



Implementation of restorative justice as an alternative to settlement of crimes of violence against children at the prosecution stage

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Abstract

Article 5 of the Prosecutor's Regulation (PERJA) Number 15 of 2020 states that criminal cases can be closed by law and discontinued prosecution based on Restorative Justice by fulfilling the requirements stipulated in the PERJA. The Lhokseumawe District Attorney's Office has discontinued prosecution based on restorative justice in cases of criminal acts of violence against children based on the provisions of PERJA Number 15 of 2020. In the application of Restorative Justice, there are several factors that influence the implementation and can hinder the peace process between the parties. The results showed that the implementation of restorative justice as an alternative to resolving criminal cases involves 3 (three) parties who play an important role, namely the perpetrator and his family, the victim and his family, and other related parties or in this case the Public Prosecutor who has an important influence in the implementation of restorative justice. PERJA Number 15 of 2020 has accommodated the settlement of criminal cases through an out-of-court process, namely by a peace process between the victim and the perpetrator.

Keywords: Restorative justice, child abuse

Introduction

Crime is a reality that can occur in people's lives and should receive special attention from the state. This is not only because crime continues to grow every day, but crime can also cause unrest or disturbance to order in society. An example of a crime that often occurs in people's lives is violence. Violence is a behaviour carried out by someone against another person with the aim of hurting or injuring psychologically or physically. This type of crime is more often treated against weak people such as children or women.

Article 1 of the UN Convention on the Rights of the Child states that a child is any person under the age of 18 years, unless under national laws applicable to children it is determined that adulthood is reached earlier. According to R.A. Kosnan, what is said to be a child is a young human being at a young age in his soul and life journey because he is easily influenced by his surroundings ^[1]. Therefore, children need special attention with seriousness. In the development of children's growth and development requires an important role of parents, teachers and adults who are around them in shaping the person to develop all aspects of development within the child so that it can be useful in their social life ^[2].

The difference between adults and children in law provides a consideration that both physically and mentally will be different. It is generally known that children are still unstable in their growth. Childhood is described as a very important phase in the process of physical and mental growth, because this phase will affect their future as adults. Children need complete love, guidance, and protection from their parents, which is in accordance with the provisions of Human Rights (HAM) ^[3].

Children are the country's assets as the next generation of the nation. This strategic role has been recognised by the international community to be embodied in a convention that emphasises the position of children as social beings

who must receive protection for their rights. Every child has four basic rights, including the right to life, the right to develop, the right to protection and the right to participate ^[4].

The Indonesian government in an effort to protect children is not only in laws and regulations, but also in the establishment of a special institution that regulates these issues, namely the Indonesian Child Protection Commission (KPAI). KPAI is an independent institution tasked with supervising the implementation of child protection efforts carried out by state institutions and investigating violations of children's rights committed by the state, as well as providing advice and input directly to the President on various efforts that need to be done in relation to child protection. Prior to the establishment of KPAI, the Indonesian government had established the National Commission on Child Protection (Komnas PA). Komnas PA aims to monitor, promote, and protect children's rights, as well as prevent possible violations of children's rights committed by the state, individuals, or institutions.

In 2018, the Indonesian Ministry of Women's Empowerment and Child Protection conducted the National Survey on the Life Experiences of Children and Adolescents (SNPHAR) which is a national household survey using a stratified four-stage cluster survey design in Indonesia, aimed at measuring the prevalence of emotional and sexual violence against children in Indonesia, then to identify risk factors and protective factors for violence, and document the impact of violence so that it can be used for prevention efforts. The results of this survey, released in early May 2019, revealed that the forms of violence against children and adolescents classified by SNPHAR include: emotional violence, physical violence and sexual violence ^[5].

The incident of violence against children as mentioned above occurred due to the lack of law enforcement on child protection in Indonesia. *Law enforcement* is inseparable from the conditions of society in a country, because the

problem of law enforcement is universal, where every country will experience it and in its own way will try to realise the achievement of law enforcement in society. Currently, law enforcement officials in Indonesia in terms of law enforcement, especially criminal law to overcome various acts of violence or crime, have begun to apply the concept of Restorative Justice as an alternative to non-litigation settlement of criminal cases. Restorative Justice is an approach in solving problems that involves victims, perpetrators, and elements of society for the realisation of justice. In relation to criminal law enforcement, restorative justice is an alternative to criminal case resolution, which originally focused on punishment, into a dialogue and mediation process involving perpetrators, victims, families of perpetrators/victims, and other related parties, to jointly create an agreement on a fair and balanced settlement of criminal cases for both victims and perpetrators by promoting restoration to the original state, and restoring good relations in society^[6].

The Public Prosecutor's Office is one of the law enforcement agencies that has implemented the concept of restorative justice in resolving various cases in criminal cases handled, including in resolving cases of criminal acts of violence against children. Restorative justice is one of the principles of law enforcement in resolving cases of violence against children which is used as an instrument of recovery. This has been implemented by the prosecutor's office at the prosecution stage in the form of implementing a policy stipulated in the Regulation of the Prosecutor's Office of the Republic of Indonesia No.15 of 2020 concerning termination of prosecution based on restorative justice. Restorative justice is a form of prosecutorial discretion by public prosecutors that is carried out based on justice; public interest; proportionality; punishment as a last resort and; fast, simple, and low cost.

Settlement using a restorative justice approach has been implemented by Prosecutor's Office throughout Indonesia, one of which is the Lhokseumawe State Attorney's Office. In the period 2022-2024 the Lhokseumawe State Attorney's Office has handled 33 cases of criminal acts of violence against children and 4 of them sought termination of prosecution based on restorative justice.

Although the settlement of criminal cases can be carried out with restorative justice, in reality the application of restorative justice as an alternative to resolving cases of violence against children has several factors that can affect the implementation of restorative justice and at any time can hinder the peace process between the parties. One of the influencing factors is the community.

The application of restorative justice as an alternative to the resolution of criminal cases is still rejected in some circles of society. There is still an assumption that the perpetrator must be punished (retributive system) and does not look at the framework behind the age of the perpetrator and the negative stigma attached to individual legal subjects^[7]. In the community, there are various opinions that say that restorative justice solutions cannot provide learning and deterrent effects to perpetrators of violence against children, there are still gaps for perpetrators to commit repeated criminal acts against victims. This then creates a negative view of the community towards law enforcement officials, in this case the prosecutor who acts as a facilitator for the creation of restorative justice settlements. Based on the description of the problem above, it is interesting to be

studied further in the form of scientific writing related to the application of restorative justice as an alternative to the settlement of criminal cases of violence against children at the prosecution stage.

Research Method

The research method is a procedure or way of obtaining correct or truthful knowledge through systematic steps. The use of research methods has implications for data collection techniques and analysis and research conclusions. The method used in this research is the empirical juridical research method, namely research by conducting a comprehensive study by conducting observations and direct interviews at the research location^[8].

Data collection techniques in this study were carried out by means of test methods, observation, questionnaires, and interviews. The data analysis in this study was carried out using qualitative and quantitative methods. Qualitative research analysis is research that does not use calculations. Meanwhile, quantitative research analysis includes all types of research based on the calculation of percentages, averages and statistical calculations^[9].

Results and Discussion

The implementation of restorative justice as an alternative to criminal case resolution involves 3 (three) parties who play an important role, namely the perpetrator and his family, the victim and his family, and other related parties or in this case the Public Prosecutor who has an important influence in the implementation of restorative justice.

Restorative justice is an alternative to solving criminal cases by promoting an integrated approach of the perpetrator on the one hand and the victim / community on the other hand as a unit to find solutions and return to good relations in society. Concretely, in the context of restorative justice, the process of meeting between offenders and victims or the community to discuss and actively participate in the resolution of the criminal matter^[10].

PERJA Number 15 of 2020 has accommodated the settlement of criminal cases through an out-of-court process, namely by a peace process between the victim and the perpetrator. This is to support the law enforcement process provided by law by paying attention to the principles of fast, simple and low-cost justice. The peace process is carried out by the parties voluntarily, by deliberation for consensus, without pressure, coercion and intimidation^[11]. In the peace process, the Public Prosecutor acts as a facilitator, which means that he has no interest or relationship with the case, the victim, or the suspect, either personally or professionally, directly or indirectly.

In case No. Reg. Perk. PDM-53/LSM/Eoh.2/12/2022, after the public prosecutor examined the case file and saw that it met the requirements as stipulated in PERJA Number 15 of 2020, then offered to the parties (victim and perpetrator) to discontinue prosecution based on restorative justice as an alternative to case settlement involving the perpetrator and victim. Then the victim and perpetrator agreed to accept the public prosecutor's offer to discontinue prosecution based on restorative justice and agreed to reconcile.

The peace process and fulfilment of obligations are carried out within a maximum of 14 (fourteen) days from the date of submission of responsibility for the suspect and evidence (stage two). The peace process is carried out at the District Attorney's office unless there are conditions or

circumstances that are not possible for reasons of security, health, or geographical conditions, the peace process can be carried out at a government office or other agreed place with an order from the Head of the District Attorney's Office or the Head of the District Attorney's Branch. In the event that a peace process is reached, the Victim and the Suspect make a written peace agreement before the Public Prosecutor, in the form of an agreement to reconcile accompanied by the fulfilment of certain obligations or an agreement to reconcile without the fulfilment of certain obligations. The peace agreement is signed by the Victim, the Suspect, and 2 (two) witnesses with the knowledge of the Public Prosecutor. In the event of a peace agreement accompanied by the fulfilment of obligations, the Public Prosecutor shall prepare a report on the peace agreement and minutes of opinion after the fulfilment of obligations has been made. In the event that the peace agreement is not accompanied by the fulfilment of obligations, the Public Prosecutor shall prepare a report on the peace agreement and minutes of opinion.

In case No. Reg. Perk. PDM-53/LSM/Eoh.2/12/2022 a case of criminal violence against a child in which the prosecution was discontinued based on restorative justice by the Lhokseumawe District Attorney's Office, the suspect and victim agreed to the peace efforts offered by the Public Prosecutor as a facilitator, and agreed to carry out the peace process on Monday, 05 December 2022 at the Lhokseumawe District Attorney's Office. Based on the Peace Agreement dated 05 December 2022 made in writing before the Public Prosecutor, the Victim and the Suspect have promised in front of the village parents not to repeat the criminal act in question, and no longer threaten each other, sue to the realm of law and so on, so with this peace both parties hopefully become a stronger bond of brotherhood. The peace agreement was reached without any conditions. The agreement was made by the parties without any element of coercion, pressure and fraud from any party. The Peace Agreement is made and signed by the parties and the peace facilitator.

Settlement of case No. Reg. Perk. PDM-53/LSM/Eoh.2/12/2022 above is a manifestation of the application of restorative justice as an alternative to the settlement of cases of violence against children at the prosecution stage which succeeded in reaching a peace agreement without fulfilling obligations (conditions).

Sometimes the victim and the suspect have carried out a peace process but the peace agreement is not successful or the fulfilment of obligations is not carried out in accordance with the peace agreement, then in accordance with Article 8 of PERJA Number 15 of 2020, the Public Prosecutor:

- a. Entering the failure to achieve reconciliation in the official report;
- b. Make a memorandum of opinion that the case be transferred to the court, stating the reasons therefor; and
- c. Submits case files to court.

If the peace agreement as mentioned above is not successful due to threats or intimidation, requests for disproportionate fulfilment of obligations, sentiment, discriminatory treatment or harassment based on ethnicity, religion, race, nationality, or certain groups against suspects who are in good faith can be taken into consideration by the Public Prosecutor in conducting prosecutions. These considerations also apply in the event that the fulfilment of obligations is

not carried out in accordance with the peace agreement due to economic factors or other reasons accompanied by good faith from the suspect. The considerations as referred to are in the form of:

- a. Submission of cases under the speedy trial procedure;
- b. Mitigating circumstances in the filing of criminal charges, and or
- c. Submission of criminal charges with conditions. In accordance with the pro
- d. ions of laws and regulations, while taking into account the guidelines for criminal charges in general criminal offences.

After a Peace Agreement is reached, in accordance with the flow of the peace process that has been regulated in the provisions of PERJA Number 15 of 2020, the Public Prosecutor reports to the Head of the State Prosecutor's Office (Kajari) or the Head of the State Prosecutor's Branch (Kacabjari) by attaching the minutes of the peace agreement and the memorandum of opinion, then the Head of the State Prosecutor's Office (Kajari) or the Head of the State Prosecutor's Branch (Kacabjari) requests approval for the termination of prosecution based on Restorative Justice to the Head of the High Prosecutor's Office. The Head of the High Prosecutor's Office shall determine whether to approve or reject the termination of prosecution based on Restorative Justice in writing with considerations within a maximum period of 3 (three) days after the request is received.

In the event that the Head of the High Prosecutor's Office approves the termination of prosecution based on Restorative Justice, the Head of the District Attorney's Office or the Head of the District Attorney's Office Branch as the Public Prosecutor shall issue a Decree of Termination of Prosecution within a maximum period of 2 (two) days after the approval is received. However, in the event that the Head of the High Prosecution rejects the termination of prosecution based on Restorative Justice, the Public Prosecutor shall submit the case file to the court.

Although the application of Restorative Justice as an alternative to resolving criminal cases of violence against children is acceptable and the process goes well, sometimes the implementation of criminal case settlement through restorative justice is influenced by certain factors that can at times hinder the peace process. According to Soerjono Soekanto, there are factors that affect law enforcement, namely ^[12]:

a. Legal Factors

In terms of the application of Restorative Justice as an alternative to the settlement of case No. Reg. Perk. PDM-53/LSM/Eoh.2/12/2022 a case of criminal violence against children handled by the Lhokseumawe District Attorney's Office, the public prosecutor along with related parties such as village officials, the victim's family and the perpetrator's family have examined and ensured that there is nothing that can harm the victim or perpetrator from the peace process carried out by the parties. The perpetrator and victim have agreed to reconcile and the public prosecutor can terminate the prosecution based on Restorative Justice without having to submit the case file to the court for trial.

b. Law enforcement factor

In the process of peace efforts through restorative justice, the role of law enforcers is indispensable. The active role of

prosecutors is to provide socialisation about *restorative justice* to victims and perpetrators and their families. Prosecutors must be active in providing understanding to the parties and offering the parties that the case can be resolved through *restorative justice* without having to continue the trial. The Public Prosecutor of the Lhokseumawe District Attorney's Office in carrying out his duties in the application of *restorative justice* in case file No. Reg. Perk. PDM-53/LSM/Eoh.2/12/2022 has played an active role in offering or seeking to resolve cases of violence against children through restorative justice.

c. Facilities

In the settlement of case No. Reg. Perk. PDM-53/LSM/Eoh.2/12/2022 can be seen in the Peace Process Report Received dated 05 December 2022 which explains that the suspect and victim agreed to the peace efforts offered by the Public Prosecutor at the Lhokseumawe District Attorney's office and agreed to carry out the peace process. Based on this data, in the legal facilities factor, the Lhokseumawe District Attorney's Office has facilitated the peace process between the victim and the suspect in resolving criminal acts of violence against children through restorative justice and has been good enough in providing facilities.

d. Community Factors

Currently, there are still people who think that restorative justice cannot represent responsibility for the perpetrators of criminal offences and that the perpetrators of criminal offences will escape responsibility for their actions. However, in case file No. Reg. Perk. PDM-53/LSM/Eoh.2/12/2022 at the Lhokseumawe State Attorney's Office, the community factor did not become an obstacle because the local gampong (village) community responded positively to the legal education provided by the Lhokseumawe State Attorney's Office regarding the implementation of termination of prosecution based on restorative justice. This can be seen from the peace letter dated 25 November 2022 made by both parties in the presence of the gampong (village) parents.

e. Cultural Factors

In the case file No. Reg. Perk. PDM-53/LSM/Eoh.2/12/2022 a case of criminal violence against a child committed by the perpetrator MA aged 19 years to the victim MFR aged 14 years which has been resolved at the Lhokseumawe District Attorney's Office, between the suspect and the victim have agreed to make peace without any obstacles because the parties between the victim, suspect, and community leaders have agreed to forgive each other, then community leaders also agree if the case is carried out restorative justice efforts.

Conclusion

The implementation of restorative justice as an alternative to criminal case resolution involves 3 (three) parties who play an important role, namely the perpetrator and his family, the victim and his family, and other related parties or in this case the Public Prosecutor who has an important influence in the implementation of restorative justice. PERJA Number 15 of 2020 has accommodated the settlement of criminal cases through an out-of-court process, namely by a peace process between the victim and the perpetrator. This is to support the effectiveness of the law enforcement process

provided by law by paying attention to the principles of fast, simple, and low cost justice. The peace process is carried out by the parties voluntarily, by deliberation to reach consensus, without pressure, coercion, and intimidation. In the peace process, the Public Prosecutor acts as a facilitator, meaning that he has no interest or relationship with the case, the victim, or the suspect, either personally or professionally, directly or indirectly.

Factors that influence the process of applying restorative justice as an alternative to resolving cases of violence against children, namely: Law Implementation Factors, Law Enforcement Factors, Facilities, Community Factors and Cultural Factors.

References

1. Koesnan RA. Criminal Structure in Socialist Indonesia, Sumur, Bandung, 2005, 99.
2. Wan Nova Listia, "Children as Social Beings", Bunga Rampai Usia Emas, Universitas Negeri Medan, 2015, 1(1).
3. Rizanizarli, Fadhlullah. "Protection and Fulfilment of Children's Rights", Kanun Law Journal, Syiah Kuala University, Banda Aceh, 2005, (41)
4. Winnarti. Children as Assets of the Nation Need Protection of Rights, <http://lpmedents.undip.com/children-as-assets-of-the-nation-need-protection-of-rights/>. [accessed on 29 July 2023]
5. Andrean W Finaka. Identifying Types of Violence Against Children, <https://indonesiabaik.id/infographics/identifying-types-of-violence-against-children> [accessed on 29 July 2023].
6. Sirtha I Nyoman. Legal Sociology Lecture Materials, Master of Law Programme, Udayana University, Bali, 2008.
7. Rizanizarli. "Handling Children in Conflict with the Law by Diversion and Restorative Justice", Pledoi Journal, Syiah Kuala University, 2010, 2.
8. Suteki, Galang Taufani. Legal Research Methodology (Philosophy, Theory and Practice). Depok: Rajawali Press, 2018, 182.
9. Master of Law Science Syiah Kuala University. Guidelines for Thesis Writing of the Master of Law Study Programme. Darussalam, 2017, 9.
10. Rizanizarli. "The Application of Diversion and Restorative Justice in the Juvenile Justice System in Aceh", Building a sustainable research culture, Aceh Development International Conference 2015, Academy of Islamic Studies University of Malaya Kuala Lumpur, 2015, 25-26.
11. Interview with Mr Rusydi Sastrawan, S.H., M.H. Head of the General Crime Section of the Lhokseumawe District Attorney's Office, on 06 May 2024
12. Soerjono Soekanto, Principles of Legal Sociology, Jakarta, Rajawali Press, 2009, 62.