



Implementation of the Restorative Justice Paradigm in Juvenile Judges' Decisions Based on the Indonesian Juvenile Justice System

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Abstract. At every stage in the Indonesian juvenile criminal justice system, it is mandatory to prioritize a restorative justice approach. Therefore, it is the duty of *juvenile* judges to seek restorative justice decision-making. This paper aims to find the construction of the restorative justice paradigm in juvenile judge decisions. In addition, it aims to determine the implementation of restorative justice rulings in the practice of juvenile trials. The research method examines the concept of restorative justice with the judge's decision as the object of study, *especially* in the paradigm of judges in ruling. In discussing this issue using a *normative* juridical approach. The data studied are secondary data consisting of primary legal material and secondary *legal* material as well as tertiary legal material. Legal materials are systematically identified, classified and collected. The existing legal materials are then analyzed with qualitative, argumentative, and normative analytical techniques to answer the formulation of the problem in this study. The results showed that the construction of restorative justice rulings, namely rulings that prioritize recovery or improvement for parties to the conflict, namely perpetrators, victims, and the community. Therefore, the construction of restorative justice in the decision of the juvenile judge, namely a decision in the form of: Peace with or without compensation to the victim; Medical and psychosocial rehabilitation; Hand over back to parent/Guardian; Participation in education or training in educational institutions or Social Welfare Institutions; and Community service. Factors inhibiting the implementation of the restorative justice paradigm in juvenile judges' decisions, namely legal structure factors, legal substance and legal cultural factors.

Keywords: Implementation; Juvenile Judge's Verdict; Restorative Justice Paradigm.

1. Introduction

Juvenile crime every year is always increasing, therefore, various efforts for the prevention and control of criminal acts. One of the efforts to prevent and overcome criminal acts is currently carried out through a separate justice system that is separate from the general judiciary, namely the juvenile criminal justice system.

The purpose of implementing the juvenile justice system is not solely aimed at imposing criminal sanctions for children perpetrating criminal acts, but also focused

on the premise that the imposition of these sanctions is a means of supporting the welfare and interests of children perpetrators of criminal acts.[1]

Currently in efforts to overcome and resolve child cases in Indonesia based on Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (*Undang-Undang Sistem Peradilan Pidana Anak / UUSPPA*). Based on the *UUSPPA*, there is a renewal of the Indonesian Criminal Law is a regulation of criminal law in the perspective and achievement of justice to improve and restore the situation after events and criminal justice processes known as restorative justice.

The Restorative Justice approach, is the resolution of criminal cases by emphasizing restoration to the original situation, and not retribution. The spirit built in restorative justice is to seek solutions, repair, peace, and rebuild relationships. [2]

Restorative justice is considered to have advantages compared to retributive justice, namely: (a) Taking into account the rights of all elements of perpetrators, victims, and society. (b) Attempt to repair existing damage or loss as a result of the criminal act that occurred. (c) Hold the perpetrator directly accountable as a whole so that the victim gets what should be rightfully his. (d) Prevent the occurrence of subsequent criminal offences. [3]

Based on Article 1 point 6 of the *UUSPPA*, what is meant by Restorative Justice is the resolution 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 the original situation, and not retribution.

Furthermore, it is stipulated in the *UUSPPA*, that the resolution of children's cases, with this restorative justice approach, must be pursued at every stage of case resolution, the stage of investigation and prosecution as well as the stage of juvenile trial.

The application of restorative justice at the investigation stage resolves with restorative justice based on the Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. At the prosecution stage, the prosecution conducts a restorative justice settlement based on Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

Furthermore, at the court stage, judges apply restorative justice with the provisions of the Supreme Court through the Decree of the Director General of the General Court Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Application of Restorative Justice in the General Court Environment.

Based on the Decree of the Director General of the General Judiciary Number 1691/DJU/SK/PS.00/12/2020, providing instructions, if the resolution of a child's case with diversion is unsuccessful or does not meet the requirements for diversion, it is

ordered that the judge proactively encourage the child/parent/legal counsel and victims and related parties to seek peace.

It is further determined based on the decree that in the event that the case does not meet the requirements of diversion, the judge seeks a decision with a restorative justice approach based on Articles 71 to 82 of the *UUSPPA*.

The provisions of Article 71 of the *UUSPPA* regulate the types of criminal sanctions, and Article 82 of the Law regulates the types of sanctions imposed on children. Criminal Sanctions consist of the main criminal and additional crimes. The main types of Criminal sanctions consist of: (a) Warning; (b) Criminal parole; (c) Job training; (d) Coaching within the institution; and (e) Prison. Additional criminal sanctions consist of: (a) Deprivation of profits obtained from criminal acts; (b) Fulfillment of customary obligations.

Sanctions Actions on children in the form of: (a) Return to parents/guardians; (b) Surrender to a person; (c) Treatment in a mental hospital; (d) Care in Social Welfare Institutions; (e) Obligation to attend formal education and/or training held by the government or private entities; (f) Revocation of driver's license; and/or (g) Reparations due to criminal offences.

As mentioned earlier, the settlement of criminal cases with a restorative justive approach, is a form of fair settlement by emphasizing restoration to its original state, and not retribution. With the guidance of the Decree of the Director General of the General Court Agency Number 1691 / DJU / SK / PS.00 / 12/2020, namely that the judge seeks a decision with a restorative justice approach based on Articles 71 to Article 82 of the *UUSPPA*. It is necessary to examine the construction of criminal sanctions or action sanctions specified in the *UUSPPA*, as decisions that can meet the criteria for decisions with aspects of restorative justice. The aspect of restorative justice is a judge's decision that emphasizes the aspect of restoring back to its original state, and is a decision not retribution.

The discussion of restorative justice in juvenile judges' rulings does not seem to exist. Rena Yulia writes about restorative justice, namely: Application of Restorative Justice in Judges' Decisions: Efforts to Resolve Conflicts through the Criminal Justice System Review of Supreme Court Decision Number 653/K/PID/2011" [4]. Hanafi Arief and Ningrum Ambarsari wrote about restorative justice in the criminal justice system, namely: "Application of Restorative Justice Principles in the Criminal Justice System in Indonesia"[5]. In addition, Diah Ratna Sari Hariyanto and Dewa Gede Pradnya Yustiawan wrote: "Restorative Justice Paradigm in Judges' Decisions".[6]

Furthermore, in the latest writing by Subarsyah and Willya Achmad who wrote restorative justice in the juvenile criminal justice system, namely: "Restorative Justice in The Juvenile Justice System Against Juvenile Delinquency".[7]. All of that has not discussed restorative justice in juvenile judge decisions, but rather discusses restorative justice in the criminal justice system in general.

The purpose of this study is to determine the construction of restorative justice-based judges' decisions as determined by *UUSPPA*, and to determine the extent of their implementation in juvenile judges' decisions in the practice of resolving children's cases. The results of this study can be a direction for juvenile judges in implementing or handing down decisions with aspects of restorative justice in the trial of children's cases.

2. Problems

- a. How is the construction of the restorative justice paradigm in juvenile judge decisions?
- b. What is the implementation of the restorative justice paradigm in juvenile judges' decisions in the practice of solving children's?

3. Research Method

This study examines the concept of restorative justice in statutory provisions and judges' decisions, and examines the opinions of juvenile judges in deciding children's cases. So this research is qualitative research with an empirical juridical approach. The empirical juridical approach means seeing aspects of law as norms (*das sollen*) and seeing law as aspects of social reality (*das sein*). Thus, this study analyzes the problems that have been formulated by combining legal materials as secondary data, with primary data in *lapangan*. [8]

The research locations are judges in 5 (five) district courts in Central Java: Banjarnegara; Purbalingga; Banyumas, Purwokerto and Cilacap. The data studied are primary and secondary data. Primary data are obtained from the opinions of juvenile judges with interviews to obtain answers relevant to the research problem. Secondary data obtained by document studies consist of primary legal materials, secondary legal materials and tertiary legal materials. Secondary data consist of: laws and judges' decisions, doctrine in literature books, and journals related to research themes and from the internet. Legal materials are collected and identified, classified, systematically compiled. Legal materials from research are analyzed with qualitative analysis techniques.

Qualitative data analysis is in the form of organizing data, sorting into manageable units, combining them, finding patterns, finding substantial ones, then deciding what can be told to others. The analysis in this case, is to provide explanations and arguments about the paradigm of restorative justice contained in the decision of the juvenile judge.

4. Discussion

4.1. Restorative Justice in Juvenile Justice

The concept of restorative justice is a theory about solving cases by emphasizing the recovery of losses and relationships damaged by criminal acts. Recovering losses and damaged relationships will be achieved with a cooperative process of interested parties (stakeholders). [9]

The concept of restorative justice is also in accordance with the laws that live in Indonesian society or known as customary law in various regions in Indonesia. Restorative justice has become a part of people's lives, through deliberation based on local wisdom values. [10]

Solving children's cases with a restorative justice approach, with the intention that children who are in conflict with the law can realize their mistakes, obtain protection and fulfillment of their rights. In addition, the resolution of children's cases with a restorative justice approach so that there are efforts to restore the situation as before as a result of criminal acts to the victim, and restore relationships that have been damaged.

One of the benefits of restorative justice programs is that they can help address underlying issues that may contribute to criminal behavior, such as substance abuse, health problems mental illness and trauma. By providing offenders with access to support services and resources, restorative justice programs can help address these issues and help offenders make positive changes in their lives. [11]

Gordon Bazemore, stated that the characteristics in the juvenile criminal justice system with a restorative paradigm, seen from aspects related to the purpose of imposing sanctions, rehabilitation of offenders, and aspects of community protection. [12]

- a. The purpose of imposing sanctions.

The purpose of imposing sanctions is for the restoration of the victim, victim satisfaction and compensation. To fulfill this goal, the forms of sanctions are: restitution, mediation of the perpetrator of the victim, direct service to the victim or restorative fines, as well as community restoration.

- b. Rehabilitation of Perpetrators.

The community has an active responsibility to support the implementation of restoration. Rehabilitation of perpetrators is carried out by learning by doing, counseling and therapy that motivates the active involvement of the parties.

- c. Community protection.

Restorative justice requires collaboration with communities to develop prevention. The community actively supports the implementation of restoration. People feel safe and trust the role of the juvenile justice system, to prevent crime, social bonding and reintegration increases.

Helen Cowie and Dawn Jeniffer, show the main aspects of restorative justice: Repair, rapprochement, and reintegration.

- a. Repair. In this case the resolution of the case is not about gaining victory or accepting defeat, accusation or revenge, but about justice;
- b. Rapprochement. Case resolution is not punitive in nature where the perpetrator bears responsibility for mistakes and corrects in various ways, but there is a communication process between the victim and the perpetrator to change the way they relate to each other;
- c. Reintegration. The purpose of reintegration activities is for them to learn about the consequences of violence and criminality and understand the impact of their behavior on others. [13]

Thus, the characteristics of the juvenile criminal justice system with a restorative paradigm, namely with indicators of achieving the objectives of imposing sanctions are achieved by looking at whether the victim has been restored, victim satisfaction, the amount of compensation, the perpetrator's awareness of his actions, the number of improvement agreements made, the quality of work services and the overall process that occurs. [1]

Muladi said that in restorative justice, the victim is taken into account for his dignity. Actors must be held accountable and reintegrated in their communities. Perpetrators and victims are equal and need each other therefore must be reconciled. [9]

Restorative justice is no longer in the interest of order, but in the interest of victims and their material and psychological restoration. Sanctions against children through juvenile justice, in which there is an integration of interests, namely the integration of perpetrators into society, and other parties for the development of the ability and responsibility of perpetrators meaningfully to their victims and communities.[12]

The Restorative justice paradigm shifts the conventional view of criminal acts, namely from criminal acts as violations of norms that cause harm, to individuals affected by criminal acts. Thus, the purpose of punishment as a nestapa, turns to the repair of losses. Recovery is a major component of the restorative justice paradigm, so restorative justice prioritizes reconciliation over retaliation.

The application of restorative justice, as part of the implementation of human rights in the resolution of criminal cases, is based on a number of policies, namely: first, criticizing the criminal justice system for not providing special opportunities for victims (the criminal justice system disempowers the individual); second, eliminating conflict, especially between the perpetrator and the victim and the community (taking the conflict away from them); Third, the fact that the feeling of helplessness experienced as a result of the offense must be overcome in order to receive compensation [14]

Based on the *UUSPPA* as a pathokan for the implementation of the juvenile criminal justice system in Indonesia, it has determined what is meant by the

settlement of children's cases with a restorative justive approach, namely 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 the original situation, and not retribution.

4.2. Construction of Restorative Justice Verdicts

The main purpose of restorative justice is to empower the victim, so that the perpetrator is encouraged to pay attention to recovery. Restorative justice is concerned with meeting the material, emotional and social needs of the victim. The success of restorative justice is not measured by how much harm the perpetrator has recovered, it is not measured by the severity of the crime imposed by the judge.

Kent Roach stated that restorative justice not only provides an alternative to prosecution and imprisonment but also holds perpetrators accountable. That is what distinguishes restorative justice from conventional criminal justice.[12]

Restorative justice can not only be in the form of out-of-court settlements such as diversion, penal mediation, and others, but can be a paradigm for judges in trying a case in order to achieve justice for all parties. Restorative justice can be the justice that underlies a judge's judgment in deciding so that court decisions reflect restorative justice that provides justice for all parties (victims, perpetrators, and the community). [6]

The process of restorative justice in children requires special attention because there are very important factors to pay attention to. The active role of communities, perpetrators and victims of crime, including affected communities, is very important in the process of restorative justice. A balanced approach should also be taken by applying responsibility-based sanctions to compensate a result of criminal acts; second, rehabilitation and reintegration of offenders; and third, strengthen the security and safety system of the community [15]

The paradigm of judges in deciding a case becomes very decisive in creating an ideal court decision. The role of a judge in this matter is certainly very important in creating judges' decisions that contain restorative justice. For this reason, a construction or model of judges' decisions with the paradigm of restorative justice is needed as an illustration and guide in the future.

Judges in this context have freedom and independence so that judges become strategic parties in realizing progressive and responsive laws in every decision. [6]

Based on the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules, UN General Assembly Resolution 45/110 of December 14, 1990), Non-Deprivation of Independence measures have been determined. These Non-Deprivation of Independence measures will encourage greater community involvement in criminal law management and encourage criminal offenders to have a sense of responsibility towards society (*as well as to promote among offenders a sense of responsibility toward society*).

The judge's decision that fulfills this will, in the form of a decision that considers the interests of the perpetrator's development, community protection and the interests of the victim, namely:

- a. Verbal sanctions such as advice, reprimands, and threats;
- b. Criminal parole;
- c. Economic sanctions and fines;
- d. onfiscation; Indemnity or compensation for victims;
- e. Suspension or postponement;
- f. Criminal probation and supervision;
- g. Social work;
- h. Must report/come;
- i. House arrest;
- j. Various types of non-institutional crimes; and
- k. Combination of the above types of criminal. [1]

Based on an assessment by the National Legal Development Agency on the application of restorative justice in solving juvenile crimes, states that to meet the demands of the restorative justice paradigm in juvenile justice, the forms of juvenile justice sanctions, in the form of:[16]

- a. Restitution;
- b. Perpetrator and victim mediation;
- c. Casualty services;
- d. Community restoration;
- e. Direct service to victims; or
- f. Restorative fines.

The settlement of cases with diversion regulated in the *UUSPPA*, is carried out with a restorative justice approach, because it is carried out through deliberation involving children and their parents/guardians, victims and/or parents/guardians, Community Advisors, and Professional Social Workers. Therefore, the result of the diversion agreement can be referred to as an agreement with aspects of restorative justice The forms of agreement with aspects of restorative justice are:

- a. Peace with or without compensation to the victim;
- b. Medical and psychosocial rehabilitation;
- c. Handover back to parent/Guardian;
- d. Participation in education or training in educational institutions or Social Welfare Institutions; and

e. Community service.

The forms of diversion agreements, can be said to be agreements or rulings with aspects of restorative justice. Realization of these forms of agreement, as a useful means for the benefit of victim recovery and rehabilitation of perpetrators, counseling, therapy and to motivate active involvement of parties in the process of reintegration of perpetrators and victims.

The form of the decision for the Non-Deprivation of Independence Act based on The Tokyo Rules and the form of the decision according to the study of the National Legal Development Agency, as well as the forms of the results of the diversion agreement, according to the author are the construction of restorative justice rulings in juvenile justice. In the ruling, there are elements or aspects of improvement, rapprochement, and aspects of reintegration, as well as aspects of the need to support community protection.

4.3. Implementation of Restorative Justice Verdicts

Every stage of examination of juvenile cases in the juvenile criminal justice system must prioritize resolution with a restorative justice approach. Currently, the settlement of juvenile cases in the juvenile criminal justice system in Indonesia, consists of settlements beyond formal examination (diversion) and formal examinations in the criminal justice process starting from investigation, prosecution and trial of juvenile cases. Therefore, settlement by diversion or formal settlement through juvenile trial, must be pursued with a settlement with a restorative justice approach.

Based on the results of research conducted on the decisions of juvenile judges for the period 2020 - 2022, at 5 (five) district court locations (Banjarnegara District Court, Purbalingga, Banyumas, Purwokerto and Cilacap District Court) it appears that the most prison sentences were imposed by judges. The complete condition of the child case and the decision of the child judge from the research at the research location are known as follows.[17]

Table 1: Number and Types of Juvenile Crimes

No.	Types of Juvenile Crimes	Number of cases	Prosentase (%)
1	Sexual Violence with Children	47	39
2	Narkotika	11	8
3	Theft	39	20
4	Pornogravie	2	2
5	Child fornication	15	11
6	Physical violence	16	12
7	Carrying a Sharp Twilight	7	6
8	Circulating counterfeit money	1	1
9	Hiding death	1	1
	Number	139	100 %

It appears that the predominant juvenile crimes committed by children and decided in court are: sexual violence with children; Theft; Physical violence; and lewd acts and drug abuse.

The conditions of the judge's decision on the child case are as follows. [17]

Table 2. *Number of Child Cases and Form of Judge's Decision*

No	Form of Judge's Decision	Number of case	Presentase (%)
1	Imprisonment	105	76
2	Treatment of parental return	9	6
3	Coaching in educational institutions	15	11
4	Diversion	10	7
	Number	139	100%

Based on the table, it appears that imprisonment still dominates as the most frequent crime imposed on children, namely 105 cases (76%), while those that are resolved by action sanctions (Parental re-action; Coaching in educational institutions; and diversion) only 34 cases (24%). Thus, the implementation of restorative justice in the practice of juvenile judges' rulings is still far from the hopes and desires of *UUSPPA*.

To determine the obstacles to the implementation of restorative justice in the juvenile criminal justice process, refer to the theory of legal work from Lawrence M. Friedman. Lawrence M. Friedman in his book entitled *The Legal System: A Social Science Perspective*, states that the legal workings of the legal system, involve three components, namely the components of legal legal substance (legal substance), and legal culture (legal culture). A legal sistem in cctual operation is complex organism in which structure, substance, and culture interact. [18]

The working of the legal system is influenced by the components of legal structure, substance, and culture, as follows:

a. Legal structure component

The structural component (legal structure) of a legal system includes various institutions created by the legal system with various functions in supporting the work of the system. In this case, law enforcement officials, especially judges, do not have the same views regarding the application of the Decree of the Director General of the General Court Agency No. 1691/DJU/SK/PS. 00/12/2020 which is a derivative regulation from Article 5 paragraph (1) of Law No. 11 of 2012.

b. Legal substance component.

Based on the results of the research obtained, there are inconsistencies on the part of law enforcement officials, especially juvenile judges in solving cases involving children, some are guided by *Peraturan Mahkamah Agung (PERMA)* and some are only guided by *UUSPPA*. *PERMA* Number 4 of 2014 must be applied by judges in handling diversion cases, but in fact *PERMA* has

not been applied optimally and maximally by juvenile judges in enforcing diversion law for diversion cases for diversion cases, because of the many different interpretations.

The Decree of the Director General of the General Court Agency No. 1691/DJU/SK/PS. 00/12/2020 in which it is regulated regarding restorative justice in children's cases also in its implementation still causes various debates by district court judges, especially judges who handle juvenile criminal cases.

This is because the form of the regulation is still in the form of a decree of the Decree of the Director General of the General Judicial Institution, and not in the form of a law or Supreme Court Regulation.

Another legal substance factor that hinders, namely the provision of the imposition of Treatment sanctions, only on cases of children who are threatened with imprisonment under 7 (seven) years as stipulated in Article 82 paragraph (3) of the *UUSPPA*.

c. Legal culture component

Legal culture is defined by Friedman as..."attitudes and values that are related to law and legal system, together with those attitudes and values effecting behavior related to law and its institutions, either positively or negatively.

That is, attitudes and values that have to do with the law or legal system, along with attitudes and values that influence behavior related to law and legal institutions, both positive and negative. Legal culture as part of the legal system requires law to be seen only as a formulation of rules on paper, but also understood as a social reality that occurs in society.[19]

In terms of social factors, the paradox is that society still considers the application of severe punishment as a price to be paid for perpetrators of crimes, both adults and children. Prison is considered an ideal place to prevent children from committing crimes. Peace efforts and kinship settlements carried out by law enforcement officials often receive negative responses from the community because of the criminal punishment model inherent in society.

Based on the research, obstacles were found in terms of legal culture components as follows:

- a. Legal culture factors on the part of victims and victims' families are related to understanding restorative justice. Currently, the understanding of justice by victims is the provision of appropriate punishment for children who are in conflict with the law with imprisonment or other criminal punishments.
- b. Factors of the legal culture of society. Society still believes that children who have committed criminal acts are naughty and evil children who are difficult to repair. This makes it difficult for the community to accept children who have committed criminal acts to return to the community. Society in general considers that recovery for victims is considered unequal and there is no deterrent effect for children who commit crimes. The community also has

concerns about children in conflict with the law that returning to their environment will have its own effects or threats to other children so that restorative justice in handling child criminal cases is considered not to have a deterrent effect on child perpetrators.

- c. Law enforcement culture factors. There are many cases of children sentenced to prison by judges today, because law enforcement is still dominant in adhering to juridical provisions alone. Law enforcers are of the view that Restorative justice is enforced through diversion programs only. For cases that do not meet the diversion, will not be examined in restorative justice, and sentenced to imprisonment in accordance with the threat according to the crime concerned.

5. Conclusion

Construction of restorative justice decisions in the juvenile criminal justice system, namely decisions in the form of: (a) Peace with or without compensation to the victim; (b) Medical and psychosocial rehabilitation; (c) Handover back to parent/Guardian; (d) Participation in education or training in educational institutions or Social Welfare Institutions; and (e) Community service. The implementation of restorative justice rulings in the juvenile criminal justice system based on the *USPPA* has not been effective, because it is hampered by legal structure factors, legal substance and legal cultural factors.

Legal culture of Law enforcement and society need to be changed, from retributive justice to restorative justice. It is necessary to change the formulation of the conditions for the imposition of sanctions for the Treatment, which is not limited to child crimes that are threatened with imprisonment under 7 (seven) years.

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