

History of The Concept of Restorative Justice (Study of Besilam Village, Langkat City)

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Abstract - The history of the development of modern law in the application of restorative justice began with the implementation of a settlement program outside of traditional justice carried out by the community called victim offender mediation which began in the 1970s in Canada. Observers and practitioners who discuss restorative justice conclude that so far victims have essentially not been included in the traditional criminal justice process. Victims are only needed as witnesses if necessary, but in decision-making policies they are not involved at all. The development of the concept of restorative justice in the last 20 years has experienced very rapid development in several countries such as Australia, Canada, England and Wales, New Zealand and several other countries in Europe and the Pacific region. Likewise, in the United States, as a country that more often forms associations with countries to introduce repressive measures of punishment, America cannot avoid the strong influence of the development of restorative justice. Michael Tonry in 1999 began a survey of American sentencing policies with the results of his research obtaining several The living concepts regarding punishment to this day are structured sentencing, risk-based sentencing, indeterminate punishment and restorative/community justice. So restorative justice is one of the punishment concepts that has been developed and is already running in the United States.

Keywords: History of Restorative Justice, Child Criminal Cases, Child Protection, (Study Of Besilam Village, Langkat City)

I. INTRODUCTION

Restorative justice is about attaching criminal justice to a pressing social context rather than isolating it behind closed doors. The definition put forward by Tony F. Marshall is very helpful in discussing restorative justice, although this definition still raises a number of questions such as: who are the parties with an interest and involvement in the offense (parties with a stake in the offense)? How do they reach a collective resolution?

What does it mean to deal with the aftermath of an offense? What are the implications for the future that need to be considered? So the answers to these questions must be explained in specific sentences.

An explanation of the concept of restorative justice is certainly an important thing to know, namely the history of restorative justice. The concept of restorative justice is a theory of justice that grows and develops from the experience of implementing punishment in various countries and the cultural roots of society that existed previously in dealing with criminal problems long before the implementation of the traditional criminal justice system.

This concept has developed with developments over time. This has been put forward by people who discuss many problems related to the criminal justice system in general and specifically research restorative justice such as Braitwaite (Australia), Elmar G. M. Weitekamp (Belgium). Howard Zehr (USA), Kathleen Daly (Australia), Mark S. Umbreit (USA), and Robert Coales (USA).

Observers and practitioners who discuss restorative justice conclude that so far victims have essentially not been included in the traditional criminal justice process. Victims are only needed as witnesses if necessary, but in decision-making policies they are not involved at all. Decision-making is only done by the Judge.

The history of the development of modern law, the application of restorative justice, began with the implementation of a settlement program outside of traditional justice carried out by the community, called victim offender mediation, which began in the 1970s in Canada. This program was initially implemented as an alternative measure in punishing criminals. children, where before the sentence is carried out the perpetrator and victim are allowed to meet to prepare a legal proposal which is one of the judge's many considerations. This program assumes that the perpetrator will benefit from



this stage and the victim will also receive special attention and benefits so that it can reduce the number of recidivists among child perpetrators and increase the number of children responsible for providing compensation to the victim. The implementation of this program resulted in a higher level of satisfaction from victims and perpetrators than when they underwent the traditional justice process.

The development of the concept of restorative justice in the last 20 years has experienced very rapid development in several countries such as Australia, Canada, England and Wales, New Zealand and several other countries in Europe and the Pacific region. Likewise, in the United States, as a country, it is more common to form associations with countries to introduce repressive punitive measures

Observers and practitioners who discuss restorative justice conclude that so far victims have essentially not been included in the traditional criminal justice process. Victims are only needed as witnesses if necessary, but in decision-making policies they are not involved at all. Decision making is only made by the Judge based on examinations during the court process. For perpetrators, their involvement in court is only passive, most of their roles and participation are represented and voiced by their lawyers.

This concept is implemented by taking into account the current conditions of society and the society in which the implementation will begin, including cultural conditions, preparation of law enforcement officers, existing criminal justice system regulations, support from laws and the readiness of state funds to implement the concept starting from a pilot project.

The concept of Restorative Justice has actually been practiced for a long time by indigenous peoples of Indonesia, such as in Papua, Bali, Toraja, Minangkabau and other traditional communities that still strongly hold onto their culture. If a crime occurs by someone (including unlawful acts committed by children), the dispute is resolved in the indigenous community internally without involving state officials in it. The measure of justice is not based on retributive justice in the form of revenge or imprisonment, but on awareness and forgiveness.² The concept of Indonesian customary law as a container for customary justice institutions also has a concept that can be described as the root of restorative justice. In Indonesia, the characteristics of customary law in each region generally strongly support the application of restorative justice. In relation to customary violations or customary crimes, and the mechanisms for resolving them, customary law has its own views. As stated above, the definition of customary violations is related to the condition of the imbalance of the cosmos in society.

The juvenile justice system shall uphold the rights and safety and promote the physical and mental well-being of children. Deprivation of a child's liberty shall be a last resort and for the minimum period and shall be limited to exceptional cases, without precluding the possibility of early release. Deprivation of a child's liberty shall be imposed under conditions that ensure respect for the child's human rights and shall be carried out only in circumstances that take full account of the child's particular needs, status and special requirements appropriate to his or her age, personality, sex and the offence, in accordance with the principles and procedures set out in these rules and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

II. METHODS

This research was conducted using a qualitative descriptive method with a jurisprudential model. In using this method, the primary and secondary data obtained will be elaborated in order to obtain a picture of the situation and conditions in the research area. The population of Besilam Village is 2,456 families. From the results of the interview with Mr. Rahmat as Secretary of Besilam Village, Langkat Regency. This open interview technique can be the right means to obtain real information.

This study aims to determine the history of the concept of Restorative Justice.

III. RESEARCH RESULT

Unpreparedness to accept the development of globalization can cause children to fall into various crimes. The rise of crimes committed by children or crimes related to children not only disrupts public security and order, but is also a danger that can threaten the future of a nation and state. So that children as successors to the ideals of the nation and state must be protected from actions that could harm children so that children can be looked after for the future of the nation and state. Crimes or violations committed by children are essentially a reflection of society's lack of responsibility in raising and guiding children, which will produce a less good generation.

This is very worrying, so based on this, children must be given the best and wisest attention and protection. Children who commit criminal acts are processed legally to uphold the supremacy of the law. The juvenile criminal justice system is an effort to protect and educate children without ignoring the essence of justice. Efforts to avoid the negative impact of the criminal process by using a method of resolving children's problems from formal criminal proceedings to a joint solution between the perpetrator and the victim by involving the family in deliberations to achieve a fair resolution for all parties (win-win solution) peacefully (Compare with Law no. 11/2012: Article 1 number 6)

In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the aim is to create justice that truly guarantees the protection of the best interests of children in conflict with the law. The Juvenile Court Law is considered no longer in accordance with legal needs in society and does not comprehensively provide special protection to children in conflict with the law. Child Crime (UU SPPA), Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Law of the Republic of Indonesia Number 4 of 1979 concerning Child Welfare, which law has provide a legal basis for child protection efforts. The state prioritizes protecting the rights of children undergoing legal proceedings at every stage of the examination.

One of them is the differentiation of legal processes in adults and children who commit criminal acts. The state provides leniency for criminal acts committed by children, because children as the nation's next generation must be treated humanely. The research in this writing uses a type of normative juridical legal research which is also known as library research, which means research into problems regarding matters that are normative and based on statutory regulations, and other research. The nature of this research is descriptive analysis, meaning that from this research it is hoped that a detailed and systematic picture of the problems to be studied will be obtained. So that you can answer questions according to the main problem in this writing

Children as the nation's next generation are sometimes unable to avoid environmental influences in the form of social factors which result in a child committing criminal acts that can harm many parties. Children who commit law violations or criminal acts are greatly influenced by factors outside themselves. Therefore, it must be taken into consideration that a child who has committed a crime is not the only party who must be punished by the judicial process. Law Number 3 of 1997 concerning Children's Courts in this case does not yet regulate the concepts of restorative justice and diversion in Juvenile Court. The concept of Restorative Justice and Diversion is a concept that provides protection and the principle of the best interests of children.

UU no. 11 of 2012 concerning the Juvenile Criminal Justice System has substantively regulated the concepts of restorative justice and diversion for children in conflict with the law. In article 7 paragraph (2) Law no. 11 of 2012 states that law enforcers are obliged to carry out diversion with a restorative justice approach to children who are in conflict with the law. Therefore, this research focuses on the juvenile criminal justice process by law enforcers as mandated by Law no. 11 of 2012. The law enforcers who were the target and location of the research were the Stabat Police, the Stabat District Prosecutor's Office and the

Stabat District Court.

The concept of restorative justice is implemented in the form of victim offender mediation, its implementation is based on providing trust and opportunities for victims and perpetrators to resolve the criminal offenses that have occurred. The ultimate goal of the victim offender mediation process is to strive to always think about the satisfaction of all parties by creating a sense of justice at every stage of the justice process.

This concept is implemented by taking into account the current conditions of society and the society in which the implementation will begin, including cultural conditions, preparation of law enforcement officers, existing criminal justice system regulations, support from laws and the readiness of state funds to implement the concept starting from a pilot project.

The concept of Restorative Justice has actually long been practiced by indigenous peoples of Indonesia, such as in Papua, Bali, Toraja, Minangkabau and other traditional communities that still strongly hold onto their culture. If a crime occurs by someone (including unlawful acts committed by children), dispute resolution is resolved in the indigenous community internally without involving state officials in it. The measure of justice is not based on retributive justice in the form of revenge or imprisonment, but on repentance and forgiveness. The concept of Indonesian customary law as a container for customary justice institutions also has a concept that can be described as the root of restorative justice. In Indonesia, the characteristics of customary law in each region generally strongly support the implementation of restorative justice.

Existing practices are part of traditions in society or the result of research and long journeys from examples or pilot projects taken as a way to resolve criminal cases outside of justice. Existing practices continue to be based on the principles of Restorative Justice which have been recognized in many countries, which in their current implementation have been implemented in a number of rules and patterns or methods. The forms of Restorative Justice practices that have developed in European countries, the United States, Canada, Australia and New Zealand can be grouped into four types of practices that are pioneers in implementing Restorative Justice in several countries, namely, Victim Offender Mediation, Conferencing/Family Group Conferencing, Circles and Restorative Boards/ youth panels.

In relation to customary violations or customary crimes, and the mechanisms for resolving them, customary law has its own view. As stated above, the definition of customary violations is related to the condition of cosmic imbalance in society. This includes actions that disrupt the peace of life or violations of propriety in society. Here,

violations of customary law are:

- (a) An event of action from parties in society;
- (b) The action causes a disturbance in the balance;
- (c) This disturbance in the balance causes a reaction;
- (d) The reaction that occurs causes the disturbance in the balance to be maintained back to its original state.

Unpreparedness to accept the development of globalization can cause children to fall into various crimes. The rampant crimes committed by children or crimes related to children not only disrupt the security and order of society, but also constitute a danger that can threaten the future of a nation and state. So that children as the successors of the ideals of the nation and state must be protected from actions that can harm children so that children can be maintained for the future of the nation and state. Crimes or violations committed by children are essentially a reflection of the nature of society that is less responsible in raising and guiding children, which will produce a less good generation.

This is very worrying, therefore, based on this, children must be given the best and wisest attention and protection. Children who commit crimes are processed legally to uphold the supremacy of law. The juvenile criminal justice system is an effort to protect and educate children without ignoring the essence of justice. Efforts to avoid the negative impacts of the criminal process with the method of resolving children's problems from the formal criminal process to a joint resolution between the perpetrator and the victim by involving the family in deliberation to achieve a fair resolution for all parties (win-win solution) peacefully (Compare with Law No. 11/2012: Article 1 number 6). Deliberation to make peace is a transfer of case resolution from formal criminal trials to a resolution process outside criminal law in general (See and compare Law No. 11/2012: Article 1 number 7). The purpose of deliberation in resolving children's cases is to provide legal protection to children. Handling cases from criminal trials to trials outside criminal trials generally seems to be aimed at avoiding negative stigmatization of children. In addition, the imposition of criminal penalties or sanctions on children is not considered the best solution to resolve juvenile crimes. This is in line with the objectives of the juvenile justice system, namely to realize a criminal justice system that truly protects the best interests of children (General explanation of Law No. 11/2012).

The juvenile criminal justice system uses a restorative paradigm, that in achieving the goal of imposing sanctions, victims are included in the right to be active in the judicial process. Indicators of achieving the goal of imposing sanctions are achieved by looking at whether the victim has been restored, the victim's satisfaction, the amount of compensation, awareness of the perpetrator or

his actions, the number of repair agreements made, the quality of work services and the overall process that occurred. The forms of sanctions include restitution, mediation between perpetrators and victims, victim services, community restoration, direct services to victims or restorative fines.

Imposing sanctions actively involves the perpetrator, victim, community and law enforcers. The perpetrator works actively to restore the victim's losses and confront the victim/victim's representatives. The victim is active in all stages of the process and will assist in determining sanctions for the perpetrator. The community is involved as a mediator, helping victims and supporting the fulfillment of the perpetrator's obligations. Law enforcement facilitates mediation.

The main focus of restorative justice is for the benefit and positive development, so children and families are the main resources. Children are considered competent and have positive abilities, are preventive and proactive. For the purposes of rehabilitating perpetrators, changes in the attitudes of social institutions and the behavior of adults are needed. Rehabilitation of perpetrators is carried out by actors who are learning by doing, counseling and therapy to motivate the active involvement of the parties.

The goal of rehabilitation is achieved based on whether the perpetrator has started new positive things, whether the perpetrator is given the opportunity to practice and demonstrate norm-compliant behavior, whether stigmatization can be prevented, whether there has been an increase in attachment to society. Rehabilitation of perpetrators in the form of practical activities so that children gain

work experience, and children are able to develop their own cultural projects. This aspect of rehabilitation jointly requires the roles of the perpetrator, victim, community and law enforcement in synergy. The perpetrator is active in developing personal qualities in community life. Victims provide input on the rehabilitation process. The community develops opportunities for children to make productive contributions, develops new roles for child offenders to practice and demonstrate their competence, access and build partnership ties with the community.

Restorative justice is about achieving community protection through collaborative efforts of the justice system and the community to develop prevention. Confinement is limited only as a last resort. The community is responsible for actively supporting the implementation of restoration. Indicators of achieving community protection are if the recidivism rate decreases, while the perpetrators are under community supervision, the community feels safe and confident in the role of the juvenile justice system, the involvement of schools, families, and community institutions to prevent crime;

social ties and reintegration increase.

Community protection, then the perpetrators, victims of society and the juvenile justice profession are very much expected to play a role. The perpetrators must be involved constructively in developing competence and restorative activities in the program in a balanced manner, developing internal control and commitment with peers and children's organizations. Victims provide useful input to continue the mission of protecting the community from fear and the need for supervision. Juvenile justice professionals develop incentive scales and ensure the fulfillment of the obligations of the perpetrators and supervision, assist schools and families in their efforts to supervise and maintain the perpetrators in the community.

Other objectives of the juvenile criminal justice system that can be seen in the provisions of laws and regulations with the juvenile criminal justice system, namely The Beijing Rules and the Convention on the Rights of the Child.

IV. CONCLUSION

1. Restorative justice is about attaching criminal justice to a pressing social context rather than isolating it behind closed doors. The definition proposed by Tony F. Marshall is very helpful in discussing restorative justice, although this definition still raises a number of questions, such as: who are the parties interested in and involved in the violation. The concept of restorative justice is certainly an important thing to know about the history of restorative justice. The concept of restorative justice is a theory of justice that grew and developed from the experience of carrying out sentences in various countries and the cultural roots of society that existed previously in dealing with criminal problems long before the implementation of the traditional criminal justice system.
2. The history of the development of modern law on the application of restorative justice began with the implementation of a settlement program outside the traditional courts carried out by the community called victim offender mediation which began in the 1970s in Canada. This program was initially implemented as an alternative measure in punishing child criminals, where before the sentence was carried out the perpetrator and victim were allowed to meet to prepare a legal proposal which was one of the many considerations of the Judge. This program assumes that the perpetrator will get benefits and advantages from this stage and the victim will also get special attention and benefits so that it can reduce the number of recidivists among child perpetrators and increase the number of children responsible for providing

compensation to the victim.

REFERENCES

- [1] Achjani Zulfa, Eva. 2009. *Keadilan Restoratif*. Depok: Badan Penerbit FHUI. Basah, Sjachran. 1992.
- [2] *Perlindungan Hukum atas Sikap Tindak Administrasi Negara*. Bandung: Alumni.
- [3] Dewi, DS. dan Fatahillah A. Syukur. 2011. *Mediasi Penal: Penerapan Restoratif Justice di Pengadilan Anak Indonesia*. Depok: Indie Publishing.
- [4] Gultom, Maidin. 2008. *Perlindungan Hukum Terhadap Anak. Dalam Sistem Peradilan Pidana Anak Di Indonesia*. Bandung: Refika Aditama.
- [5] Gultom, Maidan. 2012. *Perlindungan Hukum Terhadap Anak dan Perempuan*. Bandung: Refika Aditama.
- [6] Hasan Wadong, Maulana. 2000. *Advokasi Anak dan Hukum Perlindungan Anak*. Jakarta: Gramedia.
- [7] Syaiful Asmi Hasibuan, "Analisis Hukum Terhadap Pengecualan Pidana Anak Melalui Penerapan Restorative Justice Pada Tingkat Penyidikan" *Jurnal Ilmiah Warta Bangsa Darmawangsa*, 2022
- [8] Yasmira Madasari Saragih, "Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana", *Journal Of Social Science Research*, 2023.
- [9] Rahul Ardian Fikri, "Perlindungan Hukum Terhadap Anak Sebagai Korban Kekerasan Seksual", *Journal Of Social Science Research*, 2023.
- [10] Irma Fatmawati, "Diversi Berdasarkan UU No.11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak", *Jurnal Penegakan Hukum*, 2016.
- [11] Lidya Rahmadani Hasibuan, "Perbandingan Diversi dan Restorative Justice Terhadap Anak Berhadapan Dengan Hukum Di Kota Medan dan Kabupaten Deli Serdang", *Jurnal Mercatoria*, 2017
- [12] Simangunsong, Jimmy. (2015). *Penyalahgunaan Narkotika di Kalangan Remaja (Studi Kasus pada Badan Narkotika Nasional Kota Tanjungpinang)*. <http://jurnal.umrah.ac.id>
- [13] Asri P., Marthan, Mariyono SW, Purwanta. (2008). *Hubungan Dukungan Sosial dengan Tingkat Depresi Pasien yang Menjalani Terapi Hemodialisis*. *Jurnal Keperawatan*. 1(2), 82-86