

Assistance of Children in Conflict with the Law during the Investigation Process at Medan Police

Dewi Ervina Suryani¹, Cynthia², Kezia Carolina Tampubolon³,
Putri Damayanti Sihombing⁴

^{1,2,3,4}Faculty of Law, Universitas Prima Indonesia

dewiervinasuryani@unprimdn.ac.id, cynthiakho7@gmail.com, tkeziacaroline@gmail.com,
putridamayantisihombing@gmail.com

Abstract

The purpose of this research is to find out how to assist children who are confronted with the law during investigations at the Medan Polrestabes in resolving child cases. The resolution of the problem of juvenile delinquency can be carried out peacefully outside the court, based on the principles of solidarity and publicity. Restorative Justice emphasizes the principles of togetherness and openness so that assisting children who are confronted with the law is suitable for using restorative justice. Compared to punishment, reconciliation is more beneficial for the physical and mental development of children. This research method uses empirical legal research methods, namely field research, which is to conduct research systematically and methodically to reveal the data needed for research from a location or field. While the data collection techniques used are interviews, documentation studies. And the data analysis used is data analysis that seeks to provide a clear and concrete picture of the objects discussed quantitatively and presented descriptively. The results of this research can be concluded that assistance to children in conflict with the law is carried out without causing fear to children and not putting pressure on children.

Keywords

mentoring; legal conflict;
children



I. Introduction

Article 330 of the Civil Code defines a child as someone who has not reached the age of legal legality, as determined by civil legislation as legal subjects or state legal subjects (Suadi et al., 2021). In this context, the concept of civil law children is built from several civil aspects regarding the existence of children as legal subjects who are not reachable. These aspects are the status of minors (age restrictions) as legal subjects (Perangin-Angin, 2019).

Whereas in the field of criminal law, the concept of the child takes precedence over the understanding of children's rights that must be protected, because children are essentially weak substances, and in the legal system are treated as legal subjects, grafted from forms of accountability (Rehulina, 2016). Normal legal subject of the book. The criminal law law does not expressly limit the category of a person who is called an adult or a child. However, as we see in Articles 45, 46 and 47, perpetrators under the age of 16 (sixteen) years are threatened with less punishment than adults. Code, if a child reaches the age of 15 or 16 years, he is called an adult (Ridwan, 2015).

Criminal evidence and find the suspect (Rizal, 2021). As in research (Mohamad, 2018) it is explained that the Semarang City Police treats children legally as perpetrators of criminal acts during the investigation process starting from reporting, investigating, examining witnesses, searching for evidence, arresting cases, but during the PPA process

through mediation and prioritizing kinship. The peace process between the suspect and the victim, when the victim accepts peace, the suspect will not be brought to court or the case will be closed.

Meanwhile, research (Abdurrachman et al., 2015) shows that in Central Java cases of children who are confronted with the law are usually resolved by referral, and some cases are handled using the Criminal Procedure Code or the Criminal Procedure Code. Another thing, although the diversion path has been applied to children who are in confrontation with the law, there is no uniformity or similarity in the diversion model as regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

For people, process investigation in police is a scary thing because in the process they are often colored with violence. Based on experience – experience from a number of people which already once follow process investigation. They confess that they got torture physique which done to they, start from hair shaved until bare, burn with cigarette, besides that occur also torture psychic as nudity and dry in the sun people which checked, and omission (restriction access drugs, and imprison in room closed). Where on Step the aim forgot description and clarity on something act criminal law (Agustina & Riyadi, 2020).

Formulas Problem

Based background behind which outlined there is a number of problem in research this is as follows:

1. How application Restorative Justice on children who confront the law?
2. How shape accompaniment to children who confront law based on law No. 11/2012 about Justice Criminal Child?
3. How shape accompaniment to a child which is confronted with law during process investigation which is given to Polrestabes Medan?

II. Research Method

2.1 Type and Nature Research

Research which implemented writer is type research empirical that is research from *in action* to enforceability law normative. Type from This research is field research, namely research that is carried out systematically and methodically to reveal the data needed for research from the location or field (Harjo, 2017).

2.2 Source Data

Source Law which worn in research this covers data primary & secondary:

- a. Data Primary: is data which is obtained directly in Polrestabes Medan. Source data primary this is results Interview researcher to parties which considered has known problems which will be discussed.
- b. Data Secondary: is data which is obtained from studying literature that is with collecting data, regulation legislation – invitation as KUHAP, KUHP, Civil Code , books creation scientific and opinion para expert.

2.3 Method Collection Data

For support discussion this required data which was enough as ingredients analysis. So used technique collection data with method: Interview that is para writer stage ask answer with interviewees or party – party which related direct with problem which discussed and Studies Documentation that is para writer take data with learn document – document and files – files which given by party which related.

2.4 Analysis Data

Analysis the primary and secondary data obtained will be processed and analyzed according to the existing problem formulation, so you can get a clear picture. The data analysis used by the author is a data analysis designed to provide a clear and concrete picture to an object which is discussed quantitatively and served by descriptive.

III. Results and Discussion

3.1 Application Restorative Justice on Child which Conflict with Law

Restorative justice is understanding to keep away the process of Justice criminal for children. It can be said that the concept of restorative justice is a legal breakthrough that must and must be used in every case of juvenile delinquency. Restorative justice seeks peace in children's cases and resolves conflicts involving children, thereby instilling responsibility and having a positive impact on children in their lifetime, confronting with law.

Restorative justice alone does not always succeed, because *restorative justice* that alone should be based on a decision from a second split party, good from Whistleblower or reported, and results from decision *restorative justice* there is in Victim which correctly wants to make peace. *Restorative* alone no something must every case which experienced a child, but *restorative justice* prioritize interest child because consider a child which Becomes suspect or victim still under age.

The application of the principles of restorative justice depends on what legal system a country has. Restorative justice cannot be served if the legal system does not want it. Following Application Restorative Justice on case child in Indonesia

- a. Child Criminal Justice System Must Prioritize Approach justice restorative (*Restorative Justice*).
- b. Each diversion decision is a form of restorative justice.
- c. If diversion is unsuccessful or the diversion conditions are not met, the judge seeks a decision to apply a restorative justice approach in accordance with Articles 71 to 82 of the Law of the Republic of Indonesia Number 11 of 2012.
- d. After reading the indictment, the judge actively encourages the child /parents/legal advisors and victims and related parties (prison community advisors, hereinafter referred to as Mr PK, social workers (Peksos), community representatives) to seek peace.
- e. In the case of the peace process, the parties sign a peace agreement, which is then signed by the child and/or his family, the victim and the parties involved (PK's father, social worker, community representative). This includes considering decisions made by judges in the best interests of the child.
- f. If the judge imposes a sentence in the form of a lawsuit, the judge must clearly determine a place or body, with the father of PK, social workers and protection of women and children, hereinafter referred to as UPTD PPA (formerly called P2TP2A).
- g. In Thing perpetrator is child which not yet aged 14 (four mercy) year and face problem law, only could charged action no sentencing which include: return to people old, submission to somebody, care in House sick soul, care in LPKS, obligation follow education formal and or Training and revocation of driving licenses by government or private agencies, and corrections for criminal acts. In the right victim is child (child victim/child witness) clerk must give notes identity (stamp victim/witness child) in file case.

3.2 Shape Accompaniment to Child which Conflict with Law based on Law No. 11/2012 about Justice Criminal Children

The need for laws that specifically regulate children's rights which are face to face with law. Because rights child which face to face with law different case with rights people mature which face to face with law. This is because children have different skill levels from adults. In addition, these problems can affect a child's motivation to commit delinquency. Motivation comes from the Latin word *movere* which means drive or driving force (Purba and Sudibjo, 2020). Consideration should also be given to the level of the child's ability to serve a sentence for the offense. In contrast to the case of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, this Law regulates articles 3 to 4 concerning children's rights, good in process Justice and at the moment, operating criminals.

According to Constitution No. 11 Year 2012 about System Justice Children who commit criminal acts, or children who violate the law, are divided into three (three) groups, namely children who violate the law; children who are victims of criminal acts; and children who are witnesses to criminal acts.

UU no. 11 of 2012 shows that there are various forms of protection for children who violate the law. In here shape protection the shared to four part, that is shape protection which there is during process law in progress that is:

- a. Litigation is process solution dispute through court
- b. Non Litigation through diversion is process solution dispute outside court that is can through process diversion, Diversion is diversion solution case child From the criminal justice process to the process outside the criminal justice process. This means that the settlement of the case is resolved amicably.
- c. Apparatus enforcer law covers the police as investigators, The prosecutor as the prosecutor and the judge as the party who hears and decides the case. In connection with protection to child which face to face law, there is rule alone which different with handling act criminal which done by people mature.
- d. Accompaniment Child which face to face with law No. 11 year 2012 join arrange existence involvement companion Child which face to face with law.

3.3 Shape Accompaniment to Child which Conflict with Law during Process Investigation which Given Polrestabes Medan

Until the enactment of Law Number 23 concerning Child Protection in 2002, problem children were basically classified in term mischief child, which refers to on Constitution Number 3 Year 1997 about Court Child. After the enactment of the Child Protection Act, the term was changed to "child in confrontation" with Law (ABH), and this Constitution Number 11 Year 2012 about system Justice Child even uses the term child which confronts law.

Factors that cause children to commit criminal acts, plunge them into criminal cases and ultimately have to deal with the law, include lack of parental attention, circumstances that really require children to fulfill their needs, even to find identity.

One of the first things an investigator should do is investigate the case before continuing the investigation (Farid & ASTUTI, 2018). If the child offender is under 12 years old and the investigator shows that the child can still be placed in the care of a parent/guardian/caregiver, the Police must then return the child to the Ministry of Social Affairs for temporary placement in a child orphanage. Shelter. Section 21 of the Juvenile Justice System Act regulates the neglected status of social institutions determined by the courts.

According to a description from Mother Fanny, where He is Chairman Invisibility Sat Crime Unit PPA In Polrestabes Medan, moment Interview say that process investigation case child in Unit PPA done by sympathetic and investigation character prioritize interest child. Investigation which done with method restoration on case child because average child which confront status still school, by because that should put forward system restoration Justice, where team investigator involve second split party that is reporter or victim and also party reported or suspect.and team investigator also involve apparatus government which most low that is chipping or head environment and also witnesses other from family. So that system restoration gets results which are good, so that the second split party feels You're welcome fair in the process of solving the problem. In the Constitution System Justice Child, Well to perpetrator or Victim of course should Prioritize restoration, because if child is placed in prison/prison. Things that are not good enough for psychic children. Because of basic construction which is good, that is construction in the family.

IV. Conclusion

Based on the results and discussion, it can be concluded that the research is:

1. Restorative justice emphasizes that children who violate the law will not be punished but must be nurtured and fostered so that they can become better children because restorative justice is about returning to their original state and giving the child what he has for himself the opportunity to be responsible. It's finished.
2. With Law no. Permendiknas Number 11 of 2012 concerning the juvenile criminal justice system which focuses on restorative justice and diversion, emphasizes "recovery" rather than "retaliation", such as the application of adult criminal law.
3. The Head of the PPA Unit Criminal Investigation Unit at the Medan Polrestabes concluded that the process of investigating children's cases at the PPA Unit was carried out sympathetically and the investigation prioritized the interests of the child. Investigations carried out by way of restoration in children's cases because the average child who confronts is still in school. Therefore, it must prioritize the Justice restoration system, where the investigative team involves both parties, namely the complainant or victim and also the reported party or suspect and the investigative team also involves the lowest level of government apparatus, namely the kepling or the head of the environment as well as other witnesses from the family.

Suggestions

Based on the results of research that have been researched previously, the suggestions given are:

1. In the application or concept of restorative justice in dealing with juvenile delinquency, greater or special attention should be given to law enforcement. so that restorative justice can handle children who are confronted with the law by providing legal knowledge in order to create peace.
2. The enactment of this law promises to change the stigma of society that views children as criminals, making people aware that children are still in the process or period of self-development so that they cannot fully explain their behavior and behavior.
3. To the police to continue to pay attention to the interests of children who are in conflict with the law during the investigation process, and to make decisions that are fair but still pay attention to the future of the child.

References

- Abdurrachman, H., Sudewo, F. A., & Permanasari, D. I. (2015). Model Penegakan Hukum Anak yang Berhadapan dengan Hukum dalam Proses Penyidikan. *Pandecta Research Law Journal*, 10(2), 167–179. <https://doi.org/10.15294/pandecta.v10i2.4951>
- Agustina, A., & Riyadi, S. (2020). Penggunaan Rekonstruksi Oleh Penyidik Kepolisian Kaitannya Dengan Penerapan Asas Praduga Tak Bersalah Dalam Kitab Undang-Undang Hukum Acara Pidana (KUHP) (Studi Putusan No: 2390/PID. B/2017/PN. JKT. BRT). *Rechtsregel: Jurnal Ilmu Hukum*, 3(2), 226–236. <https://doi.org/10.32493/rjih.v3i2.8089>
- Farid, M., & ASTUTI, P. (2018). Proses Penegakan Hukum Tindak Pidana Penjualan Obat Penggugur Kandungan Secara Ilegal (Studi Kasus Di Kepolisian Resort Kota Sidoarjo). *Novum: Jurnal Hukum*, 5(4). <https://doi.org/10.2674/novum.v5i4.27000>
- Harjo, B. (2017). *Persepsi Masyarakat Pedagang Kaki Lima (PKL) Mengenai Tugas dan Fungsi Satuan Polisi Pamong Praja Dalam Menjalankan Fungsi Ketertarikan dan ketertiban Masyarakat di Kabupaten Pesawaran*. IAIN RADEN INTAN LAMPUNG.
- Mohamad, I. A. (2018). *Perlakuan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana dalam Proses Penyidikan di Polrestaes Semarang*. Universitas Wahid Hasyim Semarang.
- Perangin-Angin, B. S. (2019). *Tinjauan Hukum Terhadap Orangtua Yang Melakukan Tindak Pidana Pencurian Mengikut Sertakan Anak di Bawah Umur*. UNIVERSITAS DHARMAWANGSA.
- Purba, K., Sudibjo, K. (2020). The Effects Analysis of Transformational Leadership, Work Motivation and Compensation on Employee Performance in PT. Sago Nauli. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* Volume 3, No 3, Page: 1606-1617
- Rehulina, R. (2016). *Menyoal Perusahaan Multinasional sebagai Subjek Hukum Pengembalian Tanggung Jawab Terhadap HAM*. ELSAM.
- Ridwan, M. S. (2015). Perkawinan Di Bawah Umur (Dini). *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*, 2(1), 15–30. <https://doi.org/10.24252/al-qadau.v2i1.2632>
- Rizal, M. C. (2021). *Diktat Hukum Acara Pidana*. Lembaga Studi Hukum Pidana.
- Suadi, I. P. M., Yuliantini, N. P. R., & Ardhyia, S. N. (2021). Tinjauan Yuridis Subyek Hukum Dalam Transaksi Jual Beli Online/E-Commerce Ditinjau Dari Kitab Undang-Undang Hukum Perdata. *Jurnal Komunitas Yustisia*, 4(2), 668–681. <https://doi.org/10.23887/jatayu.v4i2.38164>