

Child rights perspective Against hildren in conflict with the law

Farhana^{1*}, Mimin Mintarsih¹, and Siti Miskiah¹

¹Jakarta Islamic University, Indonesia

*Corresponding author:frh961@gmail.com

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ABSTRACT Children in conflict with the law need special treatment to avoid actions that can hinder the child's development and growth. Children in conflict with the law have human rights. The handling of children in conflict with the law is carried out based on human rights and principles in the best interests of the child. The purpose of the study is to examine the handling of children in conflict with the law in accordance with children's human rights so that children's human rights are protected. By using the literature research method. The Judiciary is the last step to deal with children in conflict with the law in accordance with the principle of last resort. Therefore, the handling of children in conflict with the law through a restorative justice approach is comprehensive and effective handling in accordance with the spirit of the Convention on the Rights of the Child in the present, thus the development of regulations adds responsive and prospective implementing regulations in responding to the era of disruption 4.0 and the era of society 5.0

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1. INTRODUCTION

Human rights as basic rights that are naturally inherent in humans are universal and are protected, respected, and maintained, so human rights must be protected including children's rights. Discussing human rights including children's rights means discussing the existence and protection of human life. The development of human rights is in line with human development and tends to be influenced by the environment itself and society. Children's rights are part of human rights which must also be guaranteed, protected, and fulfilled by the government and the state apart from the family and society. The Universal Declaration of Human Rights in 1948 became the basis for the 1989 Convention on The Right Of A Child. Since tens of years, ago the whole world has had awareness of the importance of fulfilling children's human rights or children's rights, with the ratification of the Convention on the Rights of the Child and known as children's rights. worldwide and ratified by countries in the world. Indonesia ratified the Convention on the Rights of the Child as a positive rule of law through Presidential Decree no. 36 of 1990.

Discussing children means discussing the future of a nation, and the continuity of the next generation of the nation. Children as one of the human resources for long-term investment need to be considered because children play a role in continuing the life of the nation and state in all fields and all aspects of life. Children as successors to the ideals of the nation's struggle have a strategic role and have special characteristics and characteristics that guarantee the continued existence of the nation and state in the future. To be able to assume this responsibility, children need to get the widest possible opportunity to grow and develop

optimally, physically, mentally, and socially and have noble character (Said, 2018).

Rapid development, the flow of globalization in the field of communication and information, advances in science and technology, and changes in style in the 4.0 and 5.0 eras of society have brought essential social modifications in people's lives that significantly have an effect on children's values and conduct. Children who're within the manner of improvement seek identification to grow to be adults. Children are often affected by the poor impacts of rapid development and globalization which bring about deviant conduct or committing acts against the law or being suspected of committing a crime which is called a child in conflict with the law. Many factors influence children in conflict with the law, both intrinsic and extrinsic factors (Rasdi, 1985).

Children are not small adults because children have different characteristics from adults (Ferdianwan & Darwis, 2020; Nugroho, 2017). Childhood is an inclined period, children are now no longer independent, and immature feelings and social emotions order that the child's character continues to be developing (Hapsari, 2021). With those mental characteristics, dealing with children in conflict with the law requires special treatment and special protection against actions that can harm children's development, both psychological development and physical development (Haling et al., 2018).

Children facing the law are a major social problem globally and statistics show that child crime is increasing (Young & Giller, 2000). There are still many cases involving children as perpetrators of crimes. So far the protection given to children has focused more on children who are victims

and witnesses of a crime. The protection of children in conflict with the law and the protection of their rights as suspects, defendants, and convicts while in the criminal justice system has not been implemented properly.

Placing children in the criminal justice system has a negative effect on children's lives. These negative effects can be in the form of physical, emotional, and stigma that continue after the judge's decision, and guilt in the child (Wahyudi, 2011).

According to a 2019 UN Global study that between 160,000 -250,000 children are detained on any given day (2018) and around 410,000 children are held in correctional centers (pre-trial detention) and prisons throughout the year (UNICEF, 2021). Globally there are 261,200 children in detention (2020), Latin America and the Caribbean are the regions with the highest number of children being detained, East and South Africa have 48,600 child prisoners, 44,900 child prisoners in the South Asia region, while in the East Asia and Pacific region there are 40,700 children and 32,200 children in the North American region (Rizaty, 2000).

The handling of children in conflict with the law is different from the handling of adults who commit crimes. In dealing with children in conflict with the law it is based on the principle of the best interest of the child or the best interest of the child as the highest priority in every decision related to children. This is for the survival of children in particular and human survival in general. Always consider the survival and development of children in every decision making. This is in accordance with the general principles in the Convention on the Rights of the Child and principles in the juvenile justice system in Indonesia.

Labeling children in conflict with the law will isolate them from the environment rather than assist in their rehabilitation. Not given another proper chance, the tendency to violate the law will occur. These children need environmental support from both the family and the community so that the community's capacity needs to be increased in understanding about children in conflict with the law and to deal with these children.

At present, the settlement of child cases is developing using a restorative justice system. The restorative justice system aims to empower victims, perpetrators, families and communities to correct an unlawful act based on awareness and conviction. The measure of justice is not based on retributive justice or based on revenge but based on conviction and forgiveness, so that conflict resolution between children facing the law can be peacefully resolved.

The issue raised is how to handle children in conflict with the law in accordance with children's rights so that children's rights are fulfilled.

2. METHOD

The type of research used is library research with a normative juridical approach. The method used is the document study method. This study uses primary and secondary legal materials. Primary legal materials are in the form of laws and regulations on juvenile justice and child protection, conventions on children's rights, while secondary legal materials are legal materials that can provide an explanation of primary legal materials.

3. RESULT AND DISCUSSION

Absolute human rights and inherent in human beings are universal, as well as absolute and inherent human rights for children, including children who are in conflict with the law. The Convention on the Right of the Child has the principles of non-discrimination, the best interests of the child, the right to live, develop and respect the views of children. The convention on the Right of the Child that children who are in conflict with the law may not be treated cruelly or actions that can injure children, may not be sentenced to death or life imprisonment and receive legal assistance and adequate facilities (Article 37). The convention keeps children in conflict with the law away from the juvenile justice system so that children are protected from stigma or labels. In addition to the Convention on the Right of the Child, there are several international instruments that consider the importance of children in conflict with the law to avoid criminal justice system or imprisonment, namely The Riyadh Guidelines, Tokyo Rules and UN Rules for the Protection of Juveniles Deprived of Their Liberty.

Juvenile Justice is the last resort in resolving children in conflict with the law, if the settlement of children in conflict with the law must be resolved by imposing a sentence then life imprisonment or the death penalty may not be imposed. The treatment of children in the justice system is consistent with their dignity and worth. All professionals involved in the administration of juvenile justice must be knowledgeable about child development, and appropriate for child welfare. The Convention on the Right of the Child that the methods taken against children who are accused, prosecuted or declared to have committed a crime must be in accordance with the dignity of the child and respect or respect for children's human rights and freedoms. Besides that, the age of the child is considered as well as the reintegration and development of the child's constructive role in society.

The diversion of the settlement of children with legal conflicts outside the court is based on the fact that settlement through the courts has criminogenic effects and child development. The Riyadh guidelines UN resolution number 45/112 1990 article 46 states that placing children in correctional institutions is the last resort in a short period of time. The Havana rules are UN resolution number 45/113 1990 declaring imprisonment as the last resort in solving the problems of children in conflict with the law. Article 13 of the Beijing Rules states (detention before trial of a naughty child must be carried out as a last resort for the short period of time needed. The resolution is based on the principle of ultimum remedium meaning that punishment is the last resort in resolving children in conflict with the law.

The conventions and resolutions mentioned above as international instruments are closely interconnected in order to protect the rights of children in conflict with the law and are used as basic guidelines for the juvenile justice system in member countries. The international instrument emphasizes children's rights, child protection by the state and the role of government, society and the private sector to guarantee children's rights. The instrument reflects a paradigm to avoid juvenile criminal justice.

Settlement of children in conflict with the law through criminal justice has an impact on the physical, emotional and mental development of children and causes labeling or stigma after a judge's decision and feelings of guilt. More

Table 1. Differences in the Justice of Restitution, Retribution, and Restoration

Differences	Restitution	Retribution	Restoration
Basic Philosophy	Correction of errors through replacement or renewal	Giving recompense for the suffering/ pain caused	Forgiveness is the basis for improving human relations
Method	Victims receive compensation	Appropriate or more severe punishment	Regret for the actions committed, promised not to repeat, compensation if necessary
Focus	Victim	Perpetrator	Victims and Perpetrators

impact if deprived of freedom even if only for one day (Faquraais, 2021; Wahyudi, 2011). Besides that there can be an impact after serving a sentence that allows repetition of the act so that it becomes a recidivist (Pegu, 2021; Triwati, 2019)(Pegu, 2021; Triwati, 2019).

Labeling or stigma from friends, family, society, and from oneself will have an impact on the mental development of children dealing with the law. Labeling theory is the basis for giving stigma or labels to children in conflict with the law. Labels such as "child/adolescent offenders, child prisoners, deviant, naughty and others, can influence the way children define themselves and how society perceives them, thereby influencing their future behavior and dictating the social roles they may take (Akers, 1994; Santoso& Zulfa, 2001).

The label given to children who are in conflict with the law will affect the child so that it causes the child to recognize himself as the label given by other people or society to him. This will increase the tendency for deviations in children's behavior, for this reason it is necessary to renew or reorganize the child's psychology to release the label or stigma given by others to the child.

Settlement of children in conflict with the law, so that labeling or stigma does not occur, an out-of-court settlement can be used based on restorative justice. Restorative justice is the basis for handling children in conflict with the law in a comprehensive way to find a solution aimed at repairing, conciliation or reconciliation and reassuring the heart that is not based on retaliation so that all are involved in this settlement, namely victims, children in conflict with the law, family, and society (Bazemore & Schiff, 2005; Muliadi, 2013; Mulyadi, 2014).

Restorative justice gives equal attention to victims and perpetrators and the authority to determine a sense of justice is in the hands of the parties, not the state. The measure of justice is not based on retaliation to the perpetrator or punishment based on retributive, but based on recognition and forgiveness, the philosophy of handling children in conflict with the law shifts from punishment to reconciliation, retaliation against perpetrators to healing victims, isolation and violence towards community participation and kinship as a whole, destructive the negative leads to improvement, giving forgiveness that is full of love by using awareness and conviction to improve social life (Syukur & D, 2011; Sutrisna, 2013).

The philosophical differences between retributive justice, restitution, and restoration can be seen in the table 1 below:

Diversion is one way to carry out restorative justice. Law enforcement officials are given the authority to take wise actions in dealing with or resolving the problem of

child offenders by not taking formal steps, including stopping or continuing or releasing from the criminal justice process or returning or handing over to the community and other shapes of social benefit exercises (Ghoni & Pujiyono, 2020; Wiyono, 2016).

Diversion based on restorative justice is carried out through steps in accordance with the Convention on the Rights of the Child and other international instruments, as follows (UOR- Innocenti, 2017):

1. Unconditional diversion

It looks like a police warning and is used more frequently in practice than is included in national legislation.

2. Diversion (diversion from formal judicial proceedings)

Diversion from the formal justice process so as to avoid the negative effects of the judicial process and criminal record.

3. Alternatives to pre-trial detention

As a family or community-based alternative to detention as supervision of children awaiting trial. In some countries, this alternative has been included in the law

4. Measures to minimize time in pre-trial detention.

If pre-trial detention cannot be avoided, the detention time must be as short as possible. Most countries have incorporated provisions on release from pretrial detention into their laws.

5. Alternatives to post-trial detention

Family- or community-based post-trial detention for the reintegration, rehabilitation and supervision of children rather than sentencing them in institutions.

6. Measures to minimize time in post-trial detention

Many countries whose laws allow for an early (conditional) release of children from post-trial detention and this occurs frequently.

The handling of children in conflict with the law based on restitution, and retributive justice only gives authority to the state through law enforcers. Perpetrators, in this case children who are in conflict with the law and their victims, have very little opportunity to present their version of justice according to what they want. The state determines the measure of justice for victims by imposing punishments on perpetrators. Retributive and restitutive justice based on punishment, revenge on perpetrators, exile are changed to restorative justice based on compromise, casualty recuperation, integration in society, forgiveness, and amnesty, through diversion to avoid the negative impact of the judicial process and stigmatization and repetition. The court process is placed as the last resort in dealing with children

in conflict with the law according to the principle of last resort (*ultimum remedium*). This principle animates restorative justice contained in the Convention on the Rights of the Child.

4. CONCLUSION

Children in conflict with the law have human rights. The rights and dignity of children in conflict with the law are respected. The age of the child which must be considered in handling children in conflict with the law can be given the opportunity to improve their behavior.

The criminal justice system or deprivation of liberty (detention and imprisonment) against children in conflict with the law is the last resort in dealing with children in conflict with the law. This is contained in the Convention on the Rights of the Child and other international instruments such as the Tokyo Rules, The Beijing Rules, The Riyadh Guidelines, and the UN Rules for the Protection of Juveniles Deprived of Their Liberty. These international instruments describe that it is important to prevent children from coming into conflict with the laws of the criminal justice system. This is a form of protection of the rights of children in conflict with the law.

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