

RESTORATIVE JUSTICE IN JUVENILE JUSTICE TO FORMULATE INTEGRATED CHILD CRIMINAL COURT

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Abstract

The purpose of this article is to formulate the concept of restorative justice which balanced to protect between child offenders and the victims through the diversion (Victim-offender oriented). This goal will be realized through a normative research (legal research) based on Restorative Justice Concept. In Law Number 11 of 2012 concerning the Child Criminal Justice System the process (SPPA Law), its prioritizes the Diversion Process (Settlement outside the court) carried out through a Restorative Justice approach. Article 5 paragraph (2) of the SPPA Law states Restorative Justice is the settlement of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly to find a fair solution by emphasizing recovery and not base on revenge. Empirical conditions show that balanced legal protection between criminal offenders and victims has not implemented. Evaluation of Law Number 11 of 2012 is needed to formulating the Integrated Child Criminal Court.

Tujuan penulisan artikel ini adalah untuk merumuskan konsep restorative justice yang seimbang antara perlindungan pelaku anak melalui diversi dan perlindungan korban tindak pidana anak melalui pembaharuan hukum pidana anak yang berkeadilan untuk semua pihak (Victim-offender oriented). Tujuan tersebut akan diwujudkan melalui suatu penelitian dengan berdasarkan pada konsep keadilan restoratif. Dalam Undang-undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak Proses Penyelesaian perkara pidana anak yang lebih mengedepankan Proses Diversi (Penyelesaian di luar sidang pengadilan) yang dilaksanakan melalui pendekatan Keadilan Restoratif (Restorative Justice). Pasal 5 ayat (2) UU SPPA menyebutkan Keadilan Restoratif adalah penyelesaian perkara tindak pidana dengan melibatkan pelaku, korban, keluarga

pelaku/korban, dan pihak lain yang terkait untuk bersama-sama mencari penyelesaian yang adil dengan menekankan pemulihan kembali pada keadaan semula, dan bukan pembalasan. Kondisi empiris menunjukkan bahwa Perlindungan hukum yang seimbang antara pelaku tindak pidana dan korban belum terwujud. Evaluasi Undang-Undang Nomor 11 Tahun 2012 diperlukan dalam merumuskan Peradilan Pidana Anak Terpadu.

Keywords: Juvenile Justice, Restorative Justice, Integrated Child Criminal Court

Introduction

The process of resolving cases of children underwent a fundamental change with the enactment of Law Number 11 of 2012 concerning the Child Criminal Justice System which came into force since 2014.¹ This law aims to create a judiciary that truly guarantees the protection of the best interests of children in conflict with the law and against victims of criminal offenses whose offenders are children. A juvenile court is a series of activities in the process of resolving cases of a child crime which includes all investigative activities starting with the investigation, prosecution and examination and verification stages in the court where all the processes are directed solely for the interests of the child.

Article 1 number 1 of the SPPA Law states: The juvenile justice system is the whole process of resolving cases of children dealing with the law, from the investigation stage to the guidance stage after serving a criminal offense. The offender's child in this Act is "Child in conflict with the law." Children who are in conflict with the law according to Article 1 number 3 of this Law states: Children who are in conflict with the law, hereinafter referred to as "Children", are children who are 12 (twelve) years old, but not yet 18 (eighteen) years who are suspected commit a crime. Children in conflict with the law must be treated humanely, accompanied by those who should, provided special facilities and infrastructure, sanctions given to children differ from sanctions against adults and in accordance with the principle of the best interests

¹ Article 108 of Law Number 11 Year 2012 concerning the Criminal Justice System for Children: This Law shall enter into force after 2 (two) years from the date of promulgation.

of children, family relations are maintained so that they are well and naturally meaning children who are dealing with the law as far as possible are not detained/imprisoned, even if forced to be imprisoned/detained they must be placed in special custody of children and not with adults.

Law Number 11 Year 2012 concerning the Child Criminal Justice System (SPPA Law) regulates “Diversion”. Diversion is the transfer of the settlement of the case of the Child from the criminal justice process to the process outside the criminal justice,² and the implementation of this diversion must prioritize “restorative justice” as mentioned in Article 1 number 6 namely:

Restorative Justice is the settlement of criminal cases involving the perpetrators, victims, the families of the perpetrators/victims, and other related parties to jointly seek a fair resolution by emphasizing restoration to its original state, and not retaliation.

Article 5 (1) of the SPPA Law states “The juvenile justice system must prioritize a restorative justice approach.” What is meant by Restorative Justice in Article 1 point 6 is: “Settlement of criminal cases involving the perpetrators, victims, the families of the perpetrators/victims, and other related parties to jointly seek a fair settlement by emphasizing restoration to its original state, and not retaliation.” According to PERMA 4 of 2014,³ Diversi deliberations is a discussion between parties involving children and parents/guardians, victims and/or parents/guardians, Community Guidance, Professional Social Workers, representatives and other parties involved to reach agreement on diversion through a restorative justice approach. So that through diversion, there will be a transfer of the process in the settlement system of cases of children which is rigid and causes trauma to children as perpetrators and provides victims and families of victims will be protected by getting compensation. Mediation through deliberation in diversion is carried out to achieve restorative justice.

Empirical data at the Ministry of Law and Human Rights shows that in all of Indonesia there are 33 (thirty-three) Special Child

² Article 1 Number 7 of Law Number 11 Year 2012 concerning the Criminal Justice System for Children.

³ Perma Number 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Criminal Justice System for Children.

Development Institutions (LPKA). The establishment of this LPKA is based on the Minister of Law and Human Rights Regulation No. 18 of 2015. At present 3,624 children are being assisted in LPKA.⁴ This condition shows that even though Law No. 11 of 2012 concerning the Child Criminal Justice System, in quantity there are still many children who commit crimes that end up in the Penitentiary. The large number of child perpetrators of criminal acts who ended up in Penitentiary shows that the success rate of diversion is still low.

Integration between protecting children as perpetrators of crime and protecting victims in child cases is an important requirement in realizing integrated child criminal justice, so that it is expected to be able to formulate the concept of restorative justice which has a more balanced fair value of victims and perpetrators of crime so that it is expected to be able to realize effective diversion and restore the function of criminal law as *ultimum remedium*.

Restorative Justice in Juvenile Justice

Children as perpetrators of crime before the enactment of Law No. 11 of 2012 concerning SPPA still puts imprisonment to be the main sanction and most often applied and in the end children as perpetrators of criminal acts ended at the Penitentiary. In addition, the old law did not recognize the mechanism of victim protection through a mediation process. Placement of Children in Correctional Institutions both directly and indirectly will have a negative impact on children including: (1) psychological impacts due to children's development are influenced by social contexts that are institutional in nature; (2) social impacts will occur as a result of interactions between children and prisoners while in the Penitentiary, and (3) physical and biological impacts due to the physical condition and mental condition of children who are weaker when compared to adults, positioning children into groups that are vulnerable to becoming victims of violence.⁵

⁴ Agregasi Antara, "Menkumham Klaim 33 LPKA Sudah Terbentuk di Indonesia", *Okenews.com* (March 31, 2017, <https://news.okezone.com/read/2017/03/31/340/1655459/menkumham-klaim-33-lpka-sudah-terbentuk-di-indonesia>), accessed Feb 12, 2017.

⁵ Redaksi Geotimes, "Indonesia Butuh Tambahan Lapas Khusus Anak", *Geotimes.co.id* (July 6, 2015, <https://geotimes.co.id/arsip/indonesia-butuh-tambahan-lapas-khusus-anak/>), accessed Feb 12, 2017.

Article 1 point 6 of the SPPA Law states that Diversion is the transfer of the settlement of a child case from a criminal justice process to a process outside of criminal justice, and in Article 7 paragraph (1) it states the obligation to seek diversion at each stage of the investigation, starting with the investigation stage, prosecution and examination stages in court.⁶ Thus diversion is an obligation that must be sought at each stage of the examination starting from the stages of investigation, prosecution and examination at a court hearing. The purpose of diversion is to; a. achieving peace between victims and children; b. settle child cases outside the judicial process; c. prevent children from deprivation of independence; d. encourage the community to participate; and e. instill a sense of responsibility to the child.⁷ The philosophy underlying the implementation of diversion in achieving the goal of this diversion shows that there is a shift in philosophy in the settlement of cases of children which was originally *retributive justice*,⁸ then shifted to rehabilitative and currently based on this law the philosophical basis for settlement of child cases shifts to the philosophy of *restorative justice*.

The involvement of the victim and her family and the perpetrator and her family largely determines the success or failure of diversion in the settlement of child cases. The position of the perpetrators and their families and victims and their families is equal. The interests of both parties must be equal and balanced. If the interests of just one party take precedence, it can be understood if the diversion agreement will be difficult to realize. The SPPA Law still provides protection that is pro-criminal, in this case children, protection of victims is neglected and it seems that the state has not provided equal protection between the

⁶ Article 7 (1) At the level of investigation, prosecution and examination of cases of Children in district courts, efforts must be made for diversification.

⁷ Article 6 of Law Number 11 Year 2012 concerning the Criminal Justice System for Children

⁸ Retributive justice is a theory of justice which holds that the best response to a crime is a proportionate punishment, inflicted for its own sake rather than to serve an extrinsic social purpose, such as deterrence or rehabilitation of the offender. Retributivists hold that when an offender breaks the law, justice requires that the criminal suffer in return. They maintain that retribution differs from revenge, in that retributive justice is only directed at wrongs, has inherent limits, is not personal, involves no pleasure at the suffering of others and employs procedural standards. See, Robert Nozick, *Philosophical explanations* (Cambridge: Harvard University Press, 1981), p. 366–368.

perpetrators (children) and victims. Meanwhile, in Article 6 paragraph (1) that “The Diversion Process must pay attention to: a. victim’s interests; b. children’s welfare and responsibility; c. avoidance of negative stigma; d. retaliation avoidance; e. community harmony; and f. propriety, decency, and public order.”

According to these provisions, the “interests of the victims” is a very strategic thing so it must be seriously considered in the success of diversion. The balance of the protection of the perpetrators (children) and victims will be the center of the writer’s analysis in realizing an integrated juvenile court. Criminal law through legislation should be able to protect human rights both properly and in balance between the rights of perpetrators and victims’ rights and criminal law is able to protect the interests of all parties equally for the realization of the objectives of the criminal justice system.

This is in line with the 2005 XI UN Congress in Bangkok on the Prevention of Crime and Criminal Justice (Eleventh United Nations Congress on Crime Prevention and Criminal Justice) in item 32:

*To promote the interests of victims and the rehabilitation of offenders, we recognize the importance of further developing restorative justice policies, procedures and programs that include alternatives to prosecution, thereby avoiding possible adverse effects of imprisonment, helping to decrease the caseload of criminal courts and promoting the incorporation of restorative justice approaches into criminal justice systems, as appropriate.*⁹

In line with these various documents, the purpose of diversion in Indonesia is regulated in:

Article 2:

Diversity aims: a. achieving peace between victims and children; b. settle the Children case outside the judicial process; c. prevent children from deprivation of independence; d. encourage the community to participate; and e. instill a sense of responsibility to the child.

Article 6:

(1) Diversion process must pay attention to: a. victim’s interests; b. children’s welfare and responsibility; c. avoidance of negative

⁹ The eleventh United Nation Congress on Crime Prevention and Criminal Justice, *Bangkok Declaration: Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice*, Bangkok, April 18-25, 2005.

stigma; d. retaliation avoidance; e. community harmony; and f. propriety, decency, and public order.

Looking at the purpose of diversion, the juvenile justice process through diversion according to this law still prioritizes the interests of the child who committed the crime, the interests of the victim have not been truly protected. While according to Article 6 paragraph (1) this Law states that the diversion process must pay attention to the interests of the victim. This shows that the protection of victims of crime has not been well spelled out in the articles of this law. The State's side is still visible, that is, it still sides with the perpetrators of criminal acts, in this case the perpetrators of child crime through the regulation of children's rights, and always puts the best interests of the child. Not so with the protection of victims in criminal cases where the perpetrators are children. According to the researchers, the state's support for the victims is a determining factor in the success of diversion.

The purpose of the criminal justice system according to Philip. P. Purpura in Sidik Sunaryo stated that "the criminal justice system (criminal justice system) is a system consisting of the Police, Prosecutors' Court, and Correctional Institutions aimed at protecting and maintaining public order, controlling crime, making arrests, and detention of the perpetrators of crimes, setting limits on the guilt or failure of a person, convicting a guilty offender and through the components of the system as a whole can provide legal protection for the rights of the accused."¹⁰ This is called the Integrated Criminal Justice System (SPPI) or the Integrated Criminal Justice System (ICJS) which is a very important element of criminal law in the framework of material criminal law enforcement. According to Muladi, the criminal justice system in accordance with the meaning and scope of the system can be physical in the sense of structural synchronization in the sense of harmony in the administration of criminal justice, can also be substantial (substantial synchronization) in relation to applicable positive law, and can also be cultural (cultural synchronization) in the sense of living out the views, attitudes, and philosophies that thoroughly underlie the

¹⁰ Sidik Sunaryo, *Kapita Selekta Sistem Peradilan Pidana* (Malang: UMM Press, 2005, p. 2.

functioning of the criminal justice system.¹¹ In comparison to the restorative justice approach in Thailand the non-litigation success rate in children's cases in Thailand is quite high, reaching 75% as stated in his paper presented at the Fourth European Conference on Restorative Justice, "The Thai criminal justice system has implemented restorative justice programs since 2003. Presently, about 9,700 conferences were conducted for juvenile cases and 75% of them resulted in non-prosecution order."¹² There are some fundamental differences from the special justice system for children and families in Thailand and Indonesia.

In the context of criminal law enforcement in Indonesia Settlement of criminal cases that benefit all parties is a new idea at this time. Restorative justice is one model that is considered to be able to fulfill justice, especially for victims of crime that have been neglected.

Some key aspirations and ideals of the restorative justice movement, as stated Margarita Zernova in her book, *Restorative Justice: Ideals and reality*, is:¹³

- a. to create a new ethical orientation;
- b. to develop an alternative to punishment and treatment;
- c. to craft a model of criminal justice which will place victims at its centre;
- d. to design a way of doing criminal justice which will aim to repair harm and restore peace and harmony in the aftermath of a criminal offence;
- e. to construct a justice paradigm that will be characterized by voluntariness;

¹¹ Muladi, *Kapita Selektta Sistem Peradilan Pidana* (Semarang: Undip Press, 1995), p. 13.

¹² Rajannavong Wancai, "Justice and Reconciliation, a Program of Prison Fellowship International", 11 Novemver 2007, Restorative Justice Programs in Thailand. Papers Presented at the Fourth Conference of the European Forum for Restorative Justice, "Restorative Justice: an Agenda for Europe", Barcelona, Spain, 15-17 June 2006.

¹³ Margarita Zernova, University of Hull UK, Published by Ashgate Publishing Limited Ashgate Publishing Company Gower House Suite 420 Croft Road 101 Cherry Street Aldershot Burlington, VT 05401-4405 Hampshire GU11 3HR USA-England, p. 33.

- f. to develop a model of criminal justice which will be de-professionalized, community-based and empowering for crime stakeholders

Achilles and Zehr in Margarita Zernova stated that, “Restorative justice is presented as a way of responding to crime which would place victims at its center and include as many opportunities for participation, voice, and choices for victims as possible.”¹⁴

According to Mark William Bakker that in criminal law mediation means the process of resolving criminal cases by bringing together perpetrators of crimes and victims to reach mutual agreement relating to crimes committed by perpetrators and restitution given to victims. This meeting was attended by a mediator or more who came from law enforcement, government, people engaged in non-governmental organizations, and community leaders.¹⁵ Mediation is a form of deliberation in law, which is commonly used in settling civil cases and is an activity that bridges the two parties to the dispute to reach an agreement.¹⁶ Settlement of criminal cases that benefit all parties is a new idea at this time. Restorative justice is one model that is considered to be able to fulfill justice, especially for victims of crime that have been neglected.

Talking about the nature of justice for victims of crime in the world of law in general began to develop the concept of restorative justice (restorative justice). The criminal justice system has so far been oriented to retributive justice (criminal justice). The operation of the criminal justice system is solely aimed at preventing the occurrence (recurrence) of future crimes by providing deterrence for perpetrators of crimes. Criminal sanctions are only oriented towards the perpetrators of crimes and punishment is an absolute consequence that must exist as a retaliation to the perpetrators. Therefore, retributive justice is deemed

¹⁴ Margarita Zernova, University of Hull UK, Published by Ashgate Publishing Limited Ashgate Publishing Company Gower House Suite 420 Croft Road 101 Cherry Street Aldershot Burlington, VT 05401-4405 Hampshire GU11 3HR USA-England, p. 41.

¹⁵ Mahrus Ali, *Melampaui Positivisme Hukum Negara* (Yogyakarta: Aswaja Pressindo, 2013), p. 96.

¹⁶ Law No. 30/1999 concerning Arbitration and Alternative Dispute Resolution regulates the settlement of disputes outside the court but is still limited to disputes in the civil and especially trade fields.

unable to achieve the essence of criminal law objectives which must be oriented to the protection of the legal balance between perpetrators, the public and victims of crime.

The restorative approach through mediating penal is not really new. This institution is a value that lives in society and is deeply rooted in conflict resolution practices in Indonesia. Therefore, this Restorative Justice is widely applied in the scope of customary law. The concept of Indonesian traditional law as a forum for traditional justice institutions that also has a concept that can be described as the root of restorative justice. Marc Levin states that the approach that was once stated as obsolete, old-fashioned and traditional is now declared to be a progressive approach.¹⁷

Criminal Theory develops over time. Criminal theory is developed in line with the development of the concept of purpose of punishment. Classical Penalty Theory begins with the theory of retribution which is a form of absolute retaliation against someone who has committed a crime, without having to see the impact and further benefits. Then there is the concept of a restraint aimed at alienating (alienating) the perpetrators of crime from people's lives, so that the community is safe, calm, avoiding anxiety from the act of similar crimes. Next is the theory of deterrence/individual prevention and general deterrence/prevention, which is intended so that the punishment makes the perpetrators individually feel deterrent (individual deterrence) or at the same time intended to be used as an example of the community so as not to commit similar crimes (general deterrence). The next development is the concept of reformation or rehabilitation, a form of punishment intended to improve or rehabilitate the perpetrators of crime so that they recover into good people who can be re-accepted in the community.

These criminal concepts continue to develop in traditional theories of justice such as retributive justice, rehabilitative justice, to more modern theories such as alternative justice, transitional justice and later developing restorative justice theories. Restorative justice programs can be used to reduce the burden on the criminal justice system, to divert

¹⁷ Eva Achjani Zulfa, *Pergeseran Paradigma Pemidanaan* (Bandung: Lubuk Agung, 2011), p. 67.

cases out of the system and to provide the system with a range of constructive sanctions.¹⁸

Balance of Protection of Child and Victims of Criminal Acts (Victim-Offender Orientation) towards Integrated Juvenile Justice

Restorative justice by some criminal law experts, psychologists and child behavior experts is deemed appropriate and good in the juvenile criminal justice system for the resolution of problems of children in conflict with the law, both in terms of the perpetrators, victims, the perpetrators/victims' families, and other stakeholders for the sake of obtaining a sense justice in society.

Howard Zehr in Marian Liebmann suggests six key questions to help analyze how restorative an intervention or model is:¹⁹

- a. Does the model address harms, needs and causes?
- b. Is it adequately victim-oriented?
- c. Are offenders encouraged to take responsibility?
- d. Are all relevant stakeholders involved?
- e. Is there an opportunity for dialogue and participatory decision-making?
- f. Is the model respectful to all parties?

The restorative justice approach in resolving criminal acts must be resolved and restored by the parties jointly because a conflict or damage that arises is seen as a conflict that occurs in relations between members of the community ie perpetrators and victims of crime. This settlement model is more focused on giving opportunities to victims to play a role in the process of resolving criminal acts. Restorative justice is a concept of thought that responds to the development of the criminal justice system by focusing on the need for community and victim involvement that is felt to be set aside by the mechanism at work in the existing criminal justice system.²⁰

¹⁸ Handbook on Restorative Justice Programs, United Nation New York, 2006, p. 2.

¹⁹ Marian Liebmann, 2007, Jessica Kingsley Publishers London and Philadelphia by Jessica Kingsley Publishers 116 Pentonville Road London N1 9JB, UK and 400 Market Street, Suite 40 Philadelphia, PA 19106, USA. P. 33

²⁰ Handbook on Restorative Justice Programs, p. 65.

Restorative justice, which is the life of the Child Justice System Law, is an effort to improve or correct the concept of justice in the previous criminal justice system through the involvement of broader parties who have not received a sense of justice. It is hoped that together they will determine a fairer solution and have a good effect on all parties.

Umbreit explained, "Restorative justice is a victim-centered response to crime that allows the victim, the offender, their families, and representatives of the community to address the harm caused by the crime."²¹

Howard Zehr said, "viewed through a restorative justice lens," crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance"²².

Muladi stated that the restorative justice model had several characteristics, namely:²³

1. crime is formulated as a violation of a person against others and is recognized as a conflict;
2. focal point on solving future problems of responsibility and liability;
3. the normative nature is built on the basis of dialogue and negotiation;
4. restitution as a means of improving the parties, reconciliation and restoration as the main objective;
5. justice is formulated as rights relations, valued on the basis of results;
6. target attention to repairing social losses;
7. the community is a facilitator in the restorative process;
8. the role of the victim and the perpetrator of the crime is recognized, both in the problem and in the settlement of the rights and needs of the victim. Criminals are encouraged to take responsibility;
9. the perpetrator's accountability is formulated as an impact of understanding the act and to help decide the best;

²¹ Rufinus Hotmaulana Hutahuruk, *Penanggulangan Kejahatan Korporasi Melalui Pendekatan Restorative Suatu Terobosan Hukum* (Jakarta: Sinar Grafika, 2013), p.106.

²² Eva Achjani Zulfa, *Pergeseran Paradigma...*, p. 66.

²³ Muladi, *Kapita Selekta...*, p. 90.

10. criminal offenses are understood in a holistic, moral, social and economic context;
11. stigma can be removed through restorative action;
12. The restorative justice model is proposed by abolitionists who are a refusal of coercive means in the form of penal facilities and replaced with reparative means.

Arif Gosita and Angkasa assessed that the lack of guaranteed legal protection for victims in the criminal justice system could lead to victimization.²⁴ Responsibility for victims of criminal offenses is the responsibility of the state. The takeover of authority by the state to punish perpetrators is to maintain the rule of law and to avoid “eigenrichting” (vigilante) and improve the perpetrators themselves. The justice given by the state to the perpetrators of the crime must be the same as the justice that the victim must accept in accordance with the principle of equality before the law. If the state takes over criminal law enforcement because of the mandate of the victim as a citizen, the state must be responsible to the victim, especially in the juvenile justice system in Indonesia.²⁵

Suparman Marzuki said that state responsibility in law enforcement covers a very broad aspect, both in substance, institutions, culture and infrastructure of law enforcement. The step in that direction is fixing the existence, independence and impartiality of the main institutions of law enforcement, namely the Police, Prosecutors’ Office and the Judiciary, so that the three become the locomotive of law enforcement that reflects the strong morality of legal power, so that law enforcement realizes certainty, justice and benefits, in line with the character of the rule of law that we aspire to.²⁶

The integration of the criminal justice system is the integration of motion between the subsystems of law enforcement agencies starting from the Police, Attorney General’s Office, Courts and Penitentiary.²⁷ According to Muladi the purpose of the criminal justice system is

²⁴ Arif Gosita, *Masalah Korban Kejahatan* (Jakarta: Buana Ilmu Populer, 2004), p. 42.

²⁵ Arif Gosita, *Masalah Korban...*, p. 33.

²⁶ Komisi Yudisial Republik Indonesia, *Reformasi Peradilan dan Tanggung Jawab Negara* (Jakarta: Komisi Yudisial Republik Indonesia, 2010), p. 241.

²⁷ Hafrida, “Sinkronisasi Antar Lembaga Penegak Hukum Dalam Mewujudkan Sistem Peradilan Pidana Terpadu”, vol. 18, no. 2 (2008), p. 64.

divided into short-term goals, namely socialization, medium-term goals namely crime prevention, and long-term goals for social welfare.²⁸ Subsystems in the juvenile justice system consist of various subsystems related to the juvenile justice process, namely: Police, Prosecutors' Court, Children's Courts, Special Child Development Institutions (LPKA) plus Penitentiary. Moving on from the objectives of the juvenile justice system implemented through Diversion aimed at: a. achieving peace between victims and children; b. settle the Children case outside the judicial process; c. prevent children from deprivation of independence; d. encourage the community to participate; and e. instill a sense of responsibility to the child.²⁹

Based on these objectives, the success of juvenile justice is measured by the success of the diversion agreement between the victim (her family) and the perpetrator (her family). In addition, Diversion prevents the offender from taking the formal criminal justice process out of the court. Through this diversion model, law enforcement officials at all levels of the process are required to prioritize solutions outside criminal justice. However, diversion can also be done by the community by reconciling both parties: victims and perpetrators. According to Harkristuti Harkrisnowo, basically diversion aims to prevent children from entering the juvenile justice system. However, diversion can only be done with the permission of the victim and the victim's family, as well as the willingness of the perpetrator and his family.³⁰ Diversion which is carried out through restorative justice by prioritizing the interests of children as perpetrators and victims in child crime shows that the success of child criminal justice is very dependent on the permission of the victim and her family. Without the consent of the victim (her family), the diversion process through restorative justice will not be realized.

Based on Law Number 11 of 2012 concerning the Juvenile Justice System, it can be seen that this law only prioritizes the protection of children as perpetrators, while the protection of victims is neglected. The state is absent in providing protection to victims in these cases.

²⁸ Muladi, *Kapita Selekta...*, p. 5.

²⁹ Article 6 of the SPPA Law.

³⁰ Harkristuti Harkrisnowo, *Revisi Undang-Undang Pengadilan Anak Kedepankan Diversi*. Hukum Online.com, 10 Maret 2010

The position of victims in the Indonesian criminal justice system including in juvenile criminal justice is still neglected because Indonesian criminal law is still oriented towards the interests of offenders. If we refer to the first symposium report on victimization, it states, "Victimology may be defined as the scientific study of victims. Special attention, however, should be devoted to the problems of victims of crime, the primary concern of this."³¹

Furthermore, Shapland wrote the victim as unforgotten man (forgotten human) within the framework of state responsibility towards victims of criminal acts can be realized by providing compensation.³² If we look at the definition stated in Article 1 number 4 Government Regulation No. 44/2008 concerning the Provision of Compensation, Restitution and Assistance to Witnesses and Victims that compensation is compensation given by the state because the perpetrators are not able to provide full compensation which is their responsibility. Regarding restitution and compensation Joe Hudson said:³³

"The concepts of restitution and compensation are increasingly suggested as remedies to be made available through public social policy for crime victims to obtain reparation. While the terms, "restitution" and "compensation" are often used interchangeably, restitution will be defined here to refer to payments made by the offender to the victims of crime."

State injustice against victims can be seen in the statutory provisions regarding witnesses and victims regulating the granting of compensation only to victims of gross human rights violations while against criminal acts, the State provides compensation if or because the perpetrator is unable to provide compensation which is fully his responsibility. Both in Law No. 13 of 2006 Jo. Law number 31 of 2014 and PP No. 44 of 2008, stated compensation for victims of criminal acts as a form of state responsibility for victims in the event that the perpetrators cannot be held responsible for their criminal actions or

³¹ Mardjono Reksodiputro, *Kriminologi dan Sistem Peradilan Pidana*, book II (Jakarta: LKUI, 1994), p. 91.

³² Joanna Shaplan, Jon Willmore, Peter Duff, "Victims in The Criminal Justice System", Series Editor AE Bottons, Published by Gower Publishing Company Limited. Gower House, Croft Road, Aldershot, Han Gu 3 HR, England, 1985, p. 496.

³³ Joe Hudson and Burt Galaway, "Crime Victims and Public Social Policy," *The Journal of Sociology & Social Welfare*, vol. 3, no. 6 (1976), p. 629.

cannot undergo criminal proceedings. The victim is a determining factor and success in uncovering the criminal case. Without the presence and role of witnesses and victims, it is certain that a case will become Dark Number of the Crime.³⁴

Republic of Indonesia Government Regulation Number 44 of 2008 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims Article 2; (1) Victims of gross human rights violations are entitled to Compensation; (2) Application to obtain Compensation as referred to in paragraph (1) shall be submitted by the Victim, Family or his proxy with a special power of attorney; (3) An application to obtain Compensation as referred to in paragraph (2) shall be submitted in writing in the Indonesian language on sufficiently stamped paper to the court through the LPSK. In the legislation, restitution and compensation are only intended for victims of human rights violations and terrorism.

The absence of the state in providing protection to victims of crime, especially victims of crime in child cases results in a low success rate of diversion. One of the main factors causing the failure of diversion is not reaching an agreement for compensation between victims and perpetrators. The partisanship of the state against children as perpetrators of crime through Law Number 11 Year 2012 is seen well but the state is negligent in providing protection to victims. This resulted in the still low achievement of the diversion agreement in Indonesia. Protection of victims through the partisanship of the state in guaranteeing the right of compensation to victims in the case of children will have a positive impact on the success of future diversion.

Balanced protection for victims and perpetrators in child cases will have an impact on the realization of the Integrated Juvenile Justice for this reason, a revision of the Child Criminal Justice System Law and the Witness and Victim Protection Law are needed.

Conclusion

Law Number 11 of 2012 concerning the Child Criminal Justice System has provided adequate protection for children as perpetrators

³⁴ Fachrie Bey and Dian, "Pelaksanaan Fungsi dan Peran Lembaga Perlindungan Saksi dan Korban di Indonesia Sesuai Undang-Undang No. 13 Tahun 2006 tentang Perlindungan Saksi dan Korban", *Lex Jurnalika*, vol. 8, no. 1, (2010), p. 19.

of crime through diversion obligations at each stage of the implementation of the case investigation of children. However, the success of diversion will not be maximized if it is not followed by balanced protection between victims and perpetrators (Victim-Offender Oriented) for the realization of Integrated Juvenile Justice.

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