

History of the Concept of Restorative Justice in Resolving Child Criminal Cases (Study of Besilam Village, Langkat Regency)

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ABSTRACT

The development of the concept of restorative justice in the last 20 years has experienced very rapid development in several countries such as Australia, Canada, England and Wales, New Zealand and several other countries in Europe and the Pacific region. Likewise, in the United States, as a country that more often forms associations with countries to introduce repressive measures of punishment, America cannot avoid the strong influence of the development of restorative justice. Michael Tonry in 1999 began a survey of American sentencing policies with the results of his research obtaining several The living concepts regarding punishment until now, namely 1 structured sentencing, risk-based sentencing (sentence based on risk), indeterminate (sentence that does not determine) and restorative/community justice (recovery/community justice). So restorative justice is one of the punishment concepts that has been developed and is already running in the United States.

Keywords:

History of Restorative Justice; Child Criminal Cases; Child Protection

1. Introduction

The history of the development of modern law on the application of restorative justice began with the implementation of a settlement program outside the traditional courts carried out by the community called victim offender mediation which began in the 1970s in Canada.³ This program was initially implemented as an alternative measure in punishing child criminals, where before the sentence was carried out the perpetrator and victim were allowed to meet to prepare a legal proposal which was one of the many considerations of the Judge. This program assumes that the perpetrator will get benefits and advantages from this stage and the victim will also get special attention and benefits so that it can reduce the number of recidivists among child perpetrators and increase the number of children responsible for providing compensation to the victim. The implementation of the program obtained a higher level of satisfaction from victims and perpetrators than when they underwent the traditional justice process.

The development of the concept of restorative justice in the last 20 years has experienced very rapid development in several countries such as Australia, Canada, England and Wales, New Zealand and several other countries in Europe and the Pacific region. Likewise in the United States as a country that more often makes associations with countries to introduce repressive punishment measures cannot avoid the strong influence of the development of restorative justice. Michael Tonry in 1999 began a survey of American sentencing policies with the results of his research obtaining several living concepts regarding sentencing until now, namely structured sentencing, risk-based sentencing, indeterminate and restorative/community justice.

The reasons put forward by Michael Tonry that restorative justice is intended in these 4 groups of sentencing concepts are:

“A fully elaborated system exist nowhere, but there is considerable activity in many states, and programs based on community/Restorative principles are beginning to deal with more serious crimes and criminals and to operate at every stage of the justice system include within prisons. It is spreading rapidly and into applications that a decade ago would seemed visionary. These include various form of community involvement and emphasise offender accountability, victim participation, reconciliation, restoration and healing as goals.

Michael Tonry's view that restorative justice has a great influence because of the concept's ability to provide benefits to all stages of the judicial process and place the perpetrators appropriately in the judicial process.

2. Methods

This research was conducted using a qualitative descriptive method with a jurisprudential model. In using this method, the primary and secondary data obtained will be elaborated in order to obtain a picture of the situation and conditions in the research area. The population of Besilam Village is 2,456 families. From the results of the interview with Mr. Rahmat as Secretary of Besilam Village, Langkat Regency. This open interview technique can be the right means to obtain real information.

This study aims to determine the history of the concept of Restorative Justice.

3. Results and Discussion

Deliberation for peace is a transfer of case resolution from formal criminal trials to a settlement process outside criminal law in general (See and compare Law No. 11/2012: Article 1 number 7). The purpose of deliberation in resolving child cases is to provide legal protection to children. Handling cases from criminal trials to trials outside criminal trials generally appears to be aimed at avoiding negative stigmatization of children. In addition, the imposition of criminal penalties or sanctions on children is not considered the best solution to resolve child crimes. This is in line with

the objectives of the juvenile justice system, namely to realize a criminal justice system that truly protects the best interests of children (General explanation of Law No. 11/2012).

In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which aims to realize a justice system that truly guarantees the protection of the best interests of children in conflict with the law. The Juvenile Court Law is considered no longer in accordance with the legal needs in society and has not comprehensively provided special protection to children in conflict with the law. Juvenile Criminal Justice (UU SPPA), Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Law of the Republic of Indonesia Number 4 of 1979 concerning Child Welfare, which laws have provided a legal basis in efforts to protect children. The state prioritizes the protection of the rights of children undergoing the legal process at every stage of the examination.

Experts who propose victim-offender mediation state that restorative justice is a proposal to humanize the criminal justice system, because in traditional justice the victim is left outside the justice process, whereas in restorative justice the victim and the perpetrator have the same opportunity to express their opinions.

The concept of restorative justice implemented in the form of victim offender mediation, its implementation is based on giving trust and opportunity to the victim and the perpetrator to resolve the criminal offense that occurred. The ultimate goal of the victim offender mediation process is to always think about the satisfaction of all parties by creating a sense of justice in every stage of the justice process.

In England, a study conducted around 1990 found that 84% of victims were involved in the process of resolving criminal cases face-to-face through mediation. The findings reinforced the results of research conducted by Kettering on a small sample of participants that had been obtained. The results of the Katterring study concluded that 62% of victims and 71% of corporate victims had felt satisfied with the process of resolving criminal cases through restorative justice. Half of the perpetrators answered that they were satisfied. So the parties involved and took victim offender mediation as a way of resolving the case felt satisfied compared to not using mediation.

The juvenile criminal justice system with a restorative paradigm, that in achieving the goal of imposing sanctions, the victim is included to have the right to be active in the judicial process. Indicators of achieving the goal of imposing sanctions are achieved by looking at whether the victim has been restored, the victim's satisfaction, the amount of compensation, the perpetrator's awareness or his actions, the number of improvement agreements made, the quality of work services and the entire process that occurs. Forms of sanctions that are restitution, mediation of the perpetrator victim, victim services, community restoration, direct services to the victim or restorative fines.

The imposition of sanctions actively involves the perpetrator, victim, community, and law enforcement. The perpetrator works actively to restore the victim's losses and faces the victim/victim's

representative. The victim is active in all stages of the process and will assist in determining sanctions for the perpetrator. The community is involved as a mediator, helping the victim and supporting the fulfillment of the perpetrator's obligations. Law enforcement facilitates the mediation process.

The main focus of restorative justice is for the benefit and building positively, so children and families are the main sources. Children are considered competent and have positive abilities, are preventive and proactive. For the benefit of rehabilitating perpetrators, changes in the attitudes of community institutions and adult behavior are needed. Rehabilitation of perpetrators is carried out with perpetrators who are learning by doing, counseling and therapy to motivate active involvement of the parties. The goal of rehabilitation is achieved by looking at whether the perpetrator has started new positive things, whether the perpetrator is given the opportunity to practice and demonstrate normative behavior, whether stigmatization can be prevented, whether there has been an increase in attachment to the community. Rehabilitation of perpetrators in the form of practical activities so that children gain work experience, and children are able to develop their own cultural projects. This aspect of rehabilitation together requires the roles of perpetrators, victims, society and law enforcement in synergy. Perpetrators are active in developing their quality of life in society. Victims provide input to the rehabilitation process. The community develops opportunities for children to make productive contributions, develops new roles for child perpetrators to practice and demonstrate their competence, access and build partnerships with the community.

Restorative justice is about achieving community protection through collaborative efforts of the justice system and the community to develop prevention. Confinement is limited only as a last resort. The community is responsible for actively supporting the implementation of restoration. Indicators of achieving community protection if the recidivism rate decreases, while the perpetrator is under community supervision, the community feels safe and confident in the role of the juvenile justice system, the involvement of schools, families, and community institutions to prevent crime; social ties and reintegration increase.

Community protection, then the perpetrator, victim, community and juvenile justice profession are very much expected to play a role. The perpetrator must be involved constructively in developing competence and restorative activities in the program in a balanced manner, developing internal control and commitment with peers and children's organizations. Victims provide useful input to continue the mission of protecting the community from fear and the need for supervision. Juvenile justice professionals develop a scale of incentives and ensure the fulfillment of the obligations of the perpetrator and supervision, assist schools and families in their efforts to supervise and maintain the perpetrator in the community.

The objectives of the juvenile criminal justice system in The Beijing Rules are stated in Rule 5.1 as follows:

“The juvenile justice system shall emphasize the well being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstance of both the offenders and the offence”.

It is interpreted as: “The juvenile justice system shall give priority to the welfare of the child and shall ensure that any response to juvenile offenders shall always be proportionate to the circumstances of both the offender and the offence.”

An important objective in juvenile justice is to promote the welfare of the child (avoiding merely punitive sanctions) and to emphasize the principle of proportionality (based not only on consideration of the seriousness of the offence but also on consideration of his personal circumstances, such as social status, family circumstances, harm caused or other factors relating to personal circumstances that will affect the proportionateness of his reactions).

4. Conclusion

The history of the development of modern law in the application of restorative justice began with the implementation of a settlement program outside of traditional justice carried out by the community called victim offender mediation which began in the 1970s in Canada. This program was initially implemented as an alternative measure in punishing child criminals, where before the sentence was carried out the perpetrator and victim were allowed to meet to prepare legal proposals which became one of the judge's many considerations. This program assumes that the perpetrator will benefit from this stage and the victim will also receive special attention and benefits so that it can reduce the number of recidivism among child perpetrators and increase the number of children who are responsible for providing compensation to the victim.

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