

RESTORATIVE JUSTICE AS AN ALTERNATIVE WAY OUTSIDE THE JUDICIARY PROCESS OF CRIMINAL CASE BY FULFILL THE RIGHTS OF THE JUVENILE (CASE STUDY OF DELI SUHANDI JUDICIAL PROCESS

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Abstract

Hak asasi manusia mengenai anak telah diratifikasi oleh Indonesia oleh karena itu negara wajib melaksanakan dan untuk menjaga jalannya penegakan hak-hak anak. Tidak sedikit anak-anak dari Indonesia melakukan tindak pidana yang belum tentu secara keseluruhan atas rasa mereka sendiri mengingat diri mereka masih anak-anak yang belum cukup umur dan memenuhi syarat dalam hukum. Namun, untuk kesalahan atau kecelakaan yang dapat menghambat sendiri bahkan mematikan masa depan mereka karena mereka harus berurusan dengan proses peradilan. Banyak dari mereka yang harus mengikuti seperti prosedural harus ditangkap dan ditempatkan dalam tahanan. Prosedur semacam ini mampu menyebabkan adanya gangguan psikis terhadap para pelaku kejahatan, pelaku tindak pidana anak akan dengan mudah mendapatkan stigma dari masyarakat di sekitar mereka. masyarakat akan sulit untuk menerima tahanan untuk berada di lingkungan mereka, serta kondisi tindak pidana pelaku anak yang juga akan merasa kurang percaya diri mereka akan putus asa dan akhirnya membuat mereka bukannya menjadi penjahat profesional. Untuk itu, penulis adalah tertarik meneliti bagaimana perlindungan hukum terhadap hak-hak anak yang berhadapan dengan hukum terutama dengan penggunaan konsep Keadilan Restoratif untuk diwujudkan dalam proses peradilan anak sehingga pelaku kriminal tindakan yang tidak perlu melalui proses peradilan yang akan menyebabkan dampak untuk masa depannya.

The human rights of the Child has been ratified by Indonesia therefore the state is obligated to implement and to maintain the course of the enforcement of the rights of children. Not a few children of Indonesia committed the offense as a whole is not necessarily on their own sense considering themselves still children who are not old enough and qualified in law. However, for any errors or accidents that may inhibit himself even turn off their future because they have to deal with the judicial process. Many of those who have to follow such procedural should be arrested and placed in custody. This kind of procedure is able to cause psychological disturbances against the perpetrators, the criminal child will easily get the stigma from the community around them. the public will be difficult to accept detainees to be in their environment, as well as the condition of the crime of child actors who will also feel less confident they would be desperate, and ultimately make them instead become professional criminals. To that end, the author is interested in researching how the legal protection of the rights of children in conflict with the law, especially with the use of the concept of Restorative Justice to be realized in the juvenile justice process so that the perpetrators of criminal acts that do not need to go through the judicial process that will lead to future impacts.

Keywords: Juvenile Protection, Restorative Justice, Juvenile Delinquency

1. Preliminary.

According to the projection of the Indonesia Central Bureau of Statistic (BPS), in 2015 the amount of minors in Indonesia reached up to 62.400.000 (sixty two million four hundred) people. It means that the proportion of the average of the minors compared to the total amount of population of Indonesia is 25% (Twenty Five Percent). With respect to Law Number 23 of 2002

on Juvenile Protection, a minor or juvenile shall mean a person under 18 (eighteen) years of age, including those who are unborn. Such a big amount of minors, of course, require strict laws and regulation in order to ensure the sustainability of the next generation of the country.

In Indonesia, the regulations governing Juvenile delinquency is set in Law Number 39 of 1999 on Human Rights, Law Number 23 of 2002

on Juvenile Protection, Law Number 11 of 2012 on Juvenile Court Justice System is part of legislation governing juvenile and / or minors. although there are new regulations of law number 11 of 2012, Deli Suhandi case occurred in 2011, so the legal basis used was law number 3 of 1997

However, as the time goes by the minors nowadays seems to have no fear of committing crime and many of them have to deal with legal matters at the age where most minors are having their formal education at school. In certain cases, some of the minors even commit heavy crimes, such as robbery and murders. Recently, the legal case that involved minors was a car accident that resulted the death of many people in the highways as the minor seemed to lose control of driving his car.

There are many reasons why the minors engaged with legal issues, among others are for unreasonable reasons for people at their age which is to make a living or without further consideration on what the risks would be as a minor is not able to make a wise decision yet. According to the data issued by the Indonesian Central Bureau of Statistic, it was estimated that there were 4000 juvenile below 16 years of age and 3242 juvenile between 16 to 18 years of age were sent to jail. The minors, whose civilian rights were taken away for engaging with legal issues, remain entitled to be treated in such a way to lift up their dignity and pride, which might strengthen the appreciation of the human rights and basic freedom of the minors based on their ages.

The minors who engaged with legal issues or committed crimes actually triggered by the circumstance or the objective conditions that surround themselves as well as their environment.

The factors that cause juvenile under age involved with legal issues, there are:

- a. Poverty (29, 35%)
- b. Environment (18, 07%)
- c. Miseducated (11, 3%)
- d. Disharmonious family (8, 9%)
- e. Lack of religious education (7, 28%)

Responding to this issue, the government of Indonesia established National Commission for Juvenile Protection, an independent body which according to the provision of Article 76 of Law

Number 23 of 2002 on Juvenile Protection shall have the following duties:

a. Conducting socialization of all the laws and regulations involved in the field of juvenile protection, collecting data and information, receiving community complaints, and conducting studies, monitoring, evaluation and supervision in respect of the protection of juvenile's rights;

b. Submitting reports, advice, input and considerations to the President in respect of the protection of the rights of the juvenile.

The National Commission for Juvenile Protection conduct studies, monitoring, evaluation and supervision in respect of the protection of juvenile's rights. The word monitoring and supervision leave room for questioning on how this commission will aid the juvenile who engaged legal issues.

A case of not fulfillment of juvenile's rights in cases of criminal offenses of children is a case Deli Suhandi that occurred in 2011, in conjunction with this case the solution is to use the law number 3 of 1997 in view of the revolution previous laws have not been enacted that legislation of law number 11 of 2012 concerning juvenile justice system..

2. Study Issues.

Children is a deposit that is priceless from the Almighty. Juvenile are a part of a family that would later become part of the community. The socialization of juvenile by the family is something very important because of the attitude that will be imparted to juvenile will make the juvenile the same applies as what has been inculcated from juvenilehood his family in the community later. Juvenile under the age of conflict with the law because of his own actions is one of the events that we could see from the first socialization inequality is wrong, and therefore some of the factors mentioned above. Delinquency carried juvenile is an accident that accompanied the lack of maturity for a juvenile to commit mistakes. The kids of course are not old enough and have a careful thought in determining its actions. Inadvertence turned out to have to directed them into iron bars should not place them in a cheerful enjoy them. We certainly do not want their juvenilehood is supposed to be spent for playing with their friends in the sun should direngut by seruntutan procedural justice from the

level of investigation to the verdict, not to mention those who have to undergo the holder, to be accused and had to pay a price the same as adults who commit illegal acts to spend many years of their life behind bars cool.

Their rights as human beings, as citizens, as juvenile are often not considered, the finder of justice finally found a new effort that is able to overcome the problems of juvenile in this judicial process. Justice for those minors and violation of the law is to Restorative Justice. Restorative Justice is a new way of thinking in handling criminal proceedings, in which the perpetrators of criminal acts, victims of crime, and all related parties together to find solutions and the implications of an issue and then focuses the best decision for all parties for the fulfillment of rights the inherent right of each party. Juvenile who have violated the law or committed a crime must be very influenced by several other factors outside the juvenile.

Restorative Justice is an effort to support and implement the provisions as stipulated in Article 18 of Law No. 11 of 2012 on Juvenile Criminal Justice System.

The Concept of Restorative Justice in Law No.3 of 1997 on Juvenile Justice

At the time of this Millennium, for the modernization of the social circumstances, the changing community, economic and cultural conditions that are experiencing rapid progress brought changes the perceived values and norms of the society as well. Both parents are busy at work also provides a less good impact is. reduced their surveillance of juvenile of their own. On the other hand, the development of modernization serves not only turned out to be a positive impact. For example, the game "game" that smells a fight causing the juvenile Indonesia cultural violence. Unfortunately, juvenile even made curious for molesting his friend himself thereby causing the juvenile itself entangled crime. Plus more, free access to watch blue movies that led to the boy's own curious and it is unfortunate again that juvenile dare his friend's own obscene.

Then from this emerged the juvenile with the predicate is not good even the son of the conflict of laws (AKH), juvenile who break the law have to face with the law. Then how juvenile who are dealing with the law? Where to keep in mind that

the juvenile has its own rights different from the rights of adults, therefore any responses should refer to the views of the juvenile.

The explanation above need to be discussed in order for the juvenile in conflict with the law still feel to have dignity and self-worth with the completion of the law through a very humane way so that it is not tended to encourage the juvenile to feel himself is professional criminals.

When viewed from the aspect sociological , the youth should be prosecuted morally to have a sense of solidarity high in social life and understand value and norm that applies in the community so and they can feel to have a life socialization good and took part in is in charge of security , order , peace in the survival of social people .The formation of the social condition this is a main in the purpose of conducting prevention (prevention of misbehavior teenagers .

The Act of prevensi (prevention) is The huge benefit in efforts to abolish the social problems, aiming to minimize qualitative and quantitative social problems that often occur in the life of society. Similarly, the existence of religious norms have a correlation that is relevant to the teaching of religion itself that is positive in the straighten teenager mental development. It also aims to create the conditions of a healthy Indonesia adolescent physical and spiritual.

Therefore the positive steps that must be performed that requires the participation of all parties in order that the goals are achieved can give maximum benefits. Preventive efforts and the efforts of other relevant require participation from people of itself so that the deployment can touch the entire lining of the people especially the young Indonesia who later will become the seeds for the future of this country. While in the scope of the family, the task of formation of social values and religious norms mostly become concentration and the responsibility of both parents, just as we know that the first juvenile socialization is formed within the family. Therefore, the conditions of families that are not too well or not in harmony will affect the juvenile's behavior even tend to damage the mental development of adolescents, especially broken home and quasi broken home has the possibility to inhibit the growth of mental older juvenile. Therefore the creation of good

conditions of life in the family holds an important role so that needs to be realized as early as possible.

The Enforcement of Restorative Justice for Juvenile in Case of Deli Suhandi

Case Approach

This case was the case Deli Suhandi that were those junior high school was 14 years in a noose two article because accused of stealing a pulse voucher for Rp 10,000,00 .

As we know that principle of non-retroactivity is a derivative of the principle of legality. With the necessity to define first an act as a crime or a criminal offense in the laws or regulations of national criminal law, and on that basis the country then apply to the perpetrator of the deed. In other words, laws and regulations that govern it must exist and apply first, then later set against acts that occurred after the enactment of the legislation. In a negative sense, the legislation does not apply to the same acts that occurred prior to the enactment of the legislation. In short it can be said, that any legislation should not be applied retroactively. This is what is known as the principle of non-retroactivity, so this case was prosecuted by law number 3 of 1997 about Juvenile Justice because the case occurred in 2011 and the statute reform on the law number 3 of 1997 which is Law No. 2012 on the Juvenile Justice system is not yet in applied.

Two article that trapped boy is article 363 paragraph (1) 3rd the book the act of criminal law (Criminal Code and 362 Criminal Code about stealing). Of article that ensnare that, deli suhandi in said with prison for seven years. Besides charges that unexamined and defect; said to unexamined is because an acknowledgment of the defendant and charges that in read by of public prosecutors in the investigation different , while it is said defect is because Deli Suhandi not accompanied by lawyer when safety examination .Whereas according to article 56 Criminal Code , a suspect that charged by article who menaces his sentence over five years must accompanied by lawyer , and article 51 law no. 23 2007 about judicial juvenile states that water attorney as a companion .

Unfortunately, inequities that upon deli suhandi not only stop until there. Found the recognition from friends the defendant deli

suhandi that they are friend defendants confessed to of cases of violence carried out by the police when check second relatives the defendant deli suhandi as a witness from this case.

According to Lucky and Bowo, (friends of deli suhandi), them with the defendant coming home school when see a riot in dirt roads high, johar new on thursday, 10 march 2011.Lucky and bowo admitted that he had run away when the defendant call them in the way, from behind. Bowo giving recognition that the defendant deli suhandi find a card pulse voucher, then the defendant give him to witness bowo, then from behind someone yelling “A Thief”, and witness bowo and the defendant deli suhandi fear and run. Witness lucky also agreed that cards pulse voucher thrown in the way.

Over injustice that , deli suhandi was detained for 4 days in captivity johar new police office before finally on the move to the house of detention pondok bambu , east jakarta .

With the help team a lawyer from Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia (PBHI) jakarta , kid who lived at dirt roads high barat i , rt 002 rw 005 , johar new , this later excreted of the house of detention as a prisoner out on tuesday , april 5 2011 .The advanced with agenda reading exception of the defendant will be was held on wednesday , 4 may 2011 .The detention of the defendant deli suhandi since friday , 11 march 2011 have as almost three weeks that causes the defendant own cannot in the central the first half .While suspension submitted by attorney of deli suhandi and the bar legal aid and human rights (Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia (PBHI)) by reason suspension namely the defendant deli suhandi has an interest to join the exam central the first half rejected by the police by reason of fear police pertaining to a defendant that will tried to escape or escape if not being held .

Case Analysis

a) About Restorative Justice

Investigation over deli suhandi ignoring justice restorative justice for reference article 13 letter a a letter with Surat Keputusan Bersama (SKB) about the mechanism handling juvenile before the law, investigators used the justice restorative .The definition of restorative

justice according to article 1 number 5 Surat Keputusan Bersama (SKB) is the completion of fairly involving agents. Also, involving victims, their families, and the related in a report of criminal in together finding settlement to these crimes and implications, by stressing the recovery to your sides.

b) About Neglect The Concept of Restorative Justice in Handling The Crimes of Juvenile

Juvenile protection national commission or Komisi Perlindungan Anak (komnas pa) arist merdeka sirait will sent a letter applying for a cessation matter to kapolri and the attorney general. Demands of this based skb signed six a high state of institutions, including kapolri and the attorney general, 2009 said cases involving juvenile must prioritize on restorative justice or the principle of family spirit. Of perspective a letter with or Surat Keputusan Bersama (SKB) signed and inaugurated by six a high state of institutions can be concluded that the police vigilante without regard to the concept of procedural and the idea that has been in agreed with. Arist censure, the act of police sub-precinct johar new, who ignored skb in legal right six institutions a high state of next year. Let alone, they went on legal proceedings in deli plug it into Rutan (Rumah Tahanan) Pondok Bambu. Police has violated the rights of the juvenile deli and steal independence. This case must be stopped by law.

Besides Surat Keputusan Bersama (SKB) another completion law those involving juvenile, indonesian police department in 2009 sent a letter to all sector police in east jakarta on guidelines for handling juvenile face to face with the law. Uric numbered b / 2160 / ix / 2009 / department, which regulate guidelines for handling the son of being face to face with the law. In addition we forget article 13 letter b law no.2 2002 who are talking about the main task of police is enforce the law. From the case deli this can we pull the conclusion that sector police johar baru do not perform their

tasks well, also related to acts of violence involving two witnesses deli own relatives.

Should police on wise can use discretion and capable of deal with the problem in peace, by deliberation, as mandated from the concept of restorative justice itself namely with you wanting related parties (the, witness, the families of the victims, agents, family agents, and a public figure) together solve those problems for the purpose avoid the crimes juvenile order admitted his guilt without put it in the process of judicial will have an impact on the condition of juvenile psychologist.

c) An Impact for The Defendant For The Education

The defendant deli suhandi that is students grade 2 junior high school was experienced many loss that is, since the process judicial necessary so that make the defendant must stay in the house of detention pondok bambu for nearly three weeks in undergo the process of Judiciary. During undergo the process detention in the house of detention, the defendant deli suhandi passing lessons school, daily duties, remedial, even the test central the first half that supposed to through the past. To notice this sadness condition, the defendant deli threatened in school nor give risks for the education.

The defendant deli suhandi will be stigmas of people that is as a convict, a thief, pickpocket, thief, and the act of labeling of people in the area, he going to grow environment unhealthy, and and ridicule of the community surrounding will form self and character be like what the public contemptible. The condition his soul will influence it to be a class professional just because her past of dark because to undergo a judicial process, was kept in the house of detention, and threatened 7 years in prison for a juvenile small was just 14 years old.

Not many people which are able to receive the condition of a convict who start an thieves from age 14 years, the defendant deli will difficult get a job because stigmas of the community in the area. And their education who stop that,

he will dropping out that he could not be also rely on the education who is not much that .His future will only so the assistants drivers, drivers, domestic workers, or and others, the opportunity to be successful people finally spent only because he must be included in the judicial process just because a pulse voucher of Rp 10,000,00 .

d) For The Condition of Soul

The condition of soul that may be experienced by the defendant deli suhandi are impaired on mental and conditions of his psychologist, based on the results of the interviews conducted media and the press in his home and the postponement detention in heard him deli admit that he is still are afraid to meet or see police, deli shows that the traumatic natural by the boy, look of how deli answer that question only with nodded lightly without wanting to stared at reporters .

Junior high school juvenile who was 14 years, have to pass through a process arrest at his home, must passes an examination without accompanied by his lawyer, must go through detention for nearly three weeks. Shirking duty and obligations at school and at home just for the sake of stealing case voucher for 10,000 when it not prove true .Boy was just 14 years old, have to go through process things and follow a procedure that is, later have to accept by force stigmas of the community in the area who are not necessarily could receive the condition as “Bad Boy”.

This case ended when a letter suspension detention given by the attorney of deli and the Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia (PBHI) granted .

Based on the discussion and facts above of course people will no longer choose the process of punishment or condemnation as the main line decide crime because there are several the reality in the field someone who lives with punishment or condemnation in a correctional institution (with the purpose of giving a deterrent effect), it was after back into the community , juvenile

concerned it educated be doers crimes other kinds, even in many cases, people who have had punishment or condemnation still repeating deeds (felony) or recidive into the future. It is also a consideration own of the effectiveness punishment or condemnation in the system criminal law, so we needed sought other ways which are can ensure the settlement criminal cases effectively and efficiently, and more fulfilling the principle of justice.

The fate of juvenile in Indonesia and other countries less profitable, is supposed to be a juvenilehood full of happiness and play with the searing Sun has now turned into a period of darkness for most of the juvenile due to the increasingly complex issue of juvenile who had to deal with problems and conflicts.

Indonesia has its own laws governing the Juvenile Protection Act 23 of which in 2002, but in practice there are still many violations, especially in the case of Deli Suhandi who did not get his privilege as a child and just got a treatment that is reasonable from several parties. This law presumably can be applied not only with the inception of the legislation but local regulations may need to support this legislation in order to achieve the goal to minimize the kids who have the possibility to perform criminal acts.

Efforts should be made by law enforcement officials in order to Restorative Justice approach can be applied include:

- a. Police expected in handling criminal cases to prioritize juvenile the best decisions with relevance to the future needs of the juvenile in an effort optimal criminal distanced itself from the formal justice process. This is in accordance with Article 42 paragraph (1) and (2) of Law No. 3 of 1997 on Juvenile Justice.
- b. It is hoped with the establishment of special penitentiary for criminal juvenile, so that juvenile are not held together with adult inmates. This is in accordance with Law No. 3 of 1997 on Juvenile Justice.
- c. Implementation of social welfare programs of juvenile through the provision of social homes and trauma center. As well as it provides assistance to juvenile victims of abuse and neglect of the fulfillment of basic needs such as

assistance for juvenile in the form of conditional cash transfers, especially juvenile from poor families. In addition, the expected establishment of institutions and forums were able to protect the form of social protection and rehabilitation in accordance with the needs of juvenile. This is in accordance with Law No. 3 of 1997 on Juvenile Justice.

3. Conclusion.

In the application of the concept of Restorative Justice for juvenile criminals has not been optimal and even felt that the handling of criminal cases the juvenile was equally impressed with the adults who committed the crime. Therefore, the application of the concept of Restorative Justice in handling cases of juvenile offender must remain in control with tight, because based on his experience still frequent violations of rights for juvenile criminals, partly because:

- a. Special protection for juvenile have not been found in the Code of Penal (Penal Code) and the Code of Criminal Procedure (Criminal Procedure Code).
- b. Opportunities for the police, prosecutor and judge to use the powers of discretion in case the juvenile has not been found in the Law on Police, Law on Public Prosecution and the Law on Basic Provisions on Judicial Power, as well as the Law on juvenile justice No. 3 of 1997.
- c. The legal basis only under Article 13 Joint Decree of the Indonesian Supreme Court, the Attorney General of the Republic of Indonesia, the Indonesian National Police, Minister of Justice and Human Rights of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, and the State Minister for Women's Empowerment and Juvenile Protection of the Republic of Indonesia Number: 166 A / KMA / SKB / XII / 2009, No. 148 A / A / JA / 12/2009, No. B / 45 / XII / 2009, No. M.HH HM.03.02-08/2009, No. 10 / PRS-2 / KPTS / 2009, No. 02 / Men.PP and PA / XII / 2009 on Handling Juvenile Who Faced with the Law.

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