

# Handling of Children's Cases in Conflict with Transformative Justice-Based Law

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**Abstract:** *This study aims to find out and analyze the handling of children's cases in conflict with the law based on Transformative Justice. This research method is normative legal research. This type of research is legal research to find the rule of law, legal principles and also legal doctrines to answer the legal issues faced. Normative legal research is carried out to find a problem solver in the legal issues that are being faced. Transformative Justice is a concept that tries to expand Restorative Justice by trying to solve problems not only in the legal domain, namely trying other elements such as social, political, economic and cultural, so it can be said that the concept of Transformative Justice always pays attention to the welfare of children in the sense of avoiding sanctions that are merely punishing for the consideration of these various elements, and emphasizes the principle of professionalism and not only is based on consideration of the severity of the violation of the law but also on the consideration of personal circumstances of the child, such as social status, family circumstances, losses caused or other factors related to personal circumstances that will affect the growth and development of the child, and this is the basis of Transformative Justice as a new formulation or alternative in handling children's cases in conflict with the law as an effort to recover and grow.*

**Keywords:** Child Cases, Transformative Justice, Conflict with the Law

## 1. Introduction

Criminal acts are a social symptom that every society, from adults to children, always faces. Criminal acts can only be prevented and reduced but are challenging to eradicate. Social problems result from social and cultural development in society, that is, the result of differences in the actions of interests over the goals of society itself. Social problems can be a problem in adjusting between various aspects of a single entity so that it can cause vigilance towards the life of the group or which greatly affect the fundamental desires of its members. One of them is that efforts to overcome criminal acts are carried out by retaliation against criminal offenders. In an effort to overcome criminal acts by using retaliation against criminals, it is actually the oldest method, as old as the life of human civilization itself. In the view of criminal law, a child who commits a criminal act or activity that violates the norms in social life needs to be interpreted in the form of the incompetence of morality, mentality in the child that is influenced by various growth factors of a child himself, from a psychological point of view the existence of a process that interferes with the development of a child is an arbitrary act against a child. With complex wrongdoing committed by a child, there is a need for protection for a child who is dealing with problems or actions that are entangled with the law, essentially requires special handling efforts from various parties of society and law enforcement as an effort to save the next generation of the nation (Ramdani 2020).

In the process of caring for children in conflict with the law in Indonesia itself has Law Number 11 of 2012 on the juvenile criminal justice system, which is as a separate guideline to reduce the negative impact of criminal witnesses given to children. In the process, efforts to reduce the negative impact of criminal sanctions are the authority of law enforcement, including the police, prosecutors, and judges, with an alternative policy of stopping the judicial

process outside the judicial process by returning the child to his parents or handing over to the relevant institution. It is this act that is called diversion in the restorative justice approach (Cornelius and Harefa 2021). Restorative justice, in theory, contains the following meanings "a rapprochement between the actors of the perpetrator of the criminal act and the victim of the criminal act or an effort to peace outside the judicial process by involving the family of the victim and the family of the perpetrator of the criminal act with the intention and purpose that the legal problems arising from the criminal act committed can be resolved properly until an agreement is reached between the actors of the criminal act and victims of criminal acts" in the juvenile criminal justice system the Restorative Justice approach only involves three stakeholders, namely, the perpetrator, the victim, and the community in determining the settlement of children's cases from here the efforts of the Restorative Justice approach aim to restore the state of criminal acts committed by children (Ramadhan, Kamarusdiana, and Soefyanto 2021) Restorative justice is a concept or idea that responds to the development of the criminal justice system by emphasizing the needs of individuals who are perceived to be excluded by mechanisms in the criminal justice process (Setyorini, Sumiati, and Utomo 2020).

However, the problem is that when the handling of child cases with the Restorative Justice approach has not discussed the specific conflict between the victim and the perpetrator, there are still obstacles in the Restorative Justice approach in the application process if there is no good communication in the deliberation and mutual understanding between the two parties, the criminal case committed by the child cannot lead to peace between the two parties. The perpetrator's and victims with failure to achieve peace between the two parties caused in the process the implementation of Restorative Justice not been able to run effectively, namely internal obstacles and external obstacles (Putu et al. 2021).

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In legal development, specifically the development of criminal law in Indonesia, Asmasasmita stated that: "Indonesia's national legal system has not actually been comprehensively formed and has not fully contained the values of indigenous peoples' lives to adapt to the lives of modern peoples. In an effort to declare that there has been a national legal system, in fact it has proven to be only a relic of the colonial legal system of the Dutch East Indies which adheres to the "Civil Law System" which is only forced to apply in the midst of indigenous peoples in Indonesia. Changes to the Criminal Code in the post-independence period of the Republic of Indonesia and after the reform era, among others, were carried out by including provisions on air piracy and the prohibition of the ideology of marxism-communism. The national legal system until now its formation is still not said to be completed and becomes a question before and after Indonesia enters the reform era until now, it can be seen in the formation that it is more dominant as a result of harmonization of the influence of perspectives or the results of the formulation of foreign laws into the laws and regulations in force in Indonesia" (Atmasasmita 2012).

The renewal of criminal law is basically the realization and reevaluation of the socio-political, socio-philosophical and socio-cultural values that underlie and contain the content of the normative and substantive content of criminal law that is aspired to in the construction of national law. Furthermore, in Indonesia itself, the value approach that is also the basis must be based on a view of life based on the ideology of Pancasila as the main source of law in Indonesia, including the development of criminal law. Departing from the two value approaches above, which is the main background for the need for criminal law reform, especially seen from the subject matter of the central problem of criminal law. In other words, the renewal of criminal law is basically the reorientation and reform of criminal law that underlies criminal law policy in Indonesia which refers to the concept of the nation's central value. Within the scope of the renewal of the criminal law itself. Friedman tried to explain the basic things that include legal reform, namely legal structure, legal culture, and the substance of the law itself (Hanafi 2019).

Criminal law is a system that is in the process of being developed. In other words, Indonesia's national criminal law system is a system that is still aspired to (*Ius Constituendum*). A legal reformer from Canada, Ruth Morris, cited the concept of Transformative Justice as one of the critics of Restorative Justice around 1990. Morris stated in the application of restorative justice that it is better than retributive justice to create peace between the perpetrator and the victim of a criminal act. But restorative justice has not been able to reach socio-political, economic and social aspects of society. In this case, restorative justice in the settlement of a criminal case is solely resolved within the scope of the law but also sees and pays attention to socio-political, economic, social and cultural elements. Canada's law commission defines transformative justice as a way to deal with conflict by recognizing and responding to the various consequences caused by the conflict and utilizing the conflict as an opportunity to encourage recovery and growth involving relevant parties. Howard Zehr suggests that fundamentally the concepts of restorative justice and

transformative justice approaches are actually the same, although differences in terms can stem from some differences in practice. Howard Zehr argues that the core of restorative justice and transformative justice are equally aimed at positive transformation for social communities. However, in practice, broadly speaking, there are different methods or approaches to restorative justice and transformative justice. Where transformative justice, in general, aims to achieve social-level change and individual-level change, while in practice, the restorative justice approach still questions what things to restore (Waluyo 2020).

Therefore, the transformative justice approach can be one of the alternative formulations for handling children's cases in conflict with the law, which until now in Law No. 11 of 2012 concerning the juvenile criminal justice system still adheres to the restorative justice approach. As in the transformative justice approach, trying to see justice does not only focus on outputs but also on outcomes that one side sees the impact on society as a whole through the identification of root causes as well as efforts to renew the juvenile criminal justice system. Based on the description above, a formulation of the problem can be formulated, namely the urgency of handling children's cases in conflict with the law based on Transformative Justice.

## 2. Literature Survey

### The Concept of Transformative Justice

A law reformer in Canada named Ruth Morris, in the late 1990s, pioneered the concept of Transformative Justice for the first time as a critique of the concept of Restorative Justice. The principle of transformative justice is a principle that seeks to expand restorative justice. When restorative justice only focuses on perpetrators, victims and other related parties, transformative justice seeks to solve problems using extrajudicial approaches such as socio-political, economic, social and cultural. Therefore, through a transformative justice approach, a legal problem is not only reviewed within the limits of a legal perspective but must be viewed from a broader perspective. Thus, it can be identified and analyzed in depth the root cause of the legal problem through which a better formulation or formulation can be produced to solve the problem so that in the future, it will not happen again. One example is that a strange 14-year-old child who came from a poor neighbourhood and family stole a meal at a closed grocery store, and indirectly it was a child crime. If reviewed from a transformative justice approach, transformative justice does not see it as a crime of theft alone but delves into the root causes of why the child stole, whether the child was expelled from his family and whether the child needs money for food, clothing and shelter. Whereas restorative justice only addresses the conflict of crimes committed by the child with the shop owner or the perpetrator and the victim, transformative justice is present to seek to use the conflict as an opportunity to overcome the greater socio-political and economic injustice. Transformative justice is a comprehensive and holistic approach that not only seeks to restore the balance between the perpetrator and the victim but it focuses on the various efforts that can be made to do positive social justice in the future (Nocella II 2011).

### 3. Methodology / Approach

The type of research used is normative legal research. This type of research is legal research to find the rule of law, legal principles and also legal doctrines to answer the legal issues faced. Normative legal research is carried out to find a problem solver in the legal issues that are being faced. The result of this study is to find a prescription for how to formulate the problem posed. Normative legal research only examines existing legal norms without looking at the practice in the field (law in action). In this study, the approach used is the statute approach; conceptual approach and case approach (Mahmud Marzuki 2022).

### 4. Results & Discussion

#### Transformative Justice-Based Juvenile Criminal Justice System

The definition of handling children's cases in conflict with the law is a series of ways to resolve cases of children who commit criminal acts. According to Article 1, paragraph (3) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Children are children who are 12 (twelve) years old but not yet 18 (eighteen) years old and are suspected of committing criminal acts. In the general explanation, basically, the juvenile justice process is regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which was previously Law No. 3 of 1997 concerning juvenile courts. One of its objectives is to protect and protect children who are facing the law as an effort to protect the dignity and dignity of children as the next generation of the nation. However, in its implementation during the implementation of Law No. 3 of 1997 concerning Children's Courts, children facing the law are positioned as objects, and the treatment of children in their handling tends to harm children, so Law No. 3 of 1997 concerning Children's Courts is no longer relevant to the legal needs of the community and has not comprehensively castrated protection for children who are facing the law. Therefore, Law No. 3 of 1997 concerning Juvenile Courts was revoked and not enforced and replaced with Law No. 12 of 2012 concerning the Juvenile Criminal Justice System, which came into force after two years of enactment on July 30, 2012. Furthermore, the general explanation in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which is a substitute for Law No. 3 of 1997 concerning Children's Courts, aims to realize a juvenile justice system that truly guarantees the interests of protection for children facing the law (Wiyono 2016).

The protection of children in the face of the law is a shared responsibility of law enforcement officials, not only children as victims but also children as perpetrators and witnesses. Law enforcement officials in handling children's cases, referring to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, must prioritize conflict between victim actors and perpetrators in criminal acts committed by children. One of the legal basis for implementation in the Juvenile Criminal Justice System is Supreme Court Regulation No. 4 of 2014 concerning the Implementation of Diversion of the Juvenile Criminal Justice System, in Supreme Court Regulation No. 4 of 2014 concerning the Implementation of Diversion of the Juvenile Criminal

Justice System contains ways of handling juvenile criminal settlements, seeing that there are no regulations that contain special procedural laws in the juvenile criminal justice system. According to Supreme Court Regulation No. 4 of 2014 concerning the Implementation of the Juvenile Criminal Justice System, the Transfer of Settlement of Children's Cases from the criminal justice process to a process outside of criminal justice called Diversion, Diversion there is a Deliberation between parties involving children and parents of victims and perpetrators, community advisors and other parties involved to seek diversion agreements through a Restorative Justice approach (Danawiharja 2020).

Marlina, in her book on Juvenile Criminal Justice in Indonesia, defines the meaning of Diversion as a policy carried out to prevent criminals from formal criminal proceedings to provide protection and rehabilitation to children as perpetrators of criminal acts (Marlina 2009). While substantively, this is in line with Article 1 Number 7 of Law No. 11 of 2012 concerning the juvenile criminal justice system, Diversion is the transfer of the completion of criminal acts committed by children from the criminal justice process to processes outside of criminal justice, which is intended to avoid and keep children away from the formal judicial process so as to change the views of children who face the law and it is hoped that children can return to their environment.

In the process of implementation, the handling of children's cases facing the law is gradually carried out with the process of investigation, investigation, prosecution process, examination process in court and the process of implementing judges' decisions. The relevant institutions are the Police, Community Hall, Prosecutor's Office and Courts. Diversion in the Restorative Justice approach is an attempt to restore back to its original state, and not a retaliatory one. In addition, Diversion in the juvenile criminal justice system is a form of education for a child himself.

Galway and Joe Hudson suggest that there are basic elements in the definition of diversion with a Restorative Justice approach, including the following:

- Crime is seen as a conflict between individuals that results in injury to the victim, social society and the perpetrator himself,
- The purpose of the criminal justice process should be to create peace in society by reconciling individual attributes that are in dispute;
- In the criminal justice process, it should accommodate active participation by related parties, from victims, and perpetrators to the public in general, to find solutions to conflicts (Badan Penelitian dan Pengembangan HAM Kementerian Hukum dan HAM 2013).

In reality, the implementation of the diversion system with a Restorative Justice approach to juvenile justice still has many obstacles. Some of these things include the implementation of Diversion with a restorative justice approach that is unacceptable to the victim so that they do not find agreement. Usually, the victim feels that the implementation of the Diversion does not provide justice for

them as the victim himself because the position of the aggrieved victim requires legal protection as a citizen who has the right to be protected (Firdaus 2019).

From the obstacles that often occur in the implementation of Diversion with a Restorative Justice approach in the juvenile criminal justice system, Transformative Justice has become a new formulation in resolving children's cases facing the law in the juvenile criminal justice system in Indonesia, seeing that transformative justice and restorative justice have the same background, but in concept, Transformative Justice has a more in-depth approach, and not just analyzing a criminal act from its actual act, but reviewing further from non-legal factors such as political, economic, social and cultural aspects as a whole. When reviewed further, Restorative Justice is an approach that emphasizes justice and the restoration of circumstances and restores balance in society, perpetrators and victims are brought together to solve problems, and community members are involved in recovery efforts. Meanwhile, the Transformative Justice approach emphasizes justice and the restoration of circumstances and restoring balance in society further by involving non-legal factors such as social, political, economic and cultural and analysis of the root cause as an effort so that crimes do not repeat themselves in the future.

Canada's law commission defines Transformative Justice as a way of dealing with conflict with the aim of responding to the various consequences caused by the conflict itself and seeing the opportunities offered by the conflict by bringing together the parties together into a process that promotes recovery and development (Law Commission of Canada, and Cooley 1999).

Donna Coker stated that in handling conflicts must be handled using a public interest approach and not just a mediation approach between actors or perpetrators and victims. This opinion is in line with the principle of transformative justice, where transformative justice not only seeks ways to recover perpetrators and victims of a criminal act but also seeks ways to change the individuals involved for the better by always paying attention to the political, economic and social aspects of society. In concept, the Transformative Justice approach aims to provide answers to non-criminal victims themselves regarding several disputes, including:

- 1) Why are they victims of criminal acts
- 2) Problems of what really happened,
- 3) Indemnification
- 4) Recovery and growth

Speaking of legal reform, the most important concept is the formulation of the regulations that are aspired (*Iuscontituendum*) to better rule than the previous rules. Its implementation includes many aspects of updating and making regulations that complement the legal needs that have been applied to the judicial system, including affirming the role and function of institutions and guidance for law enforcement (Fernando 2020). BardaNawawiArifexpressed opinions on the renewal of the law must be shown for the protection of the community from harmful and harmful acts, the improvement of perpetrators of acts that violate social

norms as a form of community protection from harmful acts and the enforcement of laws that resolve conflicts by restoring the situation that occurs due to a criminal act (Fajrin and Triwijaya 2019).

Adhering to these concepts when looking further in the context of juvenile criminal justice, it can be understood that, in fact, the existence of the Juvenile Criminal Justice System Law is still said to have so many shortcomings, such as the lack of optimal application of diversion because there is often no agreement found between the perpetrator actor and the victim of criminal acts so that diversion efforts have not been effective. Therefore there is a need for updates in the juvenile criminal justice system as an aspect of legal needs in society.

The Restorative Justice approach in the Juvenile Criminal Justice System Act is already set up relatively clearly. Meanwhile, the Transformative Justice Approach, if applied in the juvenile criminal justice system, can be pursued by adding and reinterpreting the Juvenile Criminal Justice System Law with the following:

- a) Following the diversion stage model with the addition of a Transformative Justice focus
- b) The new formulation of Transformative Justice
- c) Add or refine the formulation of the concept of Restorative Justice coupled with Transformative Justice

By applying the mechanism of a transformative justice approach as an alternative settlement in cases of children facing the law, it is hoped that it can have a positive impact on law enforcement in Indonesia.

## 5. Conclusion

Restorative Justice that has been applied in the juvenile criminal justice system, in reality, has not been able to be said to reach Justice comprehensively to resolve the conflict that occurs, so the conflict often repeats itself because, in fact, Restorative Justice only focuses on recovery between individuals, that is, only between the perpetrator and the victim and the parties involved in the boundaries of the conflict is over. Meanwhile, the impact of the conflict is actually quite complex for the community. Article 28b, paragraph 2 of the Constitution of the Republic of Indonesia states, "a child has the right to grow and develop and has the right to protection from all forms of discrimination of the dignity and dignity of the child as the next generation of the nation" therefore, the approach in handling children's cases must always pay attention to the rights of children as victims and perpetrators themselves. Transformative Justice is a concept that tries to expand Restorative Justice by trying to solve problems not only in the legal domain, namely trying other elements such as social, political, economic and cultural, so it can be said that the concept of Transformative Justice always pays attention to the welfare of children in the sense of avoiding sanctions that are merely punishing for the consideration of these various elements, and emphasizes the principle of professionalism and not only is based on consideration of the severity of the violation of the law but also on consideration of the personal circumstances of the

child, such as social status, family circumstances, harm incurred or other factors related to personal circumstances that will affect the growth and development of the child.

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