

ABSTRAK

PENERAPAN *RESTORATIVE JUSTICE* DALAM PENYELESAIAN TINDAK PIDANA ANAK MENURUT TEORI PENEGAKAN HUKUM DAN HUKUM PROGRESIF

Hafizah Zahra Halim (2110622088), Beniharmoni Harefa

Studi ini bertujuan menganalisis penerapan konsep Restorative Justice dalam Tindak Pidana Anak yang terjadi dalam tahap penyidikan di Kepolisian, penuntutan di Kejaksaan dan pemeriksaan di Pengadilan dan tantangan dan hambatan penerapan *Restorative Justice* dalam menyelesaikan perkara Tindak Pidana di Kepolisian, Kejaksaan dan Pengadilan. Setiap lembaga penegak hukum telah menyusun pedoman melakukan keadilan restoratif sebagai diatur dalam berbagai peraturan, namun dalam praktiknya masih terjadi perbedaan persepsi dan implementasinya. Pengaturan restorative justice dalam berbagai aturan yang berbeda menurut dikhawatirkan menimbulkan perbedaan persepsi. Belum ada defenisi dan penjelasan komprehensif mengenai restorative justice akan berpotensi menghambat pelaksanaannya oleh aparat penegak hukum. Studi ini merupakan penelitian kualitatif dengan pendekatan normatif dan menggunakan pendekatan undang-undang (statute approach). Studi ini menunjukkan bahwa praktik penerapan restorative justice dalam tindak pidana anak berhadapan hukum belum berhasil melindungi hak asasi anak di Indonesia. Institusi penegakan hukum di Indonesia belum berhasil memberikan perlindungan hukum terhadap hak asasi anak di Indonesia. Institusi penegakan hukum di Indonesia masih terjebak dalam formalisme hukum sehingga restorative justice belum menjadi prioritas dalam belum berhasil memberikan perlindungan hukum terhadap hak asasi anak di Indonesia. Dalam penerapan keadilan restoratif dalam tindak pidana sering justru muncul dari pihak penegak hukum itu sendiri. Misalnya pihak kepolisian, kejaksaan, dan advokat yang menjadi penghambat karena perspektif yang dikembangkan lebih mengutamakan penyelesaian lewat jalur pengadilan. Pada sisi lain, dalam proses perdamaian tersebut berkaitan dengan perbedaan pandangan dalam ganti rugi untuk kepentingan pihak korban, adanya pihak korban dan keluarganya menolak perdamaian atau terdapat relasi kuasa sehingga mengalami kesulitan dalam mencapai proses keadilan restoratif. Secara filosofis keadilan restoratif berkaitan erat dengan teori hukum progresif yang lebih mengutamakan penyelesaian masalah hukum secara substantif untuk mencapai tujuan penegakan hukum yang tidak hanya sekedar melihat hukum sebagaimana hukum tertulis dalam peraturan perundang-undnagan (according to the letter), melainkan menurut semangat dan makna lebih dalam (to very meaning) dari undang-undang. Pemikiran hukum progresif menawarkan perlunya penegakan hukum progresif yang pro rakyat dan pro keadilan untuk memberi kebahagiaan kepada rakyat dan bangsanya. Hukum progresif dan keadilan restoratif melampaui peraturan dan dokumen hukum yang positivistik dan berpihak pada kearifan lokal (local wisdom) dan hukum yang hidup dalam masyarakat.

Kata Kunci: *restorative justice*, tindak pidana anak, teori penegakan hukum, teori hukum progresif

ABSTRACT

APPLICATION OF RESTORATIVE JUSTICE IN RESOLVING CHILDREN'S CRIME ACCORDING TO THE THEORY OF LAW ENFORCEMENT AND PROGRESSIVE LAW

Hafizah Zahra Halim (2110622088), Beniharmoni Harefa

This study aims to analyze the application of the concept of Restorative Justice in Child Crimes that occur in the investigation stage at the Police, prosecution at the Prosecutor's Office and examination at the Court and the challenges and obstacles to the application of Restorative Justice in resolving Criminal Cases at the Police, Prosecutor's Office and Court. Each law enforcement agency has prepared guidelines for carrying out restorative justice as regulated in various regulations, but in practice there are still differences in perception and implementation. The regulation of restorative justice in various different regulations is feared to cause differences in perception. There is no comprehensive definition and explanation of restorative justice which has the potential to hinder its implementation by law enforcement officers. This study is a qualitative study with a normative approach and uses a statute approach. This study shows that the practice of implementing restorative justice in child crimes in conflict with the law has not succeeded in protecting children's human rights in Indonesia. Law enforcement institutions in Indonesia have not succeeded in providing legal protection for children's human rights in Indonesia. Law enforcement institutions in Indonesia are still trapped in legal formalism so that restorative justice has not become a priority in not succeeding in providing legal protection for children's human rights in Indonesia. In the application of restorative justice in criminal acts, it often arises from the law enforcement itself. For example, the police, prosecutors, and advocates who become obstacles because the perspective developed prioritizes settlement through the courts. On the other hand, in the peace process, it is related to differences of opinion in compensation for the interests of the victim, the victim and his family reject peace or there is a power relationship that experiences difficulties in achieving the restorative justice process. Philosophically, restorative justice is closely related to the theory of progressive law which prioritizes the resolution of legal problems substantively to achieve the goal of law enforcement that does not only see the law as written in the legislation (according to the letter), but according to the spirit and deeper meaning (to the very meaning) of the law. Progressive legal thinking offers the need for progressive law enforcement that is pro-people and pro-justice to provide happiness to the people and their nation. Progressive law and restorative justice go beyond positivistic legal regulations and documents and side with local wisdom and the law that lives in society.

Keywords: *restorative justice; juvenile crime; law enforcement theory; progressive legal theory.*