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Accountability for Criminal Acts of Child Abuse Committed by Children with a Restorative Justice Approach

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Abstract: Increasing violence against children causes public dissatisfaction. Moreover, the crimes were committed by those closest to him. In this case, resolving this problem requires a restorative justice approach that reconciles family relationships between parties. This research aims to determine the legal aspects of the restorative justice approach to acts of sexual abuse committed by minors against minors and the restorative justice approach to acts of sexual abuse committed by minors against minors. This research aims to determine the restorative justice approach to acts of sexual abuse against minors committed by minors. The research method used by the author is qualitative. The conclusion drawn is the first. The restorative justice approach carried out by the Attorney General's Office of the Republic of Indonesia and the Indonesian District Court judiciary towards criminal acts of sexual abuse against minors committed by minors aims to support the families of victims and minors—The perpetrator's family to provide family counseling. Second, the legal perspective of the restorative justice approach adopted by law enforcement officers is consistent with the values of social norms that apply in society. Family values teach us to forgive each other.

Keywords: Restorative Justice, Obscenity, Criminal Act.

1. INTRODUCTION

Criminal comes from the word straf (Dutch), a suffering (*nestapa*) imposed on a person proven guilty of committing a criminal act. Criminal law is a law that regulates violations and crimes against the public interest. These violations and crimes are threatened with punishment, suffering, or torture for the person concerned (Manullang, 2019). One of the goals of law is to realize social justice. For these goals to be created, they must be implemented or enforced. The law must be guided by its procedures and the principle of equality before the law, and it must not be discriminated against (Nainggolan, 2019).

Molestation and rape of children are a threat to children in Indonesia as the next generation of the nation. Criminal acts of molestation are generally committed by the opposite sex, especially men, against girls as victims. The importance of preventing and eradicating child abuse has been affirmed in Law Number 35 of 2014 concerning Child Protection. Law Number 35 of 2014 has formulated the crime of molestation of children threatened with severe punishment. Criminal acts of obscenity by the framers of the Law are categorized as crimes of morality related to sex (Tatumpe, 2019). Children are the next generation of the nation. Their presence is a consolation for every older adult. Every parent hopes that the children they give birth to can become helpful children for the family, religion, nation, and country. However, what happens if a child does something contrary to moral and religious norms? Of course, this will be very sad for the hearts of parents and detrimental to the child's future. Nowadays, there are many children involved in sexual crimes, both children as victims



of sexual crimes and children as perpetrators of sexual crimes. One of the triggers for this crime is the lack of parental supervision of the media children use to play, such as Facebook, YouTube, Instagram, and others.

Based on the results of the study, children under the age of 14 (fourteen) who see sexual intercourse are more involved in the practice of sexual deviance, especially rape. This is because they claim to feel from seeing sex scenes they previously watched. This child's deviant behavior, of course, starts from curiosity, then they try to find out what sex is in their way without being accompanied by their parents. After that, they will try to practice every scene in the movie they watch with their friends of the opposite sex (Anisa, 2016).

Molestation is an event that is in the spotlight today, mainly because there are many cases of molestation committed by children. Children have unique personalities and can act according to feelings, thoughts, and will. However, the environment will also affect the child's personal development. Therefore, every child has the right to get a proper place to grow, away from everything that hurts his personal development (Gurian, 1996). Criminal sanctions against perpetrators of criminal acts of obscenity are applied to adults and children who commit criminal acts of obscenity. The definition of children can be found in the Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection (abbreviated as UUPA). Article 1, number 1 of the UUPA, provides an understanding of a child as a person who is not yet 18 (eighteen) years old, including those still in the womb.

According to R. Soesilo, what is meant by obscene acts is all acts that violate morality/decency or heinous acts that are all related to sexual lust, for example, kissing, groping the genitals, groping the breasts (intercourse is also included in this sense) (Soesilo, 1996). In the case of children as perpetrators of criminal acts of obscenity, the UUPA is used to apply criminal sanctions against children who conflict with the law. The UUPA is because children's rights can still be fulfilled and protected while undergoing legal proceedings. Children in conflict with the law are 12 (twelve) years old but not yet 18 (eighteen) years old and suspected of committing criminal acts. If a child commits a criminal act of molestation with prior appeals against the victim, the act violates Article 76E of the UUPA, which states:

"Any person who commits violence or threats of violence, coerces, commits deception, commits a series of lies or persuades a child to commit or allow an obscene act to be committed."

The penalties for those who violate Article 76E of the UUPA, regulated in Article 82 of the UUPA, are:

1. Every person who violates the provisions as referred to in Article 76E shall be sentenced to a minimum of 5 (five) years in prison, a maximum of 15 (fifteen) years, and a maximum fine of Rp 5,000,000,000 (five billion rupiah).
2. If the criminal act as intended in paragraph (1) is committed by a parent, guardian, caregiver, educator, or education staff, then the penalty is added to 1/3 (one-third) of the criminal threat as intended in paragraph (1).

Children who commit criminal acts of molestation can be held criminally responsible if they have reached the age of 14 (fourteen) years. If, at the time of committing the crime, the child is over 12 (twelve) years old but has not reached the age of 14 (fourteen) years, then the criminal threat that can be given to the child is a maximum of 1/2 (half) of the adult prison sentence. However, if the criminal

act committed by the child is threatened with the death penalty or life imprisonment, then the penalty imposed is a maximum prison sentence of 10 (ten) years.

The criminal justice process is one of the crucial parts of the law enforcement system in Indonesia, involving various parties with interrelated functions and responsibilities. One of the critical actors in this process is the public prosecutor (JPU), the state's representative in the prosecution process against the perpetrators of criminal acts. The prosecutor's role greatly determines the continuity and justice in the legal process carried out because the prosecutor not only demands but also maintains that the law is enforced fairly and impartially. In Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it is explained that the Prosecutor's Office is one of the institutions that functions in the field of judicial power as stipulated in the 1945 Constitution. The prosecutor's office is a government institution that exercises state power in prosecution and other authorities based on the law. Meanwhile, a prosecutor is defined as a functional official who has the authority to act as a public prosecutor and implement court decisions that have permanent legal force, as well as exercise other authorities by the provisions of the law, which are regulated in Article 1 paragraph 1 of Law Number 16 of 2004. The duties and powers of the prosecutor are further regulated in the same law, specifically in Chapter III, which covers responsibilities and authorities in three areas: criminal, civil, and state administration, as well as public order and order.

In the criminal field, Article 30 paragraph (1) of Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia states that the Prosecutor's Office has the following duties and authorities:

- a. Carry out prosecution.
- b. Carry out the determination of judges and court decisions that already have permanent legal force.
- c. Supervising the implementation of conditional criminal judgments, supervisory criminal judgments, and conditional release decisions;
- d. Conducting investigations into certain criminal acts by the provisions of the law;
- e. Complete specific case files and, for this purpose, conduct additional examinations before they are submitted to the court, with the implementation coordinated with investigators.

Prosecutors in the criminal justice system play a role in the trial stage, at the beginning of the investigation, and the implementation of the verdict. In this case, the prosecutor is responsible for researching the investigation results conducted by the police, ensuring that the evidence is sufficient, drafting an indictment, and bringing the case to court. The Binjai District Attorney's Office, as one of the law enforcement agencies at the regional level, has the authority to handle various criminal cases in its area. Binjai City, which is part of North Sumatra Province, often faces various crime problems, such as narcotics, theft, and violent crimes. For this reason, the prosecutor who serves at the Binjai District Prosecutor's Office must be able to carry out his duties with integrity, ensuring that the prosecution process against the perpetrators of crimes is carried out professionally and based on valid evidence.

The Prosecutor's Regulation of the Republic of Indonesia (Perja) Number 15 of 2020 regulates the termination of prosecution based on restorative justice, including:

1. The Public Prosecutor (JPU) has the right to stop the prosecution of the defendant if the victim and the defendant have agreed peacefully

2. The termination of the lawsuit is carried out in the interests of the victim and other protected legal interests
3. The public prosecutor is authorized to close the case for the sake of the law
4. Another condition of the termination of the prosecution is that the suspect has recovered his condition

Based on the provisions of Article 4 of Perja Number 15 of 2020, the authority of the public prosecutor in terminating the prosecution based on restorative justice is carried out by paying attention to:

- a. Victims' interests and other protected legal interests
- b. Avoiding negative stigma
- c. Avoidance of retaliation
- d. Community response and harmony
- e. , Propriety, decency, and public order
- f. Based on Restorative Justice is also carried out by considering
- g. Subjects, objects, categories, and threats of criminal acts
- h. The level of despicability
- i. Losses or consequences arising from criminal acts
- j. Losses or consequences arising from criminal acts
- k. Cost and benefit of handling cases
- l. Recovery to its original state
- m. There was peace between the victim and the suspect.

Based on Article 2 of Perja Number 15 of 2020, the consideration for implementing the concept of restorative justice is based on the principles of justice, public interest, proportionality, crime as a last resort, and the principle of speed, simplicity, and low cost.

Restorative justice is an approach in law enforcement that aims to resolve criminal cases differently from the conventional criminal system. In this case, the Police also participate in taking part in restorative justice as a provider and facilitator of the process of running restorative justice between both parties, both the victim's family and the perpetrator's family; the National Police has issued regulations for the implementation of restorative justice by police institutions, which are regulated in the Indonesian National Police Regulation (Perpol) No. 8 of 2021 concerning the Handling of Criminal Acts Based on Justice Restorative. This Perpol contains:

1. Accommodating norms and values that apply in society
2. Emphasis on restoration to the original state
3. Maintain a balance of protection and interests of victims and perpetrators of criminal acts
4. Not criminal-oriented.

Judges must include the provisions of Supreme Court Regulation (Perma) Number 1 of 2024 concerning Restorative Justice in their decisions. This provision is intended so the judiciary can identify judges' decisions that use a restorative approach. In this perma, the judge applies several principles, namely:

1. Restoration of the situation
2. Strengthening the rights, needs, and interests of victims

3. Defendant's responsibilities
4. Crimes as a last resort
5. Consensuality
6. Transparency and accountability

The provisions of Article 21 of Perma Number 1 of 2024 provide an obligation to judges, "If the Restorative Justice mechanism contained in this Supreme Court Regulation is applied, the Judge includes the provisions of this Supreme Court Regulation in its decision." This provision is intended so that the judiciary can identify the decisions of judges who have succeeded in using the restorative justice approach.

This paper aims to provide an analysis of the accountability of criminal acts of child abuse committed by children with a restorative justice approach. This research is expected to improve and provide a more comprehensive understanding of the responsibility for criminal acts resolved by family or deliberation or restorative justice settlement.

2. RESEARCH METHODS

Restorative justice is an approach to resolving a criminal act case involving the perpetrator, victim, and interested parties to find a standard solution. This approach emphasizes recovery, not retaliation, which aims to create balanced justice for both parties and restore a pattern of good relations in society. In addition to the term restorative justice, there is also the term mediation, a form of restorative justice. Some of the principles of restorative justice are providing compensation to victims, peace, and collective agreement or deliberation. In the sense of restorative justice, it does not eliminate criminal sanctions but instead prioritizes the provision of sanctions that emphasize efforts to recover from crimes. Restorative justice is resolving legal conflicts through mediation between victims and defendants and the involvement of community representatives. This study uses a normative methodology to learn about the accountability of criminal acts of child abuse committed by children with a restorative justice approach in the Binjai District Attorney's Office area.

3. RESULTS AND DISCUSSION

3.1. *The Position of Children in the Criminal Justice System*

Nowadays, we know that children are the nation's next generation and deserve special attention from parents, the community, and the government. This aims to channel affection, protection, and direction and coach children in realizing resilient and quality human resources. The interests of children should be used as a basis for guidelines by those responsible for the education and guidance of the children concerned so that the character of children who are educated and have good morals and norms in society is created. Of course, in this case, the leading role is the child's parents.

Most parents are not aware of what affects the development of children's lives. Children who are raised in an atmosphere of conflict tend to experience mental anxiety that can make children do negative actions, which is a term for child delinquency that leads to a direction that can be against the law. For the development and development of children's lives, it is necessary to create a juvenile criminal justice system, which means the entire process of resolving child cases that are faced with the law, starting from the investigation stage to the guidance stage after serving criminal intercourse, in which legal facilities and infrastructure are also needed to anticipate all problems that arise. The facilities and infrastructure in question are those that concern the interests of children and those that concern deviations in attitudes and behaviors that make children forced to face the law before the

court. Facilities and infrastructure aim to anticipate the stigma or destructive and mischievous stigma caused when children commit criminal acts or face the law, as well as rehabilitate and re-socialize the child. In dealing with children as perpetrators of criminal acts, law enforcement officials must pay attention to the condition of children who are different from adults. The essential nature of children as individuals who are still unstable, the future of children as the assets of the nation's successors, and the position of children in society that still need protection can be used as a basis for finding an alternative solution to how to prevent children from a formal criminal justice system, placing children in prison, and stigmatizing children as prisoners (Prakoso, 2016).

3.2. Judicial Process Against Children in Conflict with the Law

Children are an inseparable part of human survival and the sustainability of the nation and state. Every child needs to get the broadest possible opportunity to grow and develop optimally both physically, mentally, and socially so that they can take responsibility for the nation's and state's sustainability. Child crime is a criminal act or criminal act committed by children. Child crime can be associated with the term Juvenile delinquency (child delinquency), which means child delinquency or evil children. According to Paulus Hadisuprpto, Juvenile delinquency is any act or behavior of a child under 18 years and unmarried that violates applicable norms and endangers the personal development of the child concerned (Hadisuprpto, 2010). The factors that cause crimes committed by children are:

- a. Child or environmental sociability factors
- b. Factors of the position of the child in the family
- c. Intelligence or educational factors
- d. Gender factor
- e. Mass factory

There are some of the most common crimes committed by children, namely:

- a. Immoral crimes or sexual harassment
- b. Crime of order
- c. Kidnapping crime
- d. Murder crimes
- e. , Crime of persecution
- f. Extortion crimes
- g. , Delinquency in the family
- h. Sharp weapons crime
- i. Narcotics crimes
- j. Currency crimes

Legal protection of children who commit criminal acts through the implementation of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System and Law No. 35 of 2014 concerning Child Protection is one way to protect the nation's buds in the future. Legal protection for children concerns all applicable legal rules (Harkrisnowo, 2012).

The general explanation of Law No. 11 of 2012 states that the most essential substance in Law No. 11 of 2012 is the strict judicial restoration and diversion regulation. This is intended to prevent children from facing the law. Article 3 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System states the rights of children who face the law in the judicial process, namely:

- a. Treated humanely about needs according to their age
- b. Separated from adults
- c. Obtaining legal aid and other assistance effectively
- d. Conducting regenerative activities
- e. , Free from torture, punishment, or other cruel, inhuman, and degrading acts
- f. Not sentenced to death or life imprisonment
- g. , Not arrested, detained, or imprisoned, except for a last resort and within a short
- h. Obtaining justice before an objective, impartial juvenile court and in a closed trial for the public
- i. His identity was not published
- j. Obtaining assistance from parents/guardians and people trusted by the child
- k. Obtaining social advocacy
- l. Gaining a personal life
- m. , Gaining acceleration, especially for children with disabilities
- n. Obtaining education
- o. Access to health services
- p. Obtaining other rights by the provisions of laws and regulations

The purpose of diversion is to Article 6 of Law No. 11 of 2012 concerning the Juvenile Justice System, namely:

- a. Achieving peace between victims and children
- b. Resolving child cases outside the judicial process
- c. Preventing children from being deprived of independence
- d. Encouraging the community to participate
- e. , Instilling a sense of responsibility in children

The substance that has authority in the juvenile criminal justice system is the police, the Indonesian Prosecutor's Office, and the courts; in carrying out diversion duties, they must have the objectives as applied in Article 6 of Law No. 11 of 2012 concerning the Child Justice System, in that case, if it is not carried out then the juvenile justice system will not succeed as referred to in Law No. 11 of 2012 concerning the Child Justice System (Kanter et al., 2002).

Article 1, 7 of Law No. 11 of 2012 formulates the definition of diversion. Diversion transfers the settlement of children's cases from the criminal court to non-criminal processes. United Nations Standard Minimum Rules for the Administrations of Juvenile Justice (The Beijing Rules) state that diversion grants authority to law enforcement officials to take wise actions in dealing with the problem of child offenders by escaping the criminal discharge process. The application of diversion can be carried out at all levels of examination (Wahyudi, 2011).

3.3. Criminal Liability for Child Abuse Committed by Children with a Restorative Justice Approach

Based on this study, the restorative justice approach to the crime of molesting minors at the Trafalgar Law Office, there is a deliberative agreement between the parties, both from the victim's family and the perpetrator. Restorative justice is an alternative to solving criminal problems, emphasizing recovering the issues or conflicts and restoring balance in society. This approach focuses on repairing damage or losses caused by criminal acts.

Therefore, a general concept in restorative justice is Encounter, Reparative, and Transformative. The encounter emphasizes meetings between victims, perpetrators, and community members to resolve disputes and problems arising from criminal acts. Reparative emphasizes the circumstances in which all parties find themselves after the restorative process, such as a sense of empowerment, empathy, and resolution—transformative changes how we interact and relate to the world (Sodikin, 2023).

This criminal liability is a circumstance that exists in the maker when committing a criminal act, and criminal liability also connects the creator with the actions he commits. The elements of criminal liability that make those that concern the perpetrator of the offense, according to A.Z. Abidin, Professor of Criminal Law, Faculty of Law, Hasanuddin Ujung Padang University, are (Abidin, 1983):

- 1) Accountability
- 2) Mistakes in the broad sense of intention and/or forgetfulness
- 3) There is no excuse for forgiveness.

Obscene acts violate decency or decency, as well as any act against the body or with one's own body or the body of another person that contravenes decency. Obscene acts are also acts of violating morality, including acts of sexual intercourse outside of marriage (Anwar, 1982). The Criminal Code (KUHP) in Article 290 paragraph (2): "Whoever commits an obscene act with a person even though he knows or should be suspected that he is not yet fifteen years old or if the age is unclear, the person concerned is not yet ready to marry." As a criminal act related to child molestation, it is formulated that it is threatened with a maximum prison sentence of seven years.

Children as perpetrators of criminal acts of molestation are regulated in Law No. 35 of 2014 as the application of criminal sanctions against children who conflict with the law. Children who commit obscene acts begin with a prior appeal to their victims, regulated in article 76 E of Law No. 35 of 2014 concerning Child Protection, namely, "Everyone is prohibited from committing violence or threats of violence, coercing, committing deception, committing a series of lies or persuading children to commit or allow obscene acts." The criminal sanctions given are regulated in Article 82 of Law No. 35 of 2014 concerning Child Protection, namely:

- 1) Every person who violates the provisions referred to in Article 76 E shall be sentenced to a minimum of 15 (fifteen) years in prison and a maximum fine of Rp. 5,000,000,000 (five billion rupiah).
- 2) If the criminal act as intended in paragraph (1) is committed by a parent, guardian, caregiver, educator, or education staff, then the penalty is added to one-third of the criminal threat as intended in paragraph (1).

As perpetrators of criminal acts, children carry out their sentences at the Special Children's Development Institution if their circumstances and actions endanger the community. The prison sentence that can be imposed on a child is at most half of the maximum threat of imprisonment for adults. Suppose the criminal act committed by a child is a criminal act that is threatened with the death penalty or life imprisonment. In that case, the penalty imposed is imprisonment for a maximum of 10 (ten) years. If there is a cumulative criminal threat in the form of imprisonment and fines in material law, the penalty of fines is replaced with job training. Children not yet 14 (fourteen) years old can only be subject to action. The tinnitus referred to in article 82 of the juvenile justice system law includes:

- 1) Return to parents/guardians
- 2) Submission to someone
- 3) Treatment in a psychiatric hospital
- 4) Treatment at LPKS (maximum one year)
- 5) Obligation to attend formal education and/or training held by the government or private entities (maximum one year)
- 6) Revocation of driver's license (maximum one year)
- 7) Improvements due to criminal acts.

In imposing criminal sanctions against children who are in conflict with the law, including children who commit criminal acts of obscenity, the judicial process must be transferred from the criminal justice process to a process outside the criminal justice which aims to ensure the rights of children who are distinguished from adults as perpetrators of criminal acts, humane enforcing a child by paying attention to the needs according to his age, not get intimidation and discrimination, gain accessibility, obtain education, obtain health services, and obtain other rights in accordance with the provisions of laws and regulations and view Article 2 of Law No. 11 of 2012 concerning the juvenile criminal justice system that the implementation of the juvenile justice system is carried out based on the principles of protection, justice, non-discrimination, best interests for children, respect for children's opinions, continuity and growth Child development, coaching and guidance for children is as a last resort or ultimate remedium as the rights of children have been regulated in Law No. 35 of 2014 concerning Child Protection.

Law Number 1 of 1974 concerning Marriage regulates the status of children. For this reason, parents must be responsible for their children. In Article 1 number 3, letter a of Law Number 4 of 1974 concerning Child Welfare, it is explained that "Parents are fathers and/or biological mothers." The power of parents over children is regulated in Articles 298 to 329 of the Civil Code. Child development is the responsibility of parents, who play a role in educating, controlling, and improving their children's behavior and deeds (Nasution, 2005).

4. CONCLUSION

Restorative justice is a justice approach that aims to achieve fair justice for all parties involved in a violation. Restorative justice is a process in which all parties interested in a particular breach work together to resolve how to fix the consequences of the breach for the benefit of the future. Based on the above explanation, it can be concluded that the purpose of restorative justice is not focused on retaliation for the perpetrators of criminal acts but instead seeks a fair settlement by emphasizing restoration to the original state. Then, the conditions that must be met to implement restorative justice during the implementation of criminal investigation, investigation, or investigation functions, namely there is an agreement between the parties to make peace, not a repetition of the crime, the rights of the victim have been fulfilled, and the application of restorative justice has not received rejection from the community. Furthermore, the conditions that must be met to apply restorative justice at the prosecution stage, namely that peace and restoration have been created for the victim, the threat of imprisonment for not more than 5 years, the losses incurred are not more than Rp2,500,000.00 (two million five hundred thousand rupiahs), and not a repetition of the crime. In addition, restorative justice cannot be applied to criminal acts that threaten state security, corruption, crimes against people's lives, environmental crimes, and criminal acts committed by corporations. Peace does not remove from criminal acts, but peace is only limited to relief from criminal threats that the judge will

impose on the defendant. Restorative justice aims to achieve the fairest possible, especially for all parties involved, and not just to prioritize punishment. Still, there must be a confession or statement of guilt from the perpetrator.

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