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Reforming the concept of juvenile criminal liability: Forms of juvenile justice in Indonesia

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Abstract

The purpose of this research is to analyze the form of juvenile justice in order to reform the concept of juvenile criminal liability. The research method used in the analysis is normative juridical with the approach of applicable laws and regulations. The results of this study. Restorative justice is the resolution of criminal cases through cooperation between perpetrators, victims, families of perpetrators/victims, and other related parties in an effort to achieve only resolutions that emphasize restoration to the original state rather than retaliation. Both inside and outside the courtroom, restorative justice can be used. Thus, the principle of restorative justice in children's criminal responsibility becomes a dilemma when the criminal act committed by the child is not a minor crime because, in fact, the concept of restorative justice applies to minor crimes. This research uses a normative juridical method to analyze whether the concept of restorative justice can be applied to all criminal acts of children. Along with the development of the legal phenomenon that children can not only commit minor crimes, then without ignoring child protection, the principle of restorative justice, and human rights, the regulation of child punishment for certain criminal offenses must consider criminal law as an ultimatum medium.

Keywords: Crime, juvenile justice, restorative justice

1. Introduction

Criminal justice for children and child protection are mutually exclusive concepts. Children's rights are protected and guaranteed by child protection laws, while juvenile criminal justice provides punishment or restrictions on children's rights. When a child commits a criminal offense and the victim is also a child, the application of child protection and criminal justice for children becomes complicated because both the perpetrator and the victim are subjects that need to be protected by law.

Today, the phenomenon of children committing crimes against children is quite alarming. On August 4, 2022, a 13-year-old junior high school student in Magelang, Central Java was found dead in a coffee plantation and the perpetrator was allegedly his schoolmate. The perpetrator's motive was fear after being caught stealing the victim's cell phone. Also in early August 2022, 6 children in Lampung were arrested for allegedly killing their classmates on January 25, 2022 which was motivated because the victim complained about one of the perpetrators to the Guidance and Counseling Teacher (Guru BP). Furthermore, on September 20, 2022, a 7-year-old elementary school child was molested by an 11-year-old elementary school child in Nganjuk, East Java. During 2021, the Indonesian Child Protection Commission (KPAI) noted that the number of children dealing with the law as perpetrators was 126 cases. (KPAI, 2022)^[4]. Efforts to transfer the settlement of children's cases from the criminal justice system to methods outside the system are regulated in "Law Number 11 of 2012" on the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law). When the sentence is less than seven years and the offense is not repeated, this measure is required. In addition to diversion, the SPPA Law contains criminal sanctions and measures, with the limitation that minors under 14 years old can only be subject to measures. In essence, restorative justice is the method used by the SPPA Law. According to Article 1 Point 6 of the SPPA Law, restorative justice is the resolution of criminal cases that include perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by prioritizing restoration to a state of return, and not revenge. Both inside and outside the courtroom, restorative justice can be used. The existence of peace offers, the use of mediation in the legal system, and the use of restorative justice as an alternative to criminal justice itself, all demonstrate how it is applied in the justice system. The adjoining buiten procedure, which involves out-of-court dispute resolution, also uses restorative justice approaches.

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Nini Mamak in West Sumatra used this method to resolve a nephew and niece dispute. However, because the notion of restorative justice is applied to minor offenses, the notion of restorative justice in child accountability becomes a puzzle when the crime committed by the child is not a minor offense. According to Soeroso, the purpose of law is to uphold order or justice and includes all restrictions on how people should behave or act in society. (Soeroso, 2013) ^[7] Indeed, the law, like the rules and regulations it contains, can function as a tool or method of development, as in directing human activity in the direction sought by growth or renewal. It is generally expected that these two functions will support a legal product to be used in society in addition to its conventional role of ensuring certainty and order. (Suartha, 2015) ^[8].

Thus, legal regulation on the application of restorative justice principles in juvenile criminal responsibility must be able to realize order and justice. The author in this case will discuss "Can the concept of restorative justice be applied to all criminal acts of children? Studies on criminal liability by children have been conducted by many previous researchers, including a journal entitled "Legal Analysis of Criminal Liability by Child Molesters in Gorontalo City" which focuses on determining the elements that affect the criminal guilt of those who commit crimes involving sexual abuse of children, as well as the type of criminal responsibility faced by these people (Haritsa & Moha, 2022) ^[3]. And a journal entitled "Criminal Liability for Children as Narcotics Broker Offenders" specifically discusses the issue of children as narcotics broker offenders. (Sutarya & Hariyanto, 2022) ^[9]. The difference between the discussion in this paper and previous research is that this research discusses the concept of restorative justice in children's criminal liability as an alternative to solving minor criminal cases.

2. Research Methods

Since law or legal norms are the main subject of this research, this research is a normative juridical legal research that uses the statutory method. This research uses a legislative approach and conceptual approach. The legal materials used in this research are divided into two categories, namely primary legal materials such as laws and regulations, and secondary legal materials such as literature on the legal issues under study, including books, in-depth manuscripts, and scientific works in the field of law in the form of journals, articles, and legal expert opinions. The legal sourcing method involved internet searches and desk research procedures and was then assessed using interpretation.

3. Result and Discussion

Restorative Justice

According to the evolution of punishment theory, which initially concentrated on the position of the offender, it later shifted to emphasize the importance of the victim. A new philosophy of punishment focused on resolving criminal cases in a way that benefits victims, offenders and society as a whole has emerged in the evolution of punishment theory. To accommodate the interests of affected victims, the paradigm and purpose of punishment itself has changed from concentrating solely on prosecuting offenders and providing a deterrent impact for them.

A new legal concept called restorative justice incorporates many of the current approaches to punishment. Restorative justice that emphasizes rehabilitation focuses on the offender, the victim, and the community. Restorative justice does not

only prioritize finding the offender but also considers the needs of the victim (restitution, compensation, and reparation theories) and the community (incapacitation). The idea of punishment is called restorative justice, often known as restorative justice, and is not only limited to the requirements of criminal law. The criminal justice system and criminology must both be considered when examining restorative justice. (Rizky, 2008) ^[5].

When looking at restorative justice from a justice perspective, two views are present: ethical justice and legal justice. The moral balance between right and wrong, burdens and benefits for the parties, is at the core of ethical justice. Legal justice, on the other hand, places great emphasis on clauses governing legal guarantees and certainty. (Walgrave, 2004) ^[10].

It is important to have a range of different theories because the purpose of punishment should cover all aspects of resolving a case, including the victim, the offender, and society. Muladi who said that the attempt to include aspects related to human rights and make punishment operational and effective has led to a very complex situation with punishment. Therefore, a fundamental multifaceted approach to the effects of punishment is needed, both in terms of the effects on individuals and the need to select an integrative theory of the purpose of punishment that can change its function in the context of overcoming the damage caused by a crime. (Zulfa, 2011) ^[11].

Meanwhile, Australian criminologist Braithwaite divides restorative justice into two concepts: Prioritizing procedures and ideas first, bringing together all parties affected by the wrongdoing. Second, it concentrates on values. Restorative justice is a value that aims to heal victims of injustice, placing the victim before the crime, and in this case, to increase the bond between victim and offender. (Bassiouni, 2010) ^[2]. (Atmasasmita, 2012) ^[1].

The general rule of handling juvenile criminal cases, both juvenile offenders and victims, is to use restorative justice methods which are carefully regulated by the SPPA Law.

Crime

In the Criminal Code (Wetboek Van Strafrecht), the word "crime" is derived from the Dutch word "strafbaarfeit". What is meant by strafbaarfeit is an act that is punishable. In many laws and literary works, the term strafbaarfeit is used to refer to criminal events, criminal offenses, delicts, crimes punishable by law, activities that can result in punishment, and criminal offenses. (Ruba'I, 2014) ^[6].

Types of criminal offenses

1. In accordance with the Criminal Code system: Offenses and Crimes.
2. Organized crime and property crime.
3. Committing a criminal offense, assigning a criminal offense, and commission of a criminal offense.
4. Crimes of neglect, culpa, and pre parte focus pro parte culpa.
5. Reportable and non-reportable crimes.
6. Single and multiple offenses.
7. Both continuous and non-continuous illegal activities.
8. Misdemeanors, serious offenses, and ordinary offenses.

Since its development, several crimes-such as corruption, money laundering, and terrorism have been recognized as classified or referred to as certain crimes in addition to these types of crimes.

According to Book II of the Criminal Code on criminal offenses, examples of minor criminal offenses are as follows.

1. Article 172, disturbing the peace by giving shouts of false signals.
2. Article 174, disturbing a public meeting.
3. Article 176, disrupting a religious meeting.
4. Article 178, on obstructing the road.
5. Article 217, Making noise in the court of a district court.
6. Article 219, damaging an edict letter.
7. Article 231 (4), Negligence to the extent that confiscated property is lost or damaged.
8. Article 232 (3), Negligence causing damage to stamps (seals).
9. Article 302, Maltreatment of animals with intent to cause pain, disability or damage to health.
10. Article 241 (2), Carrying animals with a lin pass.
11. Article 315, Mild Insult.
12. Article 321 (1), Insult in writing.
13. Article 334 (1), By mistake a person is detained.
14. Article 352 (1), Ordinary Maltreatment.
15. Article 364, Petty theft.
16. Article 373, Petty Embezzlement.
17. Article 378, Petty Fraud.
18. Article 384, Fraud on the buyer.
19. Article 407 (1), Minor damage.
20. Article 409, maliciously damaging work.
21. Article 427, Public servant (police officer) through whose fault another person is detained.
22. Article 477 (2), through the fault of the captain the detained person escapes.
23. Article 482, Misdemeanor detention.
24. According to Book III of the Penal Code on Misdemeanors from Chapter I to Chapter II with the exception of Articles 505 (2) and 506.
25. Article 489, Mischief against persons or property.
26. Article 491, abandoning one's duty of care to a lunatic or a child, thereby endangering the lunatic or the child.
27. Article 492, Drunkenness in a public place so as to disturb order.
28. Article 493, by unlawfully obstructing the freedom of movement on a public road (obstructing a comrade to a strike).
29. Article 494, Acts which cause harm, trouble and danger to traffic on public roads, for example: 1) Failure to mark holes or excavations on public roads; and 2) Not keeping livestock loose on a public road.
30. Article 495, without the permission of the National Police, the setting of traps for wild animals that may endanger people.
31. Article 496: Without the permission of the police, setting fire to one's own building/house.
32. Article 497, Setting off sparks on the side of a public road or near a house which may cause danger of fire or accident.
33. Article 501, Selling, offering food/beverages that have been spoiled so as to damage health.
34. Article 503, Making noise or disturbing people's sleep at night. Making noise during a worship service or court session.
35. Article 504, Begging or begging in a public place.
36. Article 505 (1), Vagabond/having no livelihood wandering anywhere.
37. Article 507, not entitled to wear animal titles or honorary marks of the State of R.I. Tells a false name when asked by the proper authorities (c.q. Police).
38. Article 506, unauthorizedly wears the clothes of a public servant in a public place.
39. Article 510, without the permission of the Police (competent public servant), holding public parties and parades on public roads.
40. Article 511, Failure to obey the instructions of the Police during a party or parade on a public road.
41. Article 512 a, Carrying out the work of a dentist for a living without a license and under no compelling circumstances.
42. Article 515, Failure to give prior notice to the Village Head of his/her move. Failure to notify the Village Head after 14 days of residence in the area.
43. Article 516, An inn or hotel whose owner: 1) Does not keep a guest book; and 2) Failure to report/show the guest book to the Police.
44. Article 522, Failure to appear after being summoned according to law, to be a witness, expert or interpreter.
45. Article 525, Failure to render assistance requested by a legal representative (c.q. Polri) against a danger to public safety/goods or a person committing a crime while such assistance does not endanger him/her.
46. Article 531, Failure to render assistance to a person in danger of death, while such assistance does not endanger him.
47. Article 532, in public: singing of songs, speeches, drawing/writing offensive to modesty.
48. Article 536, apparent drunkenness on a public road.
49. Article 540, Using animals for excessively heavy labor. Using an animal that is deformed, lame, wounded, and pregnant for work of a nature that is beyond its capacity.
50. Article 546: Selling, offering, handing out amulets/antidotes under the pretext that they have magic. Article 546, Teaching knowledge/skill so as to give rise to the belief of avoiding danger if a criminal offense is committed.
51. Article 548, unlawfully allowing chickens, ducks or geese to walk on sown land.
52. Article 549, unlawfully allowing cattle to walk on sown land.
53. Article 551, unlawfully walking or riding on land belonging to another, where a clear prohibition has been marked.

Other minor offenses regulated outside the Criminal Code include minor offenses regulated in regional regulations in each region such as regional regulations on street vendors, regional regulations on parking fees, regional regulations on Tera/Tera Ulang, and regional regulations on liquor.

Diversion in Child Criminal Liability

One of the strategies for implementing restorative justice in juvenile delinquency cases is diversion. Diversion as referred to in the SPPA Law Article 1 Point 7 is the transfer of the settlement of juvenile cases from the criminal justice system to a system outside the criminal justice system. In addition, Article 6 of the SPPA Law outlines the following as reasons for diversion:

1. Achieving peace between the victim and the child;
2. Resolving the child's case outside the judicial process;
3. To prevent the child from deprivation of liberty;
4. Encouraging the community to participate; and

5. Instilling a sense of responsibility in the child." The sentencing provisions stipulated in the SPPA Law that

are based on the principle of restorative justice are presented in the following table.

Table 1: Criminal Responsibility of Children in the Juvenile Justice System law

Diversion	Crime	Action
<p>Article 7 (1) At the level of investigation, prosecution, and examination of children's cases in the district court, Diversion shall be sought. (2) Diversion as referred to in paragraph (1) shall be implemented in the event that the criminal offense committed: a. punishable by imprisonment under 7 (seven) years; and B. is not is not a repetition of a criminal offense. Article 13 The juvenile criminal justice process is continued in the event that: a. the Diversion process does not result in an agreement; or B. the Diversion agreement is not implemented.</p>	<p>Article 69 (1) Children may only be sentenced to punishment or subjected to measures under the provisions of this Act. (2) Children under the age of 14 (fourteen) years may only be subject to measures. Article 71 (1) Basic punishment for Children consists of: a. warning punishment; b. punishment with conditions: 1) coaching outside the institution; 2) community service community service; or 3) Supervision. c. job training; d. guidance in an institution; E. imprisonment. (2) Additional punishment consists of: A. forfeiture of profits obtained from the criminal offense; or fulfilment of customary obligations.</p>	<p>Article 82 (1) Measures that may be imposed on children include: a. return to parents/guardians b. handover to someone c. treatment in a mental hospital d. treatment at LPKS; e. obligation to participate in formal education and/or training held by the government or private entities; F. revocation of driving license; and/or correction of criminal offenses.</p>

Source: primer data

The Supreme Court through the "Decree of the Director General of the General Courts Agency Number: 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Application of Restorative Justice in the General Courts Environment" stipulates that criminal cases that can be handled through restorative justice are cases that fall under the definition of minor crimes according to articles 364, 373, 379, 384, 407, and 482 of the Criminal Code with a maximum value of Rp2, 500,000. The decision also reaffirmed the requirement that the juvenile justice system emphasize restorative justice strategies, demonstrated by the option of diversion. However, children actually commit crimes large and small, as well as everyday crimes and unique crimes such as sexual abuse of minors.

The SPPA Law stipulates that even if the alleged perpetrator is less than 12 years old, a child can only be charged with a crime if they are not yet 14 (fourteen) years old. Return to parents or legal guardians, or 2. Participate in education, coaching, and mentoring programs offered by public or private social welfare organizations. The regulation and scope of the SPPA Law tend to be on minor crimes and have not considered children as perpetrators of ordinary or special crimes. In the case of ordinary crimes, especially referring to cases of loss of life and child abuse as explained in the background, the SPPA Law becomes less relevant and cannot provide a sense of justice for the community, because victims of sexual abuse will experience psychological trauma and moral burden in the community forever. Meanwhile, to eliminate the life of another person committed by a child under 14 years old can only be subject to the sanction of "Action", even though the consequences of the criminal act committed cannot be restored/cannot be repaired.

Criminal law is actually an ultimatum re medium, which is the last weapon, means, or medicine used to solve a legal problem.¹² The provision of punishment aims to provide a deterrent effect so that the perpetrator will not repeat the act and others will not commit the act.

The provision of punishment aims to provide a deterrent effect so that the perpetrators will not repeat their actions and other people will not commit such acts. The regulation of juvenile crime, especially for ordinary crimes and special crimes should adhere to the Combined/Modern Theory (Vereniging Theorien) to manifest criminal law as an ultimatum remedium.

Combined Theory combines the principle of absolute theory (retaliation theory) and relative theory that law is a tool to enforce order in society. This theory has a plural purpose or dual character, on the one hand it is retaliatory and on the other hand it is also preventive, mainly to correct the perpetrator and protect the community.¹³

4. Conclusion

Reformulation of child punishment is needed to fulfill the sense of justice and create an orderly and regular system in society along with the development of the legal phenomenon that children can not only commit tipping but also ordinary crimes and special crimes. Without neglecting child protection, the principle of restorative justice, and human rights, the regulation of child punishment for certain criminal offenses must consider criminal law as an ultimatum remedy. The Law on Juvenile Justice System requires that provision of juvenile offenses be categorized according to the type of crime committed. The author suggests that interested parties should take immediate action to establish alternative criminal punishment as a different type of criminal responsibility, especially for juvenile offenders, who are not subject to diversion requirements.

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