

Application Of Restorative Justice Against Children in Traffic Crime Investigations

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Abstract. The authority of the actions of Polri Investigators is regulated by Law No. 2 of 2002, relating to the police, and Law No. 8 of 1981, relating to Code of Criminal Procedure. Polri Investigators are given "personal" powers to carry out this mission, as stated in Article 7 paragraph (1) point j of Article 16 paragraph (1) point 1 and Article 18 of Law No. 2 of 2002 managing the State Police, as well as Law No. 8 of 1981 regulating the Criminal Procedure Code of the Republic of Indonesia, which allows them to "take other actions" under "certain conditions.", and this is identical with the term police discretion. The other actions referred to are analogous to the discretionary actions possessed by police investigators. Therefore, it stresses and prioritizes restorative justice as a more humanitarian method to dealing with criminal offenses approach compared to formal legalistic considerations. The approach to the application of restoration justice, especially applies to criminals who are still minors. In the case of criminal acts related to traffic law violations, it is possible to take restorative discretionary action, if the perpetrator is still a minor. The issue is, how effective is Restorative Justice principles in the Investigation of Trafficking Crime Cases with Child Perpetrators? The research method in solving this problem is using a socio legal research approach. The discussion, that the process of an active restoration justice approach is usually offered. At the outset of the first trial, the Panel of Judges assigns a mediation room to it, which is chaired by a judge nominated by the Panel of Judges. Polri investigators must reply attentively and intelligently to Article 16 paragraph (1) point 1 and Paragraph (2) of Law No. 2 of 2002 Concerning the State Police states: "Take other actions according to responsible law." Also, a sentence (2) Other actions mentioned in paragraph (1) letter 1 include investigative and investigative actions that are carried out if they meet the requirements. without fulfilling the 5. The concept of Restorative Justice is contained in The Juvenile Criminal According to Article 5 paragraphs (1) and (2), Restorative justice must be promoted in the juvenile criminal justice system. The Juvenile Justice System is governed by Law No. 11 of the Republic of Indonesia, which was enacted in 2012. Furthermore, the concept of According to Article 5 paragraph (3) of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, Restorative Justice is a legal breakthrough that must and must be used in every child case in conflict with the law who are proven to have committed criminal acts.

Keywords: Application of Restorative Justice to Children

1 Introduction

The diversity Violations and crimes are examples of criminal acts in Indonesia has implications for the implementation of the police's principal tasks and functions, particularly in relation to the authority of Polri Investigators, which are governed The Indonesian National Police (INP) is a police force in Indonesia governed by Law No. 2 of 2002. and Law No. 8 of 1981 governing KUHAP. For this reason, the actions of Polri investigators in carrying out an investigation process against perpetrators of criminal acts must act carefully so as not to violate human rights, based on the notion of achieving justice It is a type of legal action taken by law enforcement against criminals who have committed crimes within the scope of the criminal system of justice (criminal justice system).

To carry out this task, Polri Investigators are given "personal" powers, as stated in Article 7 paragraph (1) point j. Article 16, paragraph 1, line 1; and Article 18, paragraph 1, line 1 are all found in Law No. 8 of 1981, which refers to the Criminal Procedure Code, and Law No. 2 of 2002, which refers to the Republic of Indonesia's State Police 1, line 1 which states that "under certain instances," "may take further actions." is the same as police discretion. The specified obligations of Polri Investigators are based on the Polri Institution's responsibilities as outlined in The Police Law No. 2 of 2002 was enacted. As stated in Article 13, The Indonesian National Police's key responsibilities are as follows:

- a. ensure public safety and order;
- b. uphold the law; and provide community safety, security, and service.
- c. provide community protection, and community service [1]

One of the National Police's three principal responsibilities is to protect the public, Police investigators carry out the legality of their authority. If you look at the duties of Polri investigators in the context of "enforcing the law," the normative moral basis for Polri investigators is "legal justice." It is visible because it is written on the top left of every official report made by the National Police Investigator with the words "Pro Justicia." Pro Justicia is a format in carrying out police actions at the beginning of the investigation procedure to the preparation of an Examination Report, against criminal perpetrators (BAP). [2] Police investigators must follow the law in a nondiscriminatory manner (the Equality before the law is a principle that should be followed) and be fair following the wishes of the law.

The execution of police discretion is one of the three basic jobs that the community requires. a national police force concerning the realization of a sense of justice, in all aspects of criminal events that occur, must be carried out according to law enforcement based on the principle of legality, including in this case if the police investigator is carrying out legal considerations to implement restorative justice if the perpetrator of the incident crimes in traffic where the perpetrators are categorized as children.

The issue is how are the ideas of in the criminal court system, Restorative Justice is used Investigation of Trafficking Crime Cases with Child Perpetrators? The research method in solving this problem is using a socio-legal research approach.

2 Results and Discussion

In investigative practice, police investigators are often constrained by formal criminal procedural law when they wish to rule out the possibility of a criminal case. Police investigators do not have the ability to decide whether or not an incident should be continued or canceled. It

means that if there is evidence of a crime, the police will investigate further. Therefore, In comparison to formal legalistic concerns, a more humane approach to dealing with criminal crimes promotes and prioritizes the restorative justice method. As a result, in order to resolve the legal issues, pursuant to the Juvenile Justice System Reform Law No. 11 of 2012 impasse in realizing legal certainty and justice, an approach to the application of restorative justice can be applied to minors.

Meanwhile, in Indonesia, law enforcement through an active restoration justice approach is carried out officially for civil law events when there is a conflict over legal actions that are submitted through a civil lawsuit process in court. The process of an active restoration justice approach is usually offered at the start of the first trial by the Panel of Judges, and it is offered through mediation headed by a Judge nominated by the Panel of Judges.

In contrast to the exercise of authority carried out by Polri Investigators, in taking legal action against perpetrators suspected of committing a crime, the authority to take discretionary action against the perpetrators of criminal acts, Polri investigators must respond carefully and intelligently to Law Number State Section 2 of Article 16 of the Police Act No. 2 of 2002 (1) point 1 and paragraph (2), which states that; "take additional actions in accordance with the law, as well as a sentence (2) Investigations and investigations that are carried out if they meet the following requirements are also mentioned in paragraph (1) letter 1:

- a. does not conflict with a rule of law;
- b. in accordance with statutory duties that necessitate action is done;
- c. must be appropriate, reasonable, and integrated into his workplace environment;
- d. proper consideration on the grounds of compelling circumstances; and
- e. respect 'Human rights' [3]

With these conditions, investigators cannot immediately exercise discretion without fulfilling five conditions. The first condition is it is clear that the act of discretion, "not against a rule of law," is objective. While, other conditions are subjective, or only objective according to the assessment of the investigator who handles the case. Thus the rule of law here is legalistic, or formal. Meanwhile, the provisions for regulating the scope of formal discretion in the form of laws are limited. On the other hand, restorative justice is an alternative for handling It provides a complete and practical solution for young people who have broken the law.

Victims, perpetrators, families, and communities can all benefit from restorative justice illegal behavior by using awareness and conviction as a foundation for communal improvement. The concept of Restorative Justice is simple.[4] Restorative Justice is part of the The recovery of losses incurred by criminal activities is emphasized in this conception of justice.[5]

The Juvenile Criminal Justice System Act of 2012 confirms that criminal justice based on the notion of Restorative Justice aspires to:

- a. Strive for peace between victims and children;
- b. Prioritize out-of-court settlements;
- c. Protect children from the negative effects of the legal system;
- d. Instill a sense of responsibility in children;
- e. Recognize children's welfare;
- f. Protect children from deprivation of liberty;
- g. Encourage communities to participate;
- h. Improve children's life skills [6]

Restorative justice has become the dominant model in the criminal prosecution system for minors A case settlement usually involves the criminal and his family compensating the victim or his family. avoid the consequences of revenge. The restorative justice settlement model is a process outside of formal justice. Restorative justice is a type of criminal case resolution that

emphasizes victim, perpetrator, and community recovery. The basic idea of Restorative Justice is victim and perpetrator participation, as well as citizen participation as facilitators in settling cases, so that there is a guarantee that the child or offender will no longer disrupt the societal harmony. [7]

A case transfer or the diversion process can be carried out by Police Public Prosecutors in collaboration with other officials who are authorized to keep children out of the legal system under the Convention on the Rights of the Child is an international treaty that protects the rights of children. The restorative justice approach is defined in Article 5 paragraphs (1) and (2) of Law No. 11 of 2012 Concerning the Juvenile Criminal Justice System, which specifies that the Juvenile Criminal Justice System shall encourage a restorative justice approach:

- a. Child criminal investigations and prosecutions are conducted out following the Unless otherwise specified in this law, provisions of laws and regulations;
- b. A court-ordered child trial in a public setting;
- c. Guidance, advice, monitoring, and/or help both during and after the commission of a crime or deed. [8]

Furthermore, Article 5 Children who have been shown to have committed criminal crimes must be tried for diversion first, according to The Law Number 11 of 2012 governs paragraph (3) of the System of Juvenile Criminal Justice. As a result, Restorative Justice has emerged as a viable option legal innovation that has to be explored further implemented in all cases involving a child who has broken the law.

According to Paragraph 8 of Article 8 (1) As part of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the diversion process is based on a Restorative Justice approach and is carried out through deliberation involving children and their parents/guardians, victims and their parents/guardians, community advisors, and professional social workers. Restorative Justice is used in conjunction with the diversionary mechanism, which is the movement of legislation from the criminal to the civil justice system to outside of it. The Restorative Justice strategy to diversion is only employed in cases of Children who are younger than 7 (seven) years old and have not been convicted of a crime repeated. Even though a child implicated in a crime requires special protection, it is sometimes discovered that the investigator is coerced into admitting a criminal conduct that he has performed, and that children's rights are often overlooked throughout the inquiry stage.

Investigators, Public Prosecutors, and Judges are required by Article 17 The Law Concerning the Juvenile Criminal Justice System, No. 11 of 2012, paragraph (1) to provide special protection to adolescents being investigated for criminal offenses committed in times of emergency. As mentioned in Article 17, investigators conducting Restorative Justice investigations of minors must stress particular care. justice in the criminal justice system.

In an example of a traffic crime case committed by a child, AQJ (13 years old) was found guilty of his negligence in driving a Mitsubishi Lancer sedan with police number B-80-SAL on the Jagorawi KM 8 toll road coming from the opposite direction as it avoids the car in front of it. At that time AQJ allegedly drove his car to reach a speed of 176 km per hour, resulting in seven car drivers dying and nine injured. The Police named AQJ as a suspect for violating Article 310 of the Road Traffic and Transportation Law No. 22 of 2009 (LLAJ) with a threat of 6 years in prison. AQJ also infringed Article 281 jo. Article 77 of the LLAJ Law, because driving a motorized vehicle does not have a Driving License (SIM). In addition, it violates Article 280 jo. Article 68 of the LLAJ Law because the Motorized Vehicle Number Signs installed are not following those stipulated by the Police.

The Public Prosecution Team (JPU) from the DKI Jakarta High Court indicted AQJ for violating Article 310 Paragraphs (1), (3) and (4), The Road Traffic and Transportation Law, No.

22 of 2009, with a penalty of 6 years imprisonment. The East Jakarta District Court on Wednesday, July 16th, 2014, sentenced AQJ alias Dul, 14 years old, to be returned to his parents after an accident that killed seven people in September 2013. The son of musicians Ahmad Dhani and Maia Estianty was spared a sentence of 1 (one) year in prison from the prosecutor, with a probationary period of 2 (two) years plus a fine of Rp. 50 million or a subsidiary of 3 months of social work.

According to Law Number 11 of 2012, which governs the Juvenile Criminal Justice System, children in conflict with the law include children in conflict with the law, children who are victims of criminal activities, children who are witnesses to criminal acts, and children in conflict with the law. A person under the age of 18 (eighteen) who is suspected of committing a crime is also referred to as a child.

The perpetrators of criminal acts committed by children include traffic crimes, traffic crimes perpetrators, one of which is a driver who is still classified as a child, which is under the age of 17 years. This is in accordance with the second paragraph of Article 81 of the Law No. 22 of 2009, Highway Traffic and Transportation, an individual driver's license (Driving License) must be at least 17 years old in order to receive a SIM A, C, or D. In addition, the terms of Law Number 22 of 2009's Article 81 paragraph (2) state that the minimum age limit for obtaining a B1 SIM is twenty years old, B2 SIM is twenty-one years old.

The As stated Diversion is defined as the Article 1 paragraph (7) of Law Number 11 of 2012 Concerning the Juvenile Criminal Justice System provides for the transfer of children's cases from the criminal justice system to the criminal justice system outside of the court. As a result, in accordance with the provisions of Law No. 11 of 2012 on the Juvenile Criminal Justice System, the settlement of traffic violations committed by juveniles, Polri investigators can exercise discretion by carrying out settlements utilizing a restorative justice approach.

3 Conclusion

Traffic accidents can occur due to someone's negligence or due to someone's disobedience to traffic signs and markings. An accident is something that no one wants unless there is an intention to do something that is planned to hurt someone. It means that traffic accidents generally occur without any intention or intentional element of the perpetrator because the incident took place unexpectedly.

Law enforcement is a critical component of efforts to create and improve a more culturally and meaningful environment. The law which contains the values of truth, honesty, justice, the value of trust and love among others, and so on, can only be realized through law enforcement from people who have high quality and integrity in living these values, who act as a law enforcer.

The transfer of settlement of juvenile criminal cases as part of law enforcement in the court process is referred to as diversion towards settlement through deliberation which in this case involves victims, perpetrators, families of each victim and perpetrator as well as the community outside the judicial process. Diversion is part of resolving child Restorative justice is a method of resolving criminal situations. It is crucial to do so that the rights of children, both victims and perpetrators, are protected for their future, as well as to restore social order in society.

The implementation of law enforcement by Polri investigators against perpetrators of minors doing illegal activities, notably based on upholding the rule of law. In dealing with criminal acts against traffic-traffic offenders, no one exists and places themselves above the law, and must be applied to anyone based on the principle of treatment and in an honest manner.

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