, while in facilitating the diversion itself, the Public Prosecutor is expected to provide counselling, input, views to convince the parties to reach an agreement regarding compensation so that a process can be successful, but in reality the lack of approach and input and understanding to the families of both victims and perpetrators regarding this compensation hinders the achievement of a diversion agreement.³³

In addition, although there is an exception, namely In the event that there is no Public Prosecutor who meets the requirements as referred to in paragraph (2) of Article 41 of the SPPA Law, the prosecution duties are carried out by public prosecutors who carry out prosecution duties for criminal offences committed by adults, but in the Pinrang District Prosecutor's Office has relatively few prosecutors but the number of criminal cases handled is very large so that the process for discussing compensation for victims in peace efforts is very difficult to implement, which also means that the law provides a very short time in implementing diversion.³⁴

The issue of positive legal regulations applied in the field is related to the demands or interests of the task or development of community life, so that the law can live in the community, it requires formal legal regulations that are considered more effective and perceived justice by the community.

Law No. 11/2012 on the Juvenile Criminal Justice System authorises the police to take certain actions, but in practice it is not possible for the police to act rigidly. In Faal's opinion, there are several reasons why the police act this way. Firstly, there is no legislation that is so complete that it can regulate all human behaviour; secondly, there are obstacles to adjusting legislation to developments in society, causing uncertainty; thirdly, there is a lack of funding to implement legislation as intended by the legislators; fourthly, there are individual cases that require special handling.³⁵

2. The Legal Factor Itself (Legal Substancy)

³³ Interview with Head of the General Crime Section (Margaretha Harty Paturu, SH, M.H) October 10, 2023

³⁴ Interview with Functional Prosecutor of Pinrang District Attorney (Muh. Nur Fajri Arzam, SH) October 19, 2023

³⁵ Faal, 1991, *Penyaringan Perkara Pidana Oleh Kepolisian (Diskresi. Kepolisian)*, PT. Pradnya Paramita, Jakarta, hlm. 101.

Substance also means that the products produced by people in the legal system include the decisions they issue, the new rules they formulate. In addition, the substance of law includes living law, not just the rules in the law books. And the law that lives in society can be used as a reference in building a just law..³⁶

Narrowing down the implementation of the law in this case, the statutory factor seems to play a significant role in the failure of the diversion process. The absence of an implementing regulation for diversion has been a handicap in implementing this procedure. The practice of implementing diversion is only regulated in the Supreme Court Regulation which is intended for the diversion process at the court level. Meanwhile, at the investigation and prosecution levels, the implementation is at the discretion of each entity's leadership. As a result, there is no standard reference that can be used as a standard. The absence of standards certainly does not provide a benchmark for what must be achieved for success to be realised.³⁷

3.Community Factors (Legal Culture)

In relation to the community factors that influence the implementation of diversion, if it is related to Friedman's opinion on the elements of the legal system, one of which is "legal culture", namely attitudes and values related to the law, which come from the community or users of legal services, it can be argued that the legal culture of the community can be seen from the type and number of cases, which are mainly caused by the influence of relationships, the environment and the media. Other influences that cause children to be in conflict with the law are economic and psychological pressures. It can be said that community factors, especially the legal culture of the community, are an inhibiting factor in the application of diversion in resolving children's cases.

Based on interviews, the obstacles to settlement are the victim's family or the victim does not accept because there is no punishment for the perpetrator and there is a fear of repeating the act committed because it is only a change and apology from the perpetrator.³⁸

The success of the diversion process is very dependent on the victim's family who wants to use the formal / litigation route because they consider that the litigation route has a more deterrent effect on the perpetrator, the perpetrator does not admit his actions or is convoluted in providing information, so the need for an approach from the perpetrator's parents to try to cover up the actions committed by their child, the existence of material demands that are too large, and the attitude of the victim's family who does not accept the implementation of diversion and considers that diversion does not represent accountability for children who commit crimes and children will escape responsibility for their actions and compensation for losses that are less commensurate with the circumstances caused.

³⁶ Hari Purwadi, dkk, *Kegagalan Implementasi Diversi pada Tahap Penuntutan*, Jurnal Pasca Sarjaana Hukum UNS Vol. V o. 1 Januari-Juni 2017, hlm. 84.

³⁷ *Ibid.*

³⁸ Interview with the Head of the Pre-Prosecution Sub-Section at the General Crimes of the Pinrang District Attorney's Office (Adliah Nur Fadhilah Asri, S.H), October 15, 2023

Community views on the application of restorative justice tend to be negative, resulting in resentment and ostracisation of children in conflict with the law.³⁹

In addition, the view of the community that still considers punishment as the best way to deal with criminals, so that the application of restorative justice in society is still difficult to accept, and there is no public understanding that punishment is the ultimum remedium.⁴⁰

In other interviews with law enforcement officials, every time the investigator coordinates, it is often conveyed that there is no peace between the perpetrator and the victim, but it is explained by the investigator that the victim will make peace if there is compensation by the perpetrator. That is sometimes an obstacle in the implementation of diversion based on restorative justice because the child as the perpetrator is unable to fulfil the request of the victim, which basically the child commits the crime of theft due to economic factors so that if demanded to make compensation the child is economically unable to fulfil this. One of the main requirements of the victim if they want to reconcile with the child is the existence of compensation from the child, so that if this is not fulfilled the peace cannot be carried out and the legal process continues as it should. Compensation is usually requested by the victim in the form of material money even though the goods taken by the child are not in the form of money or material. As one example of a case, there was a duck theft committed by a child, when peace was offered, the victim requested that the child compensate the victim in the form of money or material losses.⁴¹

That in peace efforts, administration should be made for the failure of peace but if it is known that the victim does not agree to make peace, no administration is made so that many cases that are attempted to be peaceful are not recorded in the diversion data of the Pinrang District Attorney's Office.⁴²

However, it is different in the case of maltreatment, if the victim has forgiven the perpetrator, then the diversion effort can be implemented, without any compensation to the victim if the victim has forgiven the perpetrator.

One example of a case where diversion was unsuccessful and there was material loss to the victim is Decision Number 8/Pid.Sus-Anak/2023/PN Pinrang related to the crime of theft with the following chronologis:

- That on Saturday 15 July 2023 at approximately 00.30 wita or at least at some time in July 2023 or at least at some time in 2023 at Jl. Landak Kel. Benteng Sawitto Kec. Paleteang Kab. Pinrang Child S, Child G, and Child R committed the crime of theft by entering the apiah shop then taking cash stored in the cashier's drawer and taking several items belonging to the apiah shop.
- That the children had taken cash amounting to Rp. 12,567,000.00 (twelve million five hundred sixty seven thousand) or at least in that amount, 2 (two) black t-shirts, 1

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Interview with the Head of the Investigation Sub-Section at the Pinrang District Attorney's Office Special Crime (Pebrianto Patulak, SH) October 18, 2023

⁴² *Ibid.*

(one) purple hoodie jacket, 1 (one) beige hoodie jacket, 1 (one) black sandal, 1 (one) black bag, and 1 (one) grey bag without the permission and knowledge of the shop owner.

In this case, investigators at the Women and Children's Services Unit have attempted to conduct diversion but the victim submitted a condition, namely if there was a payment of compensation experienced by the victim, but the parents of ABH were unable to make the payment of compensation so that the case proceeded to the prosecution stage.

Fulfilment of victims' rights in the form of compensation by returning goods, compensating for losses, replacing costs incurred as a result of criminal offences and compensating for damage caused by criminal offences. These conditions must first be met in order for the investigation or investigation to be terminated through a special case title mechanism, and the reason for the termination of the investigation and investigation is that it is terminated by law.

In the implementation of the agreement, it also contains an addendum to the agreement, which is given to the suspect in a situation where the perpetrator has tried hard to fulfil the agreement but is unable to carry it out but in good faith, such as even though he has tried, he cannot complete the obligation completely. The addendum process must still obtain the victim's consent. Amendments can be made to certain articles of the peace agreement or, if the victim consents, can be made under certain conditions.

When examining the above description, basically in applying compensation to victims is determined by the results of the agreement of the parties to reach peace. In the process, the public prosecutor acts as a mediator to assist the process in finding a win-win solution to the criminal case against the victim.

The mechanism used to pay the compensation is determined by the agreement of the parties, as evidenced by a valid and legally recognised indication. After the compensation is paid, the criminal case is declared over as evidenced by a certificate signed by the parties, the public prosecutor and relevant parties present during the mediation process on behalf of witnesses or relatives. However, unlike the Attorney General's Office and the Police who prioritise restorative justice in the implementation of restorative justice if there has been compensation for the victim, in the Supreme Court the settlement of minor criminal cases through restorative justice can be carried out provided that peace has been initiated between the perpetrator, victim, family of the perpetrator/victim, and community leaders related to the litigation with or without compensation.

4. Conclusion

Basically, restorative justice involves three stakeholders, namely, victims, offenders, and civil society or the community. There are 5 models of restorative justice approaches, namely Mediation of offenders, Conferences, Circle process, Panel or community board, Victim substitution programme. In the implementation of diversion based on restorative justice, it is carried out by deliberation or mediation where all parties involved in a criminal

act are certainly together to overcome problems and create an obligation to make things better by involving victims, children, and the community in finding a solution to repair, reconciliation, and reassurance that is not based on retaliation, one of which is discussing compensation experienced by victims of crime. The compensation applied is determined by the agreement of the parties to achieve peace. After the compensation is paid, the criminal offence committed by the child is truly declared over as evidenced by a certificate signed by the parties, in the process of deliberation or mediation on behalf of witnesses or relatives, but in its implementation there are often obstacles due to law enforcement factors and community factors..

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