

The Process Of Settlement Of Drug Crime Cases With Child Perpetrators Through A Restorative Justice Approach At The Semarang Police Station

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Abstract.

Child protection is any activity that guarantees and protects children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and protection from violence and discrimination. Children who violate the law are strongly influenced by several factors outside of the child because criminal acts committed by children are generally a process of imitating or being influenced by negative actions from adults or people around them. The application of criminal punishment can not fully educate children to be better, but can worsen conditions and can increase the level of child crime. Protection of children in conflict with the law is very necessary, considering that children who are dealing with the law are in situations and conditions beyond their mental and psychological abilities and are in the process of being examined at the investigation stage. Law Number 11 of 2012 concerning the Criminal Justice System for Children, has included a concept in the settlement of juvenile criminal cases, namely the concept of Restorative Justice. This concept is carried out in the settlement of criminal acts by involving the perpetrator, the victim, the family of the perpetrator / victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation. considering that children who are dealing with the law are in situations and conditions beyond their mental and psychological abilities and are in the process of being examined at the investigation stage. Law Number 11 of 2012 concerning the Criminal Justice System for Children, has included a concept in the settlement of juvenile criminal cases, namely the concept of Restorative Justice. This concept is carried out in the settlement of criminal acts by involving the perpetrator, the victim, the family of the perpetrator / victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation. has included a concept in the settlement of juvenile criminal cases, namely the concept of Restorative Justice. This concept is carried out in the settlement of criminal acts by involving the perpetrator, the victim, the family of the perpetrator / victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation. has included a concept in the settlement of juvenile criminal cases, namely the concept of Restorative Justice. This concept is carried out in the settlement of criminal acts by involving the perpetrator, the victim, the family of the perpetrator / victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation.

Keywords: Restorative Justice, Perpetrators.

I. INTRODUCTION

Children are a mandate as well as a gift from God Almighty that we must always protect, because in children there is inherent dignity, dignity, and rights as human beings that must be upheld and protected. Children are also buds, potentials, and the younger generation who will succeed the ideals of the nation's struggle, which has a strategic role and has special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future.¹ Child protection is all activities that guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and protection from violence and discrimination. This is felt to be a common interest, because after all it is in the hands of the children that the progress of a nation will be determined. Every child has the right to survive, grow and develop, participate and has the right to protection from acts of violence and discrimination as well as civil rights and freedoms. All of these protections are an integral part of the concept of children's rights. Children as perpetrators of criminal acts are called delinquent children or in criminal law it is said to be juvenile delinquency. Romli Atmasasmita argues that juvenile delinquency is any act or behavior of a child under the age of 18 and unmarried which is a violation of applicable legal

norms and can endanger the child's personal development.² Protection of children in conflict with the law is very necessary, considering that children who are in conflict with the law are in situations and conditions beyond their mental and psychological abilities and are in the process of being examined at the investigation stage. Investigators only look at the interests of the legal process without paying attention to the interests and welfare of the child. Handling criminal cases against children should be different from handling cases against adults. Handling of children in conflict with the law is special because it is regulated in special regulations. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System has included a concept in the settlement of juvenile criminal cases, namely the concept of Restorative Justice. This concept is carried out in the settlement of criminal acts by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation.

Restorative justice is an approach in the process of examining criminal cases by emphasizing the direct participation of perpetrators, victims and the community, who are trying to find a solution that is considered fair for all parties through the settlement of cases outside the criminal justice system. According to Article 5 paragraph 1 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that "The Juvenile Criminal Justice System must prioritize the Restorative Justice approach." This confirms that in cases of children in conflict with the law, it is obligatory to prioritize a restorative justice approach. Article 5 paragraph 2 Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states "In the Juvenile Criminal Justice System as referred to in paragraph (2) letters a and b, diversion must be sought." The explanation for diversion is contained in Article 1 number 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely "Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system."

Restorative justice emphasizes that children in conflict with the law are not to be punished but must be guided and nurtured so that they can become better children, because the main purpose of restorative justice is to restore or return to their original condition and provide opportunities for children to be responsible for what they have done. To implement restorative justice, it is necessary to have a policy from the police as law enforcers to use discretionary authority in assessing whether an incoming child case can be continued or stopped. Several legal cases involving children are often suspected of not getting justice by the law through unscrupulous officials. This situation developed into a byword in the community. One of them is the AAL case, only because it was deemed to have stolen a pair of flip-flops in Palu, Central Sulawesi, he had to undergo a trial in court. In addition, the case of the death of a 17-year-old and 14-year-old brother and sister at the Sijunjung police station in West Sumatra, after their bodies were covered with wounds and bruises during examination. A similar case also occurred in East Java, HDF died in Tulungagung Prison, East Java, he died because he was beaten by fellow prisoners.³ In addition to the cases above, it is suspected that there are still many cases involving children that should be resolved through out-of-court methods with a restorative justice approach, but due to the normativeness of law enforcement officers, many cases involving children are still brought to court, even not a few of them should be imprisoned.

The police in dealing with children as perpetrators of criminal acts must always pay attention to the conditions of children who are different from adults. Handling with a restorative justice approach must be done with the reason to provide an opportunity for lawbreakers to become good people again through non-formal channels by involving community resources, as well as trying to provide justice for cases of children who have already committed crimes to law enforcement officers. Based on the explanation above, the researchers took the title of the thesis research "The Process of Settlement of Drug Crime Cases with Child Perpetrators Through a Restorative Justice Approach at Polrestabes Semarang".

Formulation Of The Problem

1. How is the process of resolving drug crime cases with child perpetrators through a restorative justice approach at the Semarang Police Station?
2. What are the obstacles faced in the process of resolving drug crime cases with child perpetrators through a restorative justice approach at the Semarang Police Station and how to overcome them?

II. DISCUSSION

1) The Process of Settlement of Drug Crime Cases with Child Perpetrators Through a Restorative Justice Approach at the Semarang Police Station

Based on Article 1 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, what is meant by children in conflict with the law are children in conflict with the law, children who are victims of criminal acts, and witnesses of criminal acts. According to Article 1 paragraph 3 of Law Number 2012 concerning the Juvenile Criminal Justice System (SPPA), it is stated that children in conflict with the law are children who have reached the age of 12 (twelve) years but have not yet reached the age of 18 (eighteen) years.

The things that must be considered in the process of handling children in conflict with the law are:

1. Investigation Process

The investigation of the child must be in a family atmosphere as regulated in Article 27 paragraphs (1), (2) and (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Investigators must seek diversion no later than 7 (seven) days after the investigation begins, this provision is in accordance with the SPPA Law. Diversion is attempted solely to prioritize the best interests of the child so that the child will live a life later without any trauma due to the judicial process. The SPPA Law also regulates criminal provisions for investigators who do not carry out their obligations, namely seeking diversion. If there are investigators who deliberately do not carry out these obligations, they will be threatened with imprisonment for a maximum of 2 years.

2. Arrest

Technique interview conducted by a police officer against a child offender first informs the child's parents or guardian immediately before the interview begins, then the police also informs that the child has the right to get legal assistance from a lawyer or advocate. The police also inform children and their parents or guardians about the importance of children being accompanied by competent legal counsel and social workers, and how to access such assistance. Next the police in examining children, treat children with consideration of limited ability or verbal compared to adults and even compared to the police themselves. The wrong action against the child creates a sense of trauma to the child in the future. Therefore, the police in conducting an examination seek to create a friendly atmosphere between the investigator who is interviewing and the child being examined. The police institution is the first state institution to intervene against children in conflict with the law. Arrest, detention, investigation, and investigation are the authority of the police to enforce the juvenile criminal justice system. In carrying out their duties, the police are given discretionary power.

Discretionary authority is a legal authority where the police have the right to continue or not to proceed with a case. Based on this authority, the police can divert (diversion) a child's case so that the child does not have to deal with a formal criminal court settlement. Diversion meetings are held by involving children (children in conflict with the law) and their parents/guardians, victims and their parents/guardians, community counselors, and professional social workers. The diversion meeting opens the possibility to bring other parties if needed. Other parties who can be presented at the diversion meeting according to Article 8 paragraph (2) of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System are social and/or community welfare workers. The diversion deliberation that has obtained approval to carry out the diversion shall be included in the diversion agreement. The diversion agreement that has been prepared is then processed in accordance with the provisions of Article 12 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System.

2) Constraints Faced in the Process of Settlement of Drug Crime Cases with Child Perpetrators Through a Restorative Justice Approach at the Semarang Police Station and How to Overcome Them.

a. Obstacles Faced

The factors that hinder the police at Polrestabes Semarang in resolving criminal cases of minors are as follows:

1. Limited time

One obstacle to the implementation of diversion is the lack of time provided by law for law enforcement officers to seek diversion. Because the law only provides a maximum limit of 30 (thirty) days. For us in the Banyumanik area, some locations are still very far from the Polsek so it takes more time. Moreover, summoning witnesses and victims is also quite difficult, because they are not necessarily present at the appointed time. Sometimes it's too late and that's a big obstacle for the police.

2. ApparatusenforcerRetributive Law

Law enforcement officers who play a role in it are the police, prosecutors, and judges, if they are still thinking retributive (punishment), will be an obstacle in the application of restorative justice and diversion. Because law enforcement officers in charge of criminal cases of children must prioritize the rights of protection for children.

3. Attitude Perpetratorand the Perpetrator

In the case of criminal acts committed by children, there are various attitudes from children who sometimes feel innocent and think that the case they are doing is a light matter, and also the attitude of the parents of the perpetrators who are still irresponsible in accordance with the results of the diversion agreement that has been made. where usually the perpetrator does not compensate in accordance with the stipulated time.

4. AmountApparatus

The problem of the number of personnel is also an internal constraint. personnel in the PPA unit the number of police commissioners is limited. To become a police commissioner, certain qualifications are required and not all investigators can become police commissioners. With so many other tasks, the limited number of personnel sometimes becomes an obstacle because one personnel must solve many problems at once.

5. Community views on diversion and restorative justice

6. The public still has the view that all criminal cases must be resolved through the courts because of this view they assume that only judges have the most appropriate decisions in every settlement of criminal cases. Victims/families of victims who attend the diversion meeting who hear regrets and apologies from the side of children in conflict with the law do not always accept remorse and forgive children in conflict with the law

b. Efforts made in Resolving Obstacles

Effortcarried out by the police at Polrestabes Semarang in overcoming the obstacles faced are as follows:

1) Improving human resources

The improvement of human resources in the application of restorative justice is aimed at improving the quality of law enforcement officers who handle child criminal cases with the improvement of the quality of human resources. there is a process of examination, arrest and investigation using retributive behavior. In addition to improving the quality of the apparatus, the number of officers can be increased again because the addition of the number of officers is expected to optimize the work of law enforcement officers in solving juvenile criminal cases.

2) Provide child-friendly facilities and infrastructure

Children in conflict with the law should not be treated equally with adults, the facilities and infrastructure provided must also be adapted to the perpetrator, where if the perpetrator is a child then child-friendly facilities and infrastructure must be provided so that children in conflict with the law do not feel pressured and afraid in carrying out every process in the settlement of criminal cases of children.

3) Instilling an understanding of diversion and restorative justice

By providing complete understanding and clarity regarding diversion and restorative justice, it is hoped that the views of parents whose children are in conflict with the law on the settlement of criminal cases can not only be resolved by court but can be resolved by diversion. -people who are dealing with the law but it can also be done by providing socialization.

4) Deal and Indemnity at the same time

5) There are obstacles where the perpetrators do not carry out their responsibilities as agreed in the diversion agreement, the police at the Semarang Polrestabes make efforts where in the diversion agreement, the perpetrators must also make compensation in accordance with what was agreed simultaneously. This effort is made so that there are no more perpetrators who break their promises regarding the agreement

III. CONCLUSION AND SUGGESTION

Conclusion

a. The implementation of restorative justice through diversion in the Semarang Polrestabes Legal Area has begun to be implemented by adhering to the guidelines of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which replaces Law no. 3 of 1997 concerning Juvenile Court which was carried out with the aim of realizing a court that truly guarantees the protection of the best interests of children who are in conflict with the law as the nation's successor.

b. There are several obstacles faced in the process of resolving child criminal cases by investigators with restorative justice, namely the quality of the apparatus and the number of law enforcement officers where usually there are still retributive officers in resolving child criminal cases and the number of officers in handling child cases is still quite low. because it takes special skills in dealing with a child in conflict with the law, facilities and infrastructure are also an obstacle where the lack of child-friendly facilities and infrastructure

Suggestion

a. It is hoped that all law enforcers who handle criminal cases of children are more concerned with children's rights and do not commit violence against children because it can cause trauma for children who are dealing with the law.

b. Providing socialization to law enforcement officers and the public to better understand and understand the concept of diversion with restorative justice.

c. It is necessary to improve the ability of police personnel by providing special vocational education in the field of child investigation and child psychology, with the aim that if an investigator conducts an investigation of children as perpetrators of a crime, it does not deviate from the rules set by the government.

d. More efficient and effective law enforcement for all types of criminal acts committed by children so that children do not repeat these crimes.

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