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**MECHANISMS FOR THE SETTLEMENT OF CHILDREN CONCERNING  
THE LAW THROUGH THE RESTORATIVE JUSTICE APPROACH**

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**Abstract**

The ABH case settlement is carried out using a restorative justice approach, requiring the victim's consent and the victim's family and the child's willingness through diversion implementation. Thus, it is understood that the ABH case's settlement cannot always be carried out by diversion. The problem in this research is regarding the concept of restorative justice in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and the mechanism for resolving cases of children who face the law through the restorative justice approach. This research is normative juridical research. This research is a descriptive analysis using primary and secondary sources. The data analysis used in this research is qualitative. Based on the research results obtained, the concept of restorative justice in the SPPA Law is implemented by applying diversion at every juvenile criminal justice process level. Diversion is a diversion of the settlement of cases of children in conflict with the law from a formal process (judicial process) to an in-formal process utilizing deliberation and consensus that prioritizes restorative justice. Restorative justice will protect ABH because, through the implementation of diversion, children will be kept away from the formal justice process, which allows the neglect of children's rights and causes trauma. Obstacles in implementing restorative justice in the Medan District Court's jurisdiction are the lack of human resources from law enforcement officials and the difficulty of reaching a peace agreement between the perpetrator and the perpetrator's family and the victim's family.

## INTRODUCTION

Criminal law enforcement refers to the provisions of criminal law and criminal procedural law through state institutions, given the authority and authority to carry out judicial processes and impose sanctions or penalties on those who violate criminal law. (Waluyo, 2011; Pati, 2020; Tobin, 2014). Therefore, if there is a violation of the provisions of criminal law, then law enforcement agencies that are incorporated in the criminal justice system will follow up by carrying out criminal justice processes, starting from investigations, prosecutions, conviction by courts, to implementation of court decisions by placing the convicted person in a correctional facility. Enforcement of criminal law against children in conflict with the law through the implementation of the criminal justice process has recently been deemed no longer following the principles of protection of children. Based on these considerations, then came the idea of reforming criminal law, especially in handling criminal cases for children who face the law in a direction that puts forward efforts and efforts to protect children. This thinking developed around the 19th century when European and American countries saw an increase in children's crimes. At that time, the treatment of children who commit crimes or criminal acts is the same as adults, which is a matter of concern for several groups, especially law experts and child protection practitioners. (Sutedjo & Melani, 2013; Danil, 2016; Gerungan, 2016).

In its development, the legal process against in various countries is no longer based on the consideration of differences between children and adults but leads to children's education and guidance. Based on these considerations, then an alternative to punishment for children emerged, namely by providing sanctions or criminal acts against the imposition of punishment for children who commit criminal acts. (Sutedjo & Melani, 2013; Erdianti & Al-Fatih, 2019; Mursyid, 2019). The provision of criminal sanctions in actions is considered more relevant in legal protection efforts against children who conflict with the law. Accommodating legal protection efforts for children, especially children who conflict with the law, the government then formulated a legal instrument regulating legal protection for children by issuing Law Number 23 of 2002 Concerning Child Protection, which was amended through the issuance of Law Number 35 of 2014 Regarding Amendments to Law Number 23 the Year 2002 Concerning Child Protection (from now on referred to as Child Protection Law).

As a comprehensive effort to provide legal protection for children who conflict with the law, then the government of the Republic of Indonesia issued and ratified Law Number 3 of 1997 concerning Children's Courts, which was later replaced by the issuance of Law Number 11 of 2012 concerning the Child Criminal Justice System. (SPPA Law). This law is a legal instrument in the implementation of criminal justice against children. After the SPPA Law issuance, the settlement of criminal cases for children in conflict with the law underwent various changes. One of the changes in the juvenile justice process in the SPPA Law is the obligation for law enforcers at all juvenile justice processes to carry out diversion. (N. M. I. Ariani et al., 2020; Candra, 2020; N. V. Ariani, 2014). The definition, according to the formulation of Article 1 point 7 of the SPPA Law, what is meant

by diversion is the transfer of settlement of juvenile cases from the criminal justice process to the process outside the criminal court.

In other words, diversion can be understood to shift the legal process against children dealing with the law from a formal process to a non-formal process. The implementation of diversion in the juvenile justice system aims to ensure that the victim and the victim's family and the child and the child's family as the perpetrator of a criminal act can resolve disputes outside the judicial process with the hope of achieving a peace agreement. The settlement of cases of children in conflict with the law outside the court (non-formal route) will prevent children from being deprived of their liberty and the bad stigma of the effects of the formal criminal justice process by imposing imprisonment and placing children in prison. Therefore, in the SPPA Law, the implementation of diversion in the juvenile justice process is mandatory (imperative), which must be carried out by law enforcers at every level of the criminal justice process prosecution, or examination before the court.

According to the SPPA Law, diversion in the juvenile criminal justice system is carried out using and promoting restorative justice (restorative justice). Settlement of juvenile cases through a restorative justice approach demands that children as perpetrators of criminal acts are more responsible. On the other hand, juvenile cases' settlement through a restorative justice approach requires the victim's willingness to forgive the child who has committed crimes against him; it is even possible that it has caused material and immaterial losses to the victim. Based on the brief description above, this research will analyze various problems related to the implementation of restorative justice in the juvenile criminal justice system as regulated in the SPPA Law, in particular issues concerning; First, What are the legal provisions for the settlement of cases of children in conflict with the law through a restorative justice approach?. Two, what is the mechanism for applying restorative justice in the settlement of cases of children in conflict with the law?. Three, can the application of restorative justice in settlement of cases of children in conflict with the law protect children?.

## **METHOD**

From the research type, this research is normative juridical research. Data in this study come from secondary data, namely, data obtained from library research results (library research). Normative legal research includes several aspects, including positive law inventory research, legal systematics, legal doctrine, and legal principles. (Soekanto & Mamudji, 1985). This research is research on legal doctrine and legal principles related to regulation, mechanism, and application of restorative justice to settle criminal cases against children in conflict with the law. Meanwhile, seen from its nature, this research is descriptive.

In this study, several approaches were used, namely the statutory approach and the conceptual approach. Both approaches are considered relevant enough to analyze every problem that becomes the object of study and research discussion. Data collection in this study was carried out by carrying out library research. Library research is carried out by carrying out document studies or literature reviews by

tracing various legal materials. (Sugiyono, 2006; Graue, 2015; Sgier, 2012; Matthew B. Miles A Michael Huberman, 1994; Berg, 2001).

Data collection in this research is based on library research. In library research, the techniques commonly used are document study or literature review. The document study's implementation aims to collect secondary data in the form of traditional materials deemed relevant to the problem and research discussion, including primary, secondary, and tertiary legal materials. (Amiruddin, 2008).

The data analysis used in this research is qualitative. The qualitative analysis method is an analysis carried out by describing the research results and discussion in the form of a clear, detailed, and easy-to-understand description of the sentences. Furthermore, the method used to analyze the research data, the interpretation or interpretation method, is used for primary and secondary legal materials, including historical and grammatical interpretation.

## **RESULT**

The idea or notion of developing restorative justice is based on the judicial tradition that developed among the ancient Arabs, Romans, and Greeks. According to Albert Eglash's opinion, as quoted by Rufinus, argues that as a concept of thought, the term restorative justice appears as a choice of approaches used in solving criminal cases, from retributive and rehabilitative justice approaches leading to restorative justice approaches. From the opinions expressed above, it can be understood that ideas or ideas arise from human thought. (Hutauruk, 2013; Toruan, 2014). Restorative justice as an idea is based on dissatisfaction with the formal criminal justice system, which is sometimes inappropriate and contrary to the values of public justice. (Purba, 2017; Widana et al., 2020). This is under the opinion expressed by Zulfa, (2009) who argues that as a concept of thought, restorative justice is based on the existence of criminal law reforms that emphasize the involvement of victims and the community in the criminal justice mechanism, which has been marginalized and neglected.

It is recognized that restorative justice as a concept is new in the criminal law system in Indonesia. However, at the level of practice, restorative justice has long been known and practiced among Indonesian indigenous peoples, particularly in implementing the conventional criminal law system for example, the Batak indigenous people in North Sumatra, the Asmat tribe in Papua. The Dayak people in Kalimantan, the Bugis indigenous people in South Sulawesi, and other indigenous communities still hold strong culture.

In the context of Indonesia's State, a constitutional state based on Pancasila, values, and norms apply in the customary law community has been accommodated. Pancasila's values are the philosophical basis of the life of the nation and state in Indonesia. (Prasetyo & Purnomosidi, 2014). So that the position of Pancasila in the hierarchical structure of legislation in Indonesia is higher than the country's constitution is right. When scrutinized, it can be seen that the formulation of values contained in Pancasila contains the concept of restorative justice. The values of restorative justice can be seen in the formulation of the 4th Principle of Pancasila, which reads: "democracy is led by wisdom in representative deliberations." Observing this formula means that the Indonesian

nation has long adored the principle of deliberation to resolve every problem in society, including overcoming problems of the nation on a national scale. Intense resolution through a restorative justice approach is carried out through deliberation between the victim and the perpetrator to reach an agreement. This process in the 4th Precepts of Pancasila is referred to as "Deliberation and Consensus". Provisions for Deliberation and Consensus are a concept of problem or dispute resolution that aims to create a balance between the disputing parties so that the issue can be resolved by reaching an agreement by accommodating the interests of the disputing parties.

Settlement of disputes by deliberation and consensus will accommodate both parties' interests to the dispute so that it is believed to be able to provide justice for all parties.

This is very consistent with the law's objectives and is the ultimate goal of the Pancasila state legal system, as stated in the 5th Precept, which reads: "social justice for all Indonesian people."

At the normative level, the provisions of criminal law and criminal procedure law in Indonesia do not allow the settlement of criminal cases outside the court to be carried out. Because substantially, the criminal law and criminal procedure law have not accommodated this. However, even though the settlement of cases outside the court does not yet have a legal basis or umbrella, it is not uncommon for law enforcement officers to resolve criminal cases outside the criminal court through non-penal mediation based on and using the discretionary powers and powers possessed by law enforcers, especially Police investigators. Unlike the case with the settlement of criminal cases for children who are faced with the law, the SPPA Law accommodates and regulates the mechanism for resolving juvenile cases outside the criminal court. Even in the SPPA Law, the implementation of settlement of criminal cases outside the criminal court through diversion is an obligation that must be carried out by law enforcers at every level of the judicial process in the juvenile criminal justice system. However, the obligation to implement diversion is not for all types of criminal acts, and the SPPA Law provides criteria for the types of criminal acts that are obliged to be carried out by diversion, namely criminal acts punishable by imprisonment of fewer than seven years and not a repeat offense (recidivist).

Settlement of juvenile criminal cases against the law through diversion must prioritize a restorative justice approach. In an implementation of diversion, it is carried out holding deliberations to reach a peace agreement between the victim or his family and the perpetrator and his family. The deliberation process also involves Mr, social workers, and also community leaders.

The implementation of diversion in settlement of criminal cases children in conflict with the law, apart from regulating in the SPPA Law, is also regulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. The purpose of implementing diversion in the juvenile criminal justice system is to settle juvenile cases outside the criminal justice process by holding deliberations to reach a peace agreement between the victim and the child. Another objective is to instill a sense of responsibility towards

children for the wrongs they have committed and encourage community participation to resolve disputes between perpetrators and victims. The ultimate goal of diversion is to prevent children from the criminal justice process, which leads to the imposition of criminal sanctions in the form of imprisonment and prevents children from being badly labeled (stigma) by society against children. As for the considerations for implementation of diversion in the context of solving cases of children in conflict with the law, a restorative justice approach includes: (Makarao, 2013).

### **Types of Crime**

The criminal offense category that diversion must carry out using a restorative justice approach is a criminal offense punishable by a criminal sanction of more than one year to 7 years. Meanwhile, for the types of criminal acts punishable by criminal sanctions of less than or up to one year, the implementation of discretion is prioritized, which means that no formal legal process is required. The criteria for criminal acts committed by children can be resolved by implementing diversion, and restorative justice approaches if. (Marlina, 2009).

- a. The crime committed by the child did not cause harm or was related to the public interest and was not a violation of road traffic—for example, criminal acts of terrorism, and so on.
- b. The criminal act committed by the child does not cause a victim or severe injury, for example, the crime of murder;
- c. The crime is not included in decency crime, which is considered severe and involves honor, for example, the crime of rape.

### **Children's Age**

Another consideration in solving child criminal cases using a restorative justice approach is the age of the child. The younger the child who commits the crime, the more likely it is to diversify by using restorative justice to settle the child's case. According to the law, the age limit for a child who can be held responsible for the crime is 12 years old and not 18 years old. Meanwhile, children who have not reached 12 years cannot be held responsible for the crime.

### **The consent**

The first and foremost condition in solving juvenile criminal cases through a restorative justice approach is the victim's willingness and the victim's family to carry out diversion and carry out mediation to reach an agreement. This means that in order for diversion using a restorative justice approach to be carried out, it is necessary to have the victim's willingness to forgive the perpetrator. However, for the types of minor crimes and the losses that are not too big, the implementation of diversion does not require the victim's consent or willingness.

### **The perpetrator's confession and remorse**

Apart from the consent and willingness of the victim, other things that are taken into account in the implementation of diversion are remorse and the admission of guilt from the child who committed the crime. This is very reasonable,

considering that it would be impossible to make a peace agreement between the perpetrator and the victim if the perpetrator was unwilling to admit his guilt.

### **Community support**

Community support in implementing diversion is needed. Given that in the mediation process between the victim and the perpetrator, it is hoped that community leaders will be involved as mediators who will later facilitate the peace process between the victim and the child. Mediators have an essential role in the mediation process.

Therefore, a mediator is required to be able to accommodate the interests of both parties, be it the interests of the victim or the perpetrator. This community support is needed to implement diversion. As a mediator, it encourages a peace agreement between the victim and child who committed a crime against the victim. Based on the description above, it can be concluded that in solving cases of children in conflict with the law, law enforcement officials at all levels of the criminal justice process are obliged to seek diversion by prioritizing solutions based on restorative justice. Fulfilling these obligations, in settlement of cases of children who are faced with the law, investigators must always prioritize the children's best interests, namely by implementing diversion. In the implementation of diversion by investigators, several things are taken into consideration, namely the category of criminal acts, the age of the child, the results of community research from the Correctional Center (Bapas), the losses incurred, the level of public attention, and the support of the family and community environment.

The mechanism for implementing the diversion deliberation begins with the opening ceremony of the diversion deliberation by the facilitator by introducing the parties present and conveying the diversion deliberation aims and objectives and implementing the diversion. Besides, the facilitator also explained briefly about the duties and functions and briefly explained the charges and descriptions of the child's behavior and social condition and the social adviser's suggestions. Furthermore, in the deliberation, the facilitator is obliged to provide an opportunity for the child or parent/guardian to convey matters related to the child's actions and the expected form of resolution and the victim or parent/guardian to provide responses resolution. The parties' desire, which is an agreement to settle the case by deliberation, is then compiled by the facilitator as a form of agreement. The preparation of a draft agreement between the parties by the facilitator must not contradict law, religion, community decency, morality, or contain things that cannot be implemented by the child or contain lousy faith.

The critical point of the implementation of diversion is to prevent children from being deprived of their liberty. In the implementation of diversion, the interests of the victim must be considered. Therefore, the implementation of diversion must be based on the agreement or consent of the victim. In the implementation of diversion at the court level, there is the possibility of the judge terminating or diverting / not continuing the case examination and examination of children during the examination process before the trial. (Pramukti & Primaharsya, 2018). This is also the case at the level of investigation and prosecution. The conception of child protection covers an extensive scope, in the sense that child protection is

not only about protection of the physical and spiritual aspects of the child, but also regarding the protection of all their rights and interests that can ensure proper growth and development, spiritually, physically and socially. (Gultom, 2010). Based on these considerations, various countries have agreed to seek legal protection for children by formulating legal rules (regulations) that are substantially a means of providing legal protection for children.

At the normative level that applies as positive law in Indonesia, the protection of children's interests and rights in conflict with the law has been regulated in the Human Rights Law, the Child Protection Law, and the SPPA Law.

Settlement of juvenile cases must be carried out diversion using a restorative justice approach. This is a form of legal protection for children who conflict with the law. This aims to ensure that children's rights can be protected, including the best interests of children's growth and development, and can be implemented under the hopes and mandates of the Child Protection Law.

Thus, it can be concluded that in the juvenile justice system, the imposition of punishment is the last resort that will be carried out. (Priyatno, 2012). In other words, punishment can only be carried out after other attempts have been unsuccessful. This is where a clear distinction is seen between the concept of punishment in the juvenile justice system with general justice, that in juvenile criminal justice, it focuses more on child protection considerations, improving conditions and education, and the best interests of the child.

Diversion in settlement of cases of children in conflict with the law aims to shift the process of solving juvenile cases from formal justice to informal justice through a restorative justice approach. Settlement of cases of children in conflict with the law through a restorative justice approach is an effort to provide protection for children's rights and at the same time seek solutions to children's cases that prioritize the best interests of the child. In addition to the above objectives, the implementation of diversion aims to prevent children from the formal criminal justice process, which is useful for preventing the emergence of stigmatization of children from the community due to imposing crimes and punishing children by placing children in prisons. Besides, diversion is also very beneficial for the recovery of losses suffered by victims due to crimes committed by children through compensation, whether in the form of restitution, rehabilitation, or compensation. Recovery for victims is the initial goal of implementing restorative justice in criminal law enforcement.

Before reforming the juvenile justice system using a restorative justice approach, victims' rights were often ignored and neglected. Attention to victims is very much in line with the concept of justice, wherein criminal law, the rights that are violated are the rights of individuals and communities, not the rights of the state. Therefore, it is proper and appropriate that crime victims' rights must be considered in the criminal law enforcement process.

## CONCLUSION

1. Settlement of juvenile criminal cases is carried out by implementing diversion, which must be carried out by law enforcement officers who are members of the juvenile criminal justice system. The implementation of diversion



is carried out using a restorative justice approach, which involves victims in the dispute resolution process, namely by holding deliberations between the perpetrators and the victims to reach a peace agreement.

2. Implementing restorative justice in the settlement of cases of children in conflict with the law is carried out by implementing diversion. Diversion can be carried out at every level of the juvenile criminal justice process. The implementation of diversion aims to shift the formal criminal justice process to an informal justice process through a restorative justice approach, namely by prioritizing the conflicting parties' interests, both victims and perpetrators.

3. The implementation of diversion using a restorative justice approach is one way to realize children's protection in conflict with the law. With diversion implementation, the child will be spared from the formal criminal justice process and free the child from the community's lousy stigma. (labeled as ex-convicts).

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