

Model of Restorative Justice in the Era of the Industrial Revolution 4.0: An Effort to Make Justice in Children's Criminal Case Settlement

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ABSTRACT

Hulsman concluded that the criminal justice system must be abolished entirely because, logically, this system would not be a humane and sensitive means of dealing with crime. The law that regulates the settlement of criminal cases out of court is Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. This study aims to analyze the restorative justice model in the era of the industrial revolution 4.0 to realize justice in solving child criminal cases. The research method used is a qualitative research method with a normative/doctrinal juridical approach. The research results show that the conventions of the world's countries reflect a new paradigm to avoid juvenile justice. Restorative justice is a popular alternative in various parts of the world for handling children with legal problems because it offers comprehensive and practical solutions. To apply the concept of restorative justice, especially in resolving criminal cases involving children in the era of industrial revolution 4.0, an Information Technology-based Integrated Criminal Justice System has been established, which is a system that allows electronic data exchange between law enforcement agencies, particularly in the South Jakarta area in handling child criminal cases.

KEYWORDS

Restorative Justice, Children, Industrial Revolution 4.0.

Introduction

The criminal justice system is a network of courts that uses criminal law as its primary means, both material criminal law, formal criminal law, and criminal law enforcement. However, this substantial Institution must be seen in a social framework or context [1]. It is overly formal if it is based solely on legal certainty will bring disaster in the form of injustice [2].

With a very similar formulation, it is also said that the objectives of the administration of criminal justice in various countries have specific objectives, namely prevention of crime, resocialization of criminals, and in the long-term realizing social welfare. The administration of criminal justice is a mechanism for the operation of criminal law enforcement officers starting from the process of investigation and investigation, arrest and detention, prosecution and examination in court or, in other words, the operation of police, prosecutors, judges, and prison officers which also means the processing or operation of criminal procedural law [3][21].

According to Rummelink, as quoted by A. Z. Abidin and Andi Hamzah, criminal law does not an end in itself but aims to enforce legal order and protect the legal community. The maintenance of social order depends to a large extent on coercion. In English literature, the purpose of criminal activity is usually abbreviated as 3R and 1D, 3R is Reformation, Restraint, and Retribution, while 1D is Deterrence which consists of Individual Deterrence and General Deterrence (special prevention and general prevention), which means: Reformation means repairing or rehabilitating criminals become good people and useful to society; Restraint means alienating offenders from society; Retribution is retribution against the offender for committing a crime; and Deterrence means deterring or preventing so that both the defendant as an individual or other potential criminals will be deterred or afraid to commit a crime, seeing the punishment imposed on the defendant [4].

Efforts to control crime by using criminal sanctions are the most common way including in the Indonesian criminal law system, as Barda Nawawi Arief stated, who took Gene Kassebaum's opinion stating that overcoming crime using criminal sanctions is the oldest method, as old as human civilization alone. Herbert L. Packer also argues that controlling anti-social acts by using punishment on someone guilty is a social problem with an essential legal dimension [3]. Dramatically, Hulsman once said that criminal justice is essentially a social problem. Based on Hulsman's view, it can be said that the criminal justice system has provided suffering because it is unable to work

according to its objectives, does not carry out the principle of accountability, and this judicial system has innate defects. Thus, it appears that what this system aspires to do is the opposite. Hulsman has developed a notion of "abolitionism" that disagrees with the existence of punishment, which he deems inhuman and irrational. Hulsman concluded that the criminal justice system should be abolished entirely because, logically, it would not be a humane and sensitive means of dealing with crime [5]. The law that regulates the settlement of criminal cases out of court is Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. According to Article 5 of the Juvenile Criminal Justice System Law, the juvenile criminal justice system must prioritize a restorative justice approach and must also undertake diversion efforts [6].

In this regard, the criminal justice system must be replaced by an alternative model, namely by implementing a restorative justice system, one of which is in the face of technological developments in the Industrial Revolution 4.0. The industrial revolution 4.0 is an era of disruption, an era in which ways of working move or change from conventional to modern ways of working, with a digital approach. So oppose technology will be left behind by the times. Technological advances in the industrial era 4.0 have changed the way humans in the digital era interact in all aspects of life, such as education, economy, industry, and law. Specifically, artificial intelligence or commonly known as artificial intelligence (AI), will create a new era for humans.

Stephen Hawking said, "the rise of powerful AI will be either the best or the worst thing ever to happen to humanity. We do not yet know which ". The presence of AI will either make progress or setback the future of humanity. We still do not know precisely what it will be like.

In the world of law, technological advances have not only forced governments to change their approach to law. Legal professionals and law enforcers need to immediately adapt to various innovations and creatives that make it easier for people to access all kinds of law information. In particular, in the justice system that is developing AI in it.

The United States, Britain, and other European countries continue to face the 4.0 industrial revolution in the legal field. The United States, with artificial intelligence, is already using the tools to make legal decisions like a judge. Besides, there are developments in predictive analytical technology that make predictions about the outcome of the litigation.

With this unstoppable technological development, it is appropriate for a criminal law system to be changed according to human development. If the criminal law system is outdated, it will hurt the development of human civilization. With these developments, the logical consequence accepted by the world of law is that over time the criminal justice system, which tends to be outdated and formal, will be replaced by another system that is considered capable of meeting the demands of the times, but this new system should also not ignore human nature [7]. Based on the above problems, this study aims to analyze the restorative justice model in the era of the industrial revolution 4.0 to realize justice in solving child criminal cases.

Research Methods

Research method used is a qualitative research method with a normative/doctrinal juridical approach. Based on the juridical normative/doctrinal approach, the data used in this study are only secondary data. Secondary data in legal research consists of primary and secondary legal materials. The primary legal materials used in this research are various laws and regulations related to the criminal justice system, restorative justice, and the settlement of juvenile criminal cases. Secondary legal materials come from journals, books, proceedings, and various other research results related to this study's topic. The results of this study will be presented in a descriptive-analytical form. This research method is used so that the results of this research can be accounted for legally and academically ethically.

Results and Discussion

In the rule of law concept, the law enforcement function plays an essential role because it is part of national legal activities. Law enforcement itself is also commonly intended to monitor irregularities, investigations, investigations, prosecutions, judgments, and the conviction or verdicts of judges, and the execution of decisions and resocialization activities.

Law enforcement is an effort to uphold legal norms and, at the same time, the values that are behind these norms. In

essence, law enforcement is an integral part of the building and improving the quality of a more sophisticated and meaningful living environment. Law enforcement talks about the rules or articles that are in-laws and regulations and talks about many factors, including the behavior of the people involved in it, such as perpetrators of crimes, victims of crime, law enforcers such as police, prosecutors, judges as well as prison officers who are part of the Criminal Justice system.

Law enforcement is closely related to 4 (four) factors, namely: laws and regulations, law enforcers (such as police, prosecutors, and judges), facilities, and community and local culture. In connection with the four factors mentioned above, law enforcement from a sociological perspective is seen from the process that involves humans in it. Here the human factor is very much involved in the effort to enforce the law. Law enforcement is not only a logical process but rather full of human involvement in it.

The criminal justice system is a system in society to tackle crime. They were tackling means that here efforts to control crime are within the limits of community tolerance. This system is considered successful if most of the public's reports and complaints, which are victims of crime, can be seen. The description above is what is most visible from and expected by the community. However, this is not the overall task and purpose of the system. Tasks that are often overlooked are those related to preventing crime victims from occurring and preventing offenders from repeating crimes. Therefore, the objectives of the criminal justice system can be formulated to prevent people from becoming victims of crime; Resolving crimes that occur so that the public is satisfied that justice has been served and those guilty are convicted, and Seeing that those who have committed crimes do not repeat their crimes.

The components that work together in this system are mainly agencies or bodies that we know by police - Attorney - Courts and Correctional Institutions. These four components are expected to work together to form what is known as "integrated criminal justice administration." The operation of this system includes the pre-adjudication stage, the adjudication stage, and the post-stage. Adjudication Looking at the system's objectives, the criminal justice system is essentially a system that seeks to balance the protection of interests, both the interests of the state, society, and individuals, including the interests of perpetrators of criminal offenses and victims of crime, one of which is in the event of a criminal case involving a child as a victim or perpetrator of a criminal act.

One solution that can be taken in handling child criminal cases is a restorative justice approach implemented utilizing Diversion. Restorative Justice (Restorative Justice) aims to empower victims, perpetrators, families, and communities to correct an act against the law by using awareness and conviction as a basis for improving social life. Jeff Christian, an expert on international correctional institutions from Canada, argues that restorative justice has been practiced by many people since thousands of years ago, long before the birth of formalistic state law today, which is then called modern law. According to him, restorative justice is handling criminal acts seen from a legal perspective and associated with moral, social, economic, religious, and local customs and various other considerations. The definition of Restorative Justice according to the Joint Decree regarding the handling of children in conflict with the law, restorative justice is a fair settlement involving the perpetrator, the victim, their family, and other parties involved in a criminal act, jointly seeking a solution to the crime. Furthermore, its implications emphasizing recovery back to its original state.

Several other factors outside the child strongly influence children who violate the law or commit crimes. To protect children from the influence of the formal process of the criminal justice system, human or legal and humanitarian experts think to make formal rules for removing a child who has violated the law or committed a criminal act from the criminal justice process by providing other alternatives. which is considered better for the child. Diversion's concept was born based on this thought, which in Indonesian terms is called Diversion or Diversion. According to the history of the development of criminal law, the word "Diversion" was first put forward as a vocabulary in the report on the implementation of juvenile justice submitted by the President of the Australian President's Crime Commissions in the United States in 1990. Based on the United Nation Standard Minimum Rules For The Administration Of Juvenile Justice (The Beijing Rules), UN Resolution 40/33 dated 29 November 1985 regulates giving authority to law enforcement officials to take policy actions in dealing with or resolving child offenders by not taking formal steps, including stopping or not continuing. / release from the criminal justice process or return/hand over to the community and other forms of social service activities. These policy actions are referred to as Diversion as stated in Rule 11 and 17.4 of the SMRJJ / The Beijing Rules. Diversion action is a mechanism that allows children to be diverted from the judicial process to other social service processes. The application of Diversion at all levels will significantly reduce the negative impact of children's involvement in the judicial process [8][22].

Jack E. Bynum, in his book *Juvenile Delinquency a Sociological Approach*, states, "Diversion is an attempt to divert or channel out, youthful offender from the juvenile justice system (Diversion is an act or treatment to divert or place child offenders out of the justice system. criminal). The notion of Diversion is also contained in the United Nation Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) point 6 and point 11, which contain statements regarding Diversion, namely as a process of delegating children who conflict with the law from the criminal justice system to informal processes such as returning to the Institution. Social community, either government or non-government. Diversion seeks to provide justice for cases of children who have already committed criminal acts up to law enforcement officials as law enforcers. Based on the draft Law on Juvenile Criminal Justice System, Diversion transfers juvenile cases from the criminal justice process to processes outside the criminal court.

Understanding children's meaning concerning child delinquency behavior is usually done based on age, which means that a person can be categorized as a child. According to the national instrument, namely Law Number 3 of 1997 concerning Child Court, what children mean is a person who, in the case of a delinquent child, has reached the age of 8 (eight) years but has not reached the age of 18 (eighteen years) and has never been married. Meanwhile, based on the Joint Decree, what is meant by children who conflict with the law are children who conflict with the law and children who are victims of criminal acts, is meant by a child in conflict with the law, after this referred to a child, is a person who has reached the age of 12 (twelve) years, but has not reached the age of 18 (eighteen) years who is suspected, indicted, sentenced to a criminal act [9].

The Attorney General's Office of the Republic of Indonesia as the Prosecutorial Institution in Indonesia also indicated that the AGO is in a central position with a strategic role in strengthening the nation's resilience. The AGO is the post and acts as a filter between the investigation process and the examination process in court and acts as the executor of court decisions and decisions. The Prosecutor's Office is the controller of the case process (*Dominus Litis*) because only the Attorney General's office can determine whether a case can be submitted to the court or not based on valid evidence according to the Criminal Procedure Code. The Attorney General's Office of the Republic of Indonesia referred to as the Prosecutor's Office, is a government institution that exercises state power in prosecution and other powers based on law. Prosecutors are functional officials authorized by law to act as public prosecutors and executor of court decisions who have obtained permanent legal force and other powers based on law. Public Prosecutors are prosecutors who are authorized by this law to carry out prosecutions and carry out judges' orders. In prosecution, a principle known as legality and opportunity is known (*legalities and the opportunitate principle*). According to the legality principle, the public prosecutor is obliged to prosecute a criminal act, meaning that the prosecutor must continue prosecuting a sufficiently evident case.

In contrast, according to the principle of opportunity, the prosecutor has the authority to prosecute and not prosecute a case to court with conditions without conditions. So, in this case, the public prosecutor is not obliged to sue someone to commit a criminal act if, according to his considerations, it will harm the public interest. So in the public interest, someone who commits a criminal act is not prosecuted. The Opportunity Principle is a legal principle that gives the Public Prosecutor the authority to sue or not sue with or without conditions a person or corporation has manifested offenses in the public interest.

The conventions of countries in the world reflect a new paradigm to avoid juvenile justice. Restorative justice is a popular alternative in various parts of the world for handling children with legal problems because it offers comprehensive and effective solutions. Restorative justice aims to empower victims, perpetrators, families, and communities to correct an act against the law by using awareness and conviction as a foundation for improving social life [10].

The restorative justice approach is assumed to be the most recent shift from the various models and mechanisms that work in the criminal justice system in handling criminal cases at this time. The United Nations, through its Basic Principles, has outlined that a restorative justice approach is an approach that can be used in a rational criminal justice system.

Jeff Christian, an expert on international correctional institutions from Canada, argues that restorative justice has been practiced by many people since thousands of years ago, long before the birth of formalistic state law today, which is then called modern law. According to him, restorative justice is handling criminal acts that are seen from a legal perspective and associated with moral, social, economic, religious, and local customs and various other

considerations [11].

Restorative justice is the most recommended form of diversifying children who conflict with the law. This is because the concept of restorative justice involves various parties to solve problems related to criminal acts committed by children. A British criminal expert Tony F. Marshall in his writing "Restorative Justice an Overview," said Restorative Justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implication for the future [12].

Explanation of the definition of restorative justice put forward by Tony Marshall in his writing "Restorative Justice an Overview," developed by Susan Sharpe in his book "Restorative Justice a Vision For Hearing and Change" which reveals five key principles of restorative justice, namely: Restorative Justice contains full participation and consensus; Restorative Justice seeks to heal any damage or loss caused by a crime; Restorative Justice provides direct accountability from the perpetrators as a whole; Restorative Justice seeks reunification for community members who are divided or separated due to criminal acts, and Restorative Justice provides resilience to the community in order to prevent further criminal acts.

Settlement in restorative justice is different from conventional justice processes. Conventional justice is a court that determines mistakes and manages the damage/suffering suffered by a person or several people in a forum between the perpetrator of a criminal act and the state, carried out by systemic rules.

Meanwhile, according to Howard Zehr, restorative justice sees a judicial process with a different view; namely, crime is violence committed by people to others. Restorative justice is carried out to restore something to normal by involving victims, perpetrators, and the community in finding solutions that prioritize repair, reconciliation, and protection again. Howard Zehr said the comparison between "retributive justice" and "restorative justice" is: Retributive Justice focuses on resistance to law and the state, while restorative justice is on the destruction or violence against humans related to it; Retributive Justice tries to defend the law by fixing mistakes and regulating punishment, while Restorative Justice defends the victim by paying attention to his pain and makes the perpetrator accountable to the victim and the injured community so that everyone gets their respective rights; Retributive Justice involves the state and actors in the formal justice process, while restorative justice involves victims, perpetrators and the public in a dialogue to find solutions; In retributive justice, the victim is only a complementary part, while in Restorative Justice the victim is a central position; and In retributive justice, the position of society is represented by the state, while in restorative justice the community actively participates [13].

The restorative justice approach is assumed to be the most recent shift from the various models and mechanisms that work in the criminal justice system in handling criminal cases at this time. The United Nations, through the basic principles that it has outlined, assesses that a restorative justice approach is an approach that can be used in a rational criminal justice system [14]. This is in line with GP Hoefnagels' view, which states that criminal politics must be rational. The restorative justice approach is a paradigm that can be used as a frame for a strategy for handling criminal cases that aim to answer dissatisfaction with the current criminal justice system's functioning. Restorative justice is a concept of thought that responds to the criminal justice system's development by focusing on the need for community involvement and victims who are felt to be marginalized by the mechanisms that work in the current criminal justice system. On the other hand, restorative justice is also a new frame of mind that can be used in responding to a crime by law enforcers and workers.

Restorative justice is a concept of punishment, but it is not only limited to the provisions of criminal law (formal and material) as a concept of punishment. Restorative justice must also be observed in terms of criminology and the correctional system. Bagir Manan describes the substance of "Restorative Justice" which contains principles, among others: "Building joint participation between perpetrators, victims and community groups in resolving an incident or criminal act. Placing perpetrators, victims, and society as "stakeholders" who work together and immediately try to find a solution that is considered fair for all parties (win-win solutions). " [15]

The concept of Restorative Justice has been practiced for a long time by indigenous Indonesians, such as in Papua, Bali, Toraja, Minangkabau, and other traditional communities that are still strong in their culture. If a criminal act occurs by a person (including an unlawful act committed by a child), dispute resolution is resolved in the customary community internally without involving state officials in it. The measure of justice is not based on retributive justice in revenge or imprisonment but based on conviction and forgiveness [16].

In handling child cases, the known form of restorative justice is reparative board/youth penal, which is a settlement of criminal cases committed by children by involving perpetrators, victims, communities, mediators as well as judges, prosecutors, and defenders together to formulate the right form of sanctions for perpetrators and compensation for victims or society [17].

The definition of Restorative Justice according to the Joint Decree regarding the handling of children in conflict with the law, restorative justice is a fair settlement involving the perpetrator, the victim, their family, and other parties involved in a criminal act, jointly seeking a solution to the crime. And its implications, emphasizing recovery back to its original state [18].

In this concept, conflict resolution is based on community participation. Cases involving children do not always need to be processed legally. It is enough to be resolved through the community employing kinship. This process is expected to reduce the impact on children who conflict with the law, which is sometimes worse than the criminal behavior itself. Because there is still a sense of resentment, it is not uncommon for "fights" to occur between students, groups, villages, tribes because there is no complete settlement between the perpetrator and the victim and his family and environment, even though the defendant has already been sentenced. This kind of conflict should be carried out by deliberation and consensus with residents or the most respected community figures.

In the 1945 Constitution in Article 28B Paragraph (2), it is stated that every child has the right to survive, grow and develop and have the right to protection from violence and discrimination[19]. The international community has recognized the strategic role of children as the successor to the ideals of the nation's struggle to give birth to a convention that essentially emphasizes children's position as human beings who must receive protection for their rights. This is marked by the publication of the *Convention on the Rights of the Child*. The ratification of the carried out through Presidential Decree No. 36 of 1990 concerning the Ratification of the *Convention on the Child's Rights*. Furthermore, in the framework of implementing the Convention, the government took the initiative to issue several laws and regulations for child protection, including Law Number 3 of 1997 concerning Child Courts, Law Number 39 of 1999 concerning Human Rights, and Law Number 23 of 2002 concerning Child Protection, Law Number 13 of 2006 concerning Protection of Witnesses and Victims, Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons, Law Number 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office, Joint Decree between the Chief Justice of the Supreme Court, the Attorney General, the Chief of Police, Ministry of Law and Human Rights, Social Minister, and the State Minister for Women's Empowerment and Child Protection of the Republic of Indonesia regarding the handling of children who conflict with the law in Law no. 11 of 2012 concerning the Criminal Justice System for Children, and others. It is hoped that these laws and regulations can become the basis for implementing child protection, especially for children who conflict with the law.

Every child who conflicts with the law has the right to receive protection, be it physical, mental, spiritual, or social. In carrying out their duties, law enforcement officials and related agencies/institutions need to pay attention to the principles of the Convention on the Rights of the Child and the Child Protection Law, namely the principle of non-discrimination, the best interests of children, the right to life, survival, and development, and respect for opinions child. Besides, children are the hopes of parents, the hope of the nation and state that will continue the baton of development and have a strategic role, have particular characteristics or characteristics that will ensure the continuity of the nation's existence and state in the future. Therefore, every child must get guidance from an early age. Children need to have the widest possible opportunity to grow and develop optimally, both physically, mentally, and socially. Moreover, childhood is a period of sowing seeds, erecting piles, making foundations, which can also be called a period of shaping the character, personality, and character of a human being to have strength and ability and stand firm in life.

In essence, children cannot protect themselves from various actions that cause mental, physical, and social harm in various life and livelihood fields. Children must be assisted by others in protecting themselves, given their situation and condition, especially in implementing juvenile justice that is foreign to them. Children need to get protection from the wrong application of the laws and regulations imposed on them, which cause mental, physical, and social harm. Protection of children, in this case, is called legal protection / juridical (legal protection). Child protection is an important work that all elements of our country must continue to do. These forms of child protection are also carried out from all aspects, starting with fostering the family, social control of children's relationships, and proper handling through good regulations made by a country [20].

To apply the concept of restorative justice, especially in resolving criminal cases involving children in the era of industrial revolution 4.0, an Information Technology-based Integrated Criminal Justice System has been established, which is a system that allows electronic data exchange between law enforcement agencies/agencies in particular. in the South Jakarta area in handling criminal cases. All related agencies agree to cooperate in terms of data exchange related to the joint application of an information Technology-based integrated criminal justice system. The above aims to help this program be implemented by building an integrated criminal justice system in the jurisdiction area of South Jakarta so that this system is expected to accelerate and facilitate the handling of criminal cases.

Conclusion

The restorative justice model in the era of the industrial revolution 4.0 To realize justice in solving child criminal cases, the conventions of countries in the world reflect a new paradigm to avoid juvenile criminal justice. Restorative justice is a popular alternative in various parts of the world for handling children in legal trouble because it offers a comprehensive and effective solution. Restorative justice aims to empower victims, perpetrators, families, and communities to correct an act against the law by using awareness and conviction as a foundation for improving social life. Cases involving children do not always need to be processed legally. It is enough to be resolved through the community using kinship. This process is expected to reduce the impact on children who conflict with the law, which is sometimes worse than the criminal behavior itself. Restorative justice is the concept of punishment, but it is not only limited to the provisions of criminal law (formal and material) as a concept of punishment. Restorative justice must also be observed in terms of criminology and the correctional system. To apply the concept of restorative justice, especially in resolving criminal cases involving children in the era of industrial revolution 4.0, an Information Technology-based Integrated Criminal Justice System has been established, which is a system that allows electronic data exchange between law enforcement agencies in particular in the South Jakarta area in handling child criminal cases.

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