

Utilization Of Restorative Justice In The Handling Of Child Crimes From The Perspective Of Utilities Theory

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Abstract

In essence, everyone who commits a crime will face legal consequences, even minors. Although restorative justice policies and procedures for juvenile offenders have been developed, they have not yet been fully put into practice. The truth is that not all police detectives at the regional sector level comprehend how to use restorative justice to resolve juvenile criminal cases. The purpose of this study is to comprehend and evaluate the paradigm of restorative justice for juvenile offenders from a utility theory standpoint. The difficulties in applying restorative justice to juvenile offenders at the police level are also examined in this study. This study is a normative, legal, descriptive, and analytical study. Secondary data were used in this study, and they were gathered by employing library research techniques. A qualitative method is used in data analysis. The study's findings demonstrate that applying restorative justice to kids who break the law is essentially protecting kids from the law itself, with the goal that kids will still be protected even when mistakes are made. The use of restorative justice is a type of legal benefit from the standpoint of legal advantages. The community benefits from the law that has been created by the government, including both those who are criminals and those who are among their victims. In other words, the law is not only created to punish, but also to protect, advance the law, and benefit society. Second, that barriers to the use of restorative justice can be divided into two categories: internal barriers arising from the juvenile offenders and external barriers in the form of community environmental barriers, family barriers, juvenile officer barriers, and juvenile mediator barriers.

Keywords: Restorative justice, Children and Utilities Theory.

I. INTRODUCTION

A juvenile criminal case is one example of a situation where restorative justice may be used to address the conflict. Children who commit crimes are frequently referred to as having legal issues as children. Children who have legal issues or who have committed crimes are not the only ones who are in conflict with the law. Children who are both victims and witnesses of crimes are included in this. The government has a Restorative Justice Policy in place to safeguard kids who are in legal trouble. To establish a just resolution for both the victim and the offender in this situation, the parties meet [1]. According to Law No. 11 of 2012 governing the Juvenile Criminal Justice System (JCJS Law), restorative justice is used to handle instances involving young criminal offenders. The statute stipulates that children of criminal offenders are no longer treated as criminal objects but rather as diversionary targets. Restorative justice is a procedure in which parties impacted by particular crimes come together to solve common problems and to settle the consequences of these violations in the future, according to British criminologist Tony F. Marshall in his article "Restorative Justice and Overview.", [2]. According to information from the Komisi Perlindungan Anak Indonesia (KPAI), 655 kids were involved in criminal proceedings between 2016 and 2020. The two types of violence that occur most frequently are physical and psychological. More in the table that follows:

Table 1. Number of Child Offender Cases

No	Year	Number of cases of child offenders
1	2016	147
2	2017	153
3	2018	139
4	2019	147
5	2020	69

Source: KPAI, 2023

In theory, every youngster who commits a crime will unquestionably face consequences. This complies with Indonesia's internal state regulations as well as the Beijing Rules International Convention. The international community wants authorities in every nation to execute or use even greater caution while continuing legal actions against youngsters [3]. The large number of child criminals listed in police records suggests that officers do not truly understand how to keep kids out of formal court processes so that kids are kept out of detention by court orders, [4]. Before the Juvenile Court Law was passed, children's cases were handled in the same way as adults' cases in the judicial system. Children who are subjected to sanctions, such as drug offenses that result in prison time, run the risk of having their rights violated rather than the problem being solved. According to reports, the police are now compelled to give restorative justice priority as a result of the ratification of Law No. 11, 2012, governing the Juvenile Criminal Justice System.

In combination with Law No. 35 of 2014 regarding child safety, Law No. 23 of 2002 is being implemented through the restoration of children's rights. Children may only be arrested, detained, or held in a criminal detention facility if it is authorized by the law that is in effect, and then only in extreme cases, [5]. Although restorative justice practices and methods for children who commit crimes have been regulated by law, they haven't actually been effectively implemented in those situations. In truth, not every police investigator at the regional sector level is aware of how restorative justice is used to resolve cases involving juvenile offenders. The study's title, Utilization of Restorative Justice in the Handling of Child Crimes from the Perspective of Utilities Theory, is based on this. The following questions are addressed in this paper: 1) How should restorative justice be applied to children who do not fit the utilitarian paradigm?, 2) What is the impact of restorative justice on a child who is not allowed to enter a police neighborhood?

II. METHODS

This study falls under the category of normative juridical research and has the characteristics of descriptive analytical study. The primary, secondary, and tertiary legal texts that were employed in this study's secondary data sources are secondary data. Research conducted in libraries served as the study's technique of data collecting. The study's entire data set underwent qualitative analysis, [6].

III. RESULTS AND DISCUSSIONS

1. A utilitarian perspective on the Model of Restorative Justice Use for Children of Criminal Offenders

Settlement of criminal cases or cases by the courts is frequently overly formal and restrictive and does not ensure true justice between crime victims and criminals. A breakthrough is required to conclude a criminal case or a case that seeks to restore a just situation based on this idea. A balance between criminals and their victims is what the idea of restorative justice attempts to achieve. Additionally, he may comprehend that criminal cases can be swiftly concluded, flexible rather than formal, and flexible, saving time, money, and effort. The majority of child-related crimes are committed in North Sumatra. Data from children in prisons and detention facilities show that there are a lot of kids who get caught up in criminal cases in North Sumatra, [7].

Table 2. Number of Correctional Institutions and Detention Centers by Age Group and Gender

Place of detention	Age Group	2020		
		Man	Woman	Amount
(1)	(2)	(3)	(4)	(5)
Correctional Institution	Mature	24.210	1.238	25.448
	Children	166	-	166
	Number	24.376	1.238	25.614
Jail	Mature	9.358	292	9.650
	Children	26	-	26
	Number	9.384	292	9.676
Correctional Institution & Jail	Mature	33.568	1.530	35.098
	Children	192	-	192
	Number	33.760	1.530	35.290

Source: Kantor Wilayah Kementerian Hukum dan Hak Asasi Manusia, 2021

According to the data above, it appears that in Sumatra Utara, the use of restorative justice for children who are tindak pidana is largely ineffective and rarely carried out, whether in a judicial or administrative setting. Justice that places an emphasis on reparations for harms brought on by or connected to crime is known as restorative justice. All parties (stakeholders) participate in a collaborative effort to implement the right to a fair situation. According to Ali Muhammad, resolving child cases with a focus on the spirit of restorative justice is consistent with the admirable traits of the Indonesian nation as expressed in Pancasila, the ideology of the Indonesian nation, as the values of justice, tolerance, and mutual cooperation, whose admirable traits have been embodied in the current Indonesian legal system, [8]. Restorative justice is not a brand-new idea. The idea of restorative justice has been applied in the practice of enforcing customary offences, [9].

The idea of restorative justice encompasses the existence of a settlement reached via discussion and custom for settling usual criminal breaches. Children who commit crimes are essentially protected by the law itself through the application of restorative justice, where it is believed that protection will exist for children even though they have made mistakes. The application of restorative justice can be seen from the standpoint of legal efficiency as a legal function. The community benefits from the law that has been created by the government, including both those who are criminals and those who are among their victims. That is to say, the law is not created merely to punish, but also for the protection of individuals, the advancement of the law, and the benefit of society. The parties involved in processing juvenile criminal cases through restorative justice include the parties who committed the crimes, the people who were harmed, the community, mediators, and law enforcement officers who have the authority to formulate the cases jointly, [10].

2. Obstacles to the Utilization of Restorative Justice in Child Offenders

According to the principles of restorative justice, the best alternative to treating children as criminals is to migrate from formal criminal justice to informal criminal justice, when all parties involved in a given crime cooperate to resolve the issue at hand. The child's future is impacted by the consequences. There are challenges in implementing restorative justice in the community, thus it is not simple. Processes used in restorative justice can be modified to meet societal demands and various cultural situations. Victims, offenders, and society all recover control over the process through it. Additionally, the procedure itself frequently alters how communities and the court system as a whole interact with one another. Programs for restorative justice can help lighten the load on the criminal justice system. In some situations, such as those involving young offenders and constructive sanctions.

According to the fundamental principles, "restorative outcomes" are agreements that are made as a result of a restorative process. Restorative justice programs are implemented as a complement to the criminal justice system, along with the development and protection of the parties' rights. Referrals to programs like reparations, restitution, and community services may be part of such agreements. The program seeks to achieve the reintegration of victims and offenders while also addressing the requirements of particular individuals or groups and the obligations of the parties. The use of restorative justice is not always successful and frequently goes wrong. The use of restorative justice to juvenile offenders has a number of challenges, including:

1. Internal Elements

This element originates in the victim's child who committed the crime. In this instance, children are the ones who commit crimes including abuse, theft, and traffic offenses, in which they flee the scene of the crime to avoid taking responsibility. It is challenging to adopt restorative justice to resolve the issue because the family is also unsure of the child's whereabouts.

2. Outside Factors

This component is a result of outside effects from criminals who commit crimes. Environmental, community, familial, and law enforcement officer variables are a few of the contributing aspects. First, social and environmental factors have an impact on how children behave on a daily basis. As a result, children who are in trouble with the law when they are in the incorrect environment will develop into irresponsible youngsters who avoid conflict with the law. In addition, the victim's family expressed their opposition to the restorative justice procedure as a substitute for dealing with juvenile criminal cases due to the status of the

Indonesian people. Second, the influence of the family is crucial in determining how children behave, feel, and think in daily life. Children that grow up in unhappy families will act rebelliously and naughtily, which will encourage them to continue committing crimes. It will be challenging for a child who is in trouble with the law to be accountable, and it will be challenging for the family to cooperate in order to benefit from restorative justice for children, if the child comes from a broken home. Children's attitudes and behaviors will be impacted by family circumstances. The cops, third. The implementation of restorative justice in police organizations depends mostly on this element.

The capacity and expertise of a police investigator will have an impact on how law enforcement is carried out within the police institution. In contrast, a police officer who is unfamiliar with juvenile criminal law and the juvenile criminal justice system will find it challenging to use restorative justice. Police officials who are knowledgeable about juvenile criminal law can easily resolve juvenile criminal cases. The shortage of mediators in the restorative justice procedure is the fourth issue. The implementation of restorative justice in the field is hampered by the small number of mediators who oversee the procedure and instances involving minors. As a result, in real life, the police machinery will continue to look into juvenile criminal cases all the way up to the Public Prosecutor. Restorative justice must be socialized to the community and law enforcement officials in order to overcome obstacles to its implementation. The restorative justice approach aims to resolve cases involving children who have come into conflict with the law (child criminal cases) through deliberation and the restoration of rights by involving victims, perpetrators, and their respective families. Additionally, there will be community representatives present to represent the area where the crime involving the juvenile perpetrator happened. Decisions that prioritize interests and duties that hurt children, victims, and society tend to be nonpunitive when there is local environmental support to address concerns outside of juvenile justice.

IV. CONCLUSION

Even though the child is in a situation where he must be held accountable for his misdeeds, the restorative justice strategy utilized in attempts to resolve cases of juvenile offenders (children in confrontation with the law) is an attempt to protect children's rights and the child's future. Philosophically speaking, the Pancasila ideals are in line with this restorative justice strategy's humane outlook. This restorative justice strategy is governed by the law in terms of justice. According to sociology, this restorative justice strategy is consistent with the idea of Indonesian people's deliberation and does not go against the local knowledge values of the Indonesian people. The practical implications of research focused on creativity showed that creative employees must be able to innovate in finding new opportunities, doing new things, taking ideas from things around them, broad-minded, netting feedback from consumers (because this company was engaged in promotional services and customer service) and build cooperation between teams to be able to solve problems.

Practically, PT. Mitra Andal Sejati, Medan, North Sumatra which has experienced employees will gain better trust from other companies in conducting their duties. The authority of the company will increase so that it can influence other companies to work together. Likewise, employees who have high work involvement will certainly make the company able to strengthen relationships with stakeholders that lead to partnerships, create opportunities for dialogue with business stakeholders and the company can use resources efficiently. A restorative justice program needs to be built into the juvenile justice system and child protection laws as the primary and initial effort, not as a substitute, in light of these barriers. In order to prevent rule overlap, the restorative justice strategy in treating juvenile criminal cases needs to be developed technically in accordance with other law enforcement institutions like the Police, Prosecutors' Office, and Courts.

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