

Rehabilitation and reintegration policies of children victims of criminal action in the Children's Criminal Jurisdiction System

Políticas de reabilitação e reintegração de crianças vítimas de ação criminal no Sistema de Jurisdição Criminal de Crianças

Políticas de rehabilitación y reintegración de niños víctimas de acción penal en el Sistema de Jurisdicción Penal de Menores

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Ani Purwati

ORCID: <https://orcid.org/0000-0002-5727-362X>

Departement of Law, Faculty of Law, Wijaya Putra University, Indonesia

E-mail: anipurwati@uwp.ac.id

Fifin Dwi Purwaningtyas

ORCID: <https://orcid.org/0000-0002-0558-969X>

Departement of Law, Faculty of Law, Wijaya Putra University, Indonesia

E-mail: fifin@uwp.ac.id

Jumali Sapta Agung

ORCID: <https://orcid.org/0000-0002-0392-217X>

Social worker supervisor of East Java Provincial Government, Indonesia

E-mail: jumali.2109@yahoo.com

Abstract

This research examines the harmonization of statutory regulations and the application of law on child victim protection as an achievement of optimal independence for child victims during formal restorative justice and post-recovery. The research objectives and specific targets were (1) formulating the concept of rehabilitation and reintegration of child victims in the juvenile justice system; (2) establishment of SOP (Standard Operational Implementation) for law enforcement officers on the handling of child victims; (3) integrated networking institutions / legal aid institutions and psychological assistance for child victims; and (4) the formulation of juvenile justice teaching, restorative justice, legal and psychological approaches. The method used in this research is through a mix methodological approach between law and psychology with a conceptual approach and a statue approach to analyze the weaknesses of current legislation, such as centralized legal protection for child victims of the fulfillment of restorative judicial evidence (informal), but not yet. Integrated psychosocial and vocational rehabilitation programs for every victims. Apart from that, the child criminal law policy in Indonesia which implements restorative justice is still in the perspective of children in conflict with the law. The concept method of victim rehabilitation is implemented by rehabilitation programs in accordance with the principles of the Convention on the Rights of the Child (KHA).

Keywords: Restorative justice; Child victims; Cost-benefit analysis (CBA); Rehabilitation; Social reintegration.

Resumo

Esta pesquisa examina a harmonização dos regulamentos estatutários e a aplicação da lei sobre proteção de crianças vítimas como uma conquista da independência ideal para crianças vítimas durante a justiça restaurativa formal e pós-recuperação. Os objetivos da pesquisa e metas específicas foram (1) formular o conceito de reabilitação e reintegração de crianças vítimas no sistema de justiça juvenil; (2) estabelecimento de SOP (Implementação Operacional Padrão) para policiais no tratamento de vítimas infantis; (3) rede integrada de instituições / instituições de assistência jurídica e assistência psicológica para crianças vítimas; e (4) a formulação de ensino de justiça juvenil, justiça restaurativa e abordagens jurídicas e psicológicas. O método utilizado nesta pesquisa é através de uma abordagem metodológica mista entre direito e psicologia com uma abordagem conceitual e uma abordagem de estátua para analisar as fragilidades da legislação em vigor, como a proteção legal centralizada para crianças vítimas do cumprimento de provas judiciais restaurativas (informal), mas ainda não. Programas integrados de reabilitação psicossocial e profissional para todas as vítimas. Além disso, a política de direito penal infantil na Indonésia, que implementa a justiça restaurativa, ainda está na perspectiva das crianças em conflito com a lei. O conceito de método de reabilitação de vítimas é implementado por programas de reabilitação de acordo com os princípios da Convenção sobre os Direitos da Criança (KHA).

Palavras-chave: Justiça restaurativa; Crianças vítimas; Análise de custo-benefício (CBA); Reabilitação; Reintegração social.

Resumen

Esta investigación examina la armonización de las regulaciones estatutarias y la aplicación de la ley sobre la protección de las víctimas infantiles como un logro de la independencia óptima para las víctimas infantiles durante la justicia restaurativa formal y después de la recuperación. Los objetivos de la investigación y las metas específicas fueron (1) formular el concepto de rehabilitación y reintegración de los niños víctimas en el sistema de justicia de menores; (2) establecimiento de SOP (Implementación Operacional Estándar) para los agentes del orden sobre el manejo de niños víctimas; (3) redes integradas de instituciones / instituciones de asistencia jurídica y asistencia psicológica para los niños víctimas; y (4) la formulación de la enseñanza de la justicia juvenil, justicia restaurativa, enfoques legales y psicológicos. El método utilizado en esta investigación es a través de un enfoque metodológico mixto entre derecho y psicología con un enfoque conceptual y un enfoque estatuto para analizar las debilidades de la legislación vigente, como la protección legal centralizada para los niños víctimas del cumplimiento de la prueba judicial restaurativa (informal), pero no todavía. Programas integrados de rehabilitación psicosocial y vocacional para todas las víctimas. Aparte de eso, la política de derecho penal infantil en Indonesia que implementa la justicia restaurativa todavía se encuentra en la perspectiva de los niños en conflicto con la ley. El concepto de método de rehabilitación de víctimas se implementa mediante programas de rehabilitación de acuerdo con los principios de la Convención sobre los Derechos del Niño (KHA).

Palabras clave: Justicia restaurativa; Niños víctimas; Análisis de costo-beneficio (CBA); Rehabilitación; Reintegración social.

1. Introduction

Indicators of weakness in child protection as victims of crime that was recorded by Ministry Of Women Empowerment and Child Protection at least 4,116 cases of violence against children in 2020, by the total of 12,855 in Indonesia (Kamil, 2020). While in East Java, in guiding the children as victims there was an increase by the total of 2498 (2018), and 2019, the number was 2963 children consist of children that has to face the law, children as victims, children as perpetrators, and children as witnesses of raping case, sexual abuse, theft, assault, murder, narcotics, murder, gambling, children with HIV disease, children that experienced a mistreatment, children as victims and disabilities children. Several weaknesses in the implementation of legal regulations and the application of cost benefits for psychological recovery and social reintegration in handling cases of under aged victims have not been maximally focused on fulfilling evidence in form of *visum et repertum* (Medico legal report) as trial evidence (Article 13/1 of Criminal Procedure Code), the Government and the local government committed to rehabilitated and reintegrated the social work of children as victims which in reversal still constrained by the handling which is not well integrated within the administrative procedures, both by Bapas Litmas report (society research) and Social Worker Social Reports of law enforcement officers (police, prosecutors, courts) technically, the judge's decision should be legally binding (inkrach) to children as victims that prioritizes not only imprisonment, supervision of child welfare protection agency (LPKA). However the judge's consideration puts forward to the assessment of value from recovery losses both material and immaterial (traumatic) in form of compensation for rehabilitation, compensation for underage victim (Huda, 2006).

The weaknesses in the implementation of handling children as victims for social rehabilitation is a person able to carry out his social functions properly in social life. Practically, underage victims requires a long process to restore the social functioning of victim's is the same as rearranging the child's mental state; thus it needs a lot of changes. Behavior as an indicator of mental, spiritual, social and biological functioning. in case of handling process should involve professional psychologists for counseling, building social protection houses / LPKS if there is an emergency condition happen such as when the child is pregnant or when the family finds out that a child was being a victim of sexual abuse from their relatives or close friends, regarding those matters. Child protection and safety are the main focuses point, several social workers experience difficulties of handling the cases if their family and relatives reject the existence of sexual abuse because it is considered as a disgrace to the family, thus, the child protection or LKSA (Child Protection Institutions) becomes a reference for placing the child in a certain place until the child recovers, gives birth to the child (Suryani & Hardiati, 2016). The institution will be able to provide education when the child wants to remain at the LKSA (Child Protection Institutions).

The individualization of each victim can be truly felt by social workers, each victim has its own character, including the social environment of family, education, friend and others. Thus, the rehabilitation and integration process cannot be made by the same curriculum during the same period, and the same service standards. Likewise, when an institution has its own local characteristics according to the management's human resources capacity and the facilities they have, several social workers placed the child victims from a place to another for the reasons above, the child's resilience ability toward the situation and condition of institution and the children there.

Another weakness happen is that the child as a victim's often has multiple cases which follow it through the legal handling and social rehabilitation that have been completed, other difficulties happens regarding the child that does not have a family, rejected by the family, having an unharmonious relationship, broken home family, have a family which is far from the current child, Both parents are working abroad to become migrant workers (Herlina & Apong, 2004). Distance is also a weakness because if the victim's child has family, social worker should directly check the condition of the child from home to home or periodically ask the victim regarding the condition of the victim's or his guardian. The challenge of social work practice process that carried out by social workers for social rehabilitation included the reintegration of homework for team in each district considering that they cannot do networking by themselves is absolute and able to place the mandate and roles of each service provider. Law enforcement, social workers, families, and social institutions and budget support to maximize the performance.

Legal protection for perpetrator, victim and the society through diversion solutions, forgives and receives compensation (Wahyudi, 2011). Perpetrator is able to realize behavioral improvements and alternative forms of sanctions that guiding for individual recovery and behavior improvement (Angkasa, Hanadi, & Setyadi, 2009). Rehabilitation policies and social reintegration of the victims within a cost benefit analysis (CBA) calculation approach by legal psychological concept focusing on a balance of psychological, social, vocational recovery and medical rehabilitation pre-trial, trial and post-trial.

There are two problems that discussed in this research, the legal arrangements and the implementation of rehabilitation and reintegration policies for victims of criminal act. The development on the concept of "child recovery clinic" to contribute on the calculation of immaterial losses, the value of criminal losses and the social services reports that include as a part of the reformation of the criminal justice system of a Law Number 11/2012 concerning on the juvenile criminal justice system includes consideration of judge's decision and the post-trial considerations of the institution that responsible for monitoring and evaluating the recovery of underage victims in their original state.

2. Methodology

This study used descriptive qualitative as the methodology along with mixing methodology of law and psychology within the statute and conceptual approach. According to Sugiyono, descriptive qualitative methodology refers to method that used descriptive or explanation to analyze the research result (Sugiyono, 2009). The use of both statute and conceptual approach are to analyze the weaknesses of the current legislation, such as centralized legal protection for underage victims of the fulfillment of (informal) restorative justice evidence. This type of research include as normative juridical research. First, statutory approach (statute approach) examines and analyzes the consistency and suitability of laws related to the implementation of rehabilitation policies and reintegration of child as victims in international and national legal regulations (Marzuki, 2016). Second, the conceptual approach examines and analyzes the concept of implementing the rehabilitation and reintegration of child as victims within the cost benefit analysis method (Marzuki, 2016). The data were collected through library research, such as journal, books, internet and others. To achieve the objective of the research, legal psychology research also used to obtain empirical data, especially in the context of tracing the implementation of child rehabilitation policies and social reintegration of child as victims at the scope of investigation, prosecution, court and post-recovery juvenile justice.

3. Results and Discussion

The facilities of social rehabilitation and managing children's behavior by the law, both perpetrators and victims, should be carried out by formal and post-trial rehabilitation program that comprehensive in for underage victims, whether from psychological, social, vocational recovery and medical aspect of rehabilitation. The success scale of restorative program (recovery of victim's children) by psychosocial assistance of underage victims and their families can help children and families to find the problems within the required assessment method and assist the victims' problems such as stigma, personal and social independence and trauma. Regulations for the Rehabilitation and Integrity of Children as Victims of International Instruments included as following below (Muladi, 2002):

- a. Declaration of Human Rights, resolution Number 217A (III) Children as victims are regulated under the Convention of Children's right, Article 13 (legal jurisdiction for examining children abuse), article 14 (the legal system on the fulfillment of compensation of victims abuse), article 15 (statement of victims as evidence of trial);
- b. International Convention on Economic, Civil, Political and Cultural Rights Article 7 (legal protection did not apply to physical abuse but mental abuse), article 10 (special measures to protect all children and adolescents without discrimination);
- c. Convention on the Rights of Child Resolution Number 109/1990 is regulated inside Article 2 (handling of witnesses and victims of non-discrimination), Article 12 (numbers 1 and 2 of the state guarantee freedom according to the weight of the child's age and maturity at the same time the right to have their opinions heard in court either directly or represented by an institution in accordance with national legal regulations), Article 19 (protection of physical abuse, mental abuse, exile, exploitation of children, adults, families and institution) and article 39 (the country takes remedial steps of physical and spiritual recovery and the reintegration of children as victims of every kind of exile, exploitation, abuse, torture, and inhuman punishment);
- d. Beijing Rules number 11 (guideline for juvenile justice system) The State facilitates the policies of social programs implementation with by temporary supervision, guidance, restitution and compensation of victims;
- e. Cost Benefit Analysis considerations are regulated in Tokyo Rules number 8 which regulates the disposition of the punishment by considering the rehabilitation of perpetrator and the interests of victim, then reinforced on 8.2 by imposing economic sanctions and monetary penalties such as penalty payment, compensation to victims and Article 9 of Law Number 11/2012 concerning on the Criminal Justice System for Children.

The Policy for Rehabilitation and Integrity of Children as Victims of National Instruments:

- a. Law Number 39/1999 concerning on Human Rights is regulated inside the article 39 paragraph 1 (legal protection of children against all physical, mental, educational, bad treatment and sexual abuse that responsible for the parenting and guiding), paragraph 2 (implementing further punishment or penalty if the parents, guardians and other parties commit an act that was regulated in article 39/1);
- b. Law Number 23/2002 concerning on Child Protection that regulated in Article 63/3a (protection of children specifically for victims of criminal acts as referred in paragraph 1 through rehabilitation efforts from the inside institutions and outside institutions), Article 64 paragraph 1 and 2 (confidentiality on the identity of victims from the offline or online media, whether it comes from names, address, face, and identity of children as victims, witnesses, parents), article 23 regarding the right to be accompanied on every examination of parents, trusted

persons, social workers within the exception of parents as suspects), Article 63/3 (to obtain any information on case developments);

- c. Law Number 11/2012 concerning on the Criminal Justice System for children, guarantees of safety and sense of security, article 19 (protection of the victim's identity through the mass media to avoid labeling), article 64/2 (protection for witnesses and expert witnesses from physically, mentally and socially), Article 90/1 (children of victims and witnesses have the right to progress the medical and social rehabilitation efforts institutionally and outside the institution), article 91 paragraphs 1, 2, 3 (considerations or suggestions for social advisers, professional social workers, welfare and law enforcement officials provide protection in form of social reports or assistance measures to hospitals or child welfare protection institutions), article 91 (protection of social homes for victims / witnesses);
- d. Law No.13/2006 concerning on Witnesses and Victims protection which regulated inside article 3 (the principle of protection for witnesses and victims, including respect, sense of security, justice, non-discrimination, and legal certainty), Article 4 (protection of security sense in judicial process), article 5 letters a to m (the rights of victims: protection of family security, property, and freedom of threats that will be given and determine the form of protection, get a translator, information on developments in cases and decisions, new identity and residence, transportation costs and temporary living assistance until the end of period);
- e. Law No. 11/2009 concerning on National Welfare that regulated in article 5 paragraph 2 letter G (social administration against the act of violence, exploitation and discrimination), protection of social rehabilitation article 7 paragraphs 1, 2 and 3.

The reformation of criminal law that places rehabilitation and social reintegration of victims, families and communities as a form of restoration to their original state that related to the value of restorative justice, include (Muladi & Arief, 1998):

- a. Social Policy: efforts to address social problems in national purposes. The problem of children as perpetrators and victims should be synchronized based on the quality of decision and the victim's psychological report on the assessment of post traumatic syndrome disorder (PTSD) and *Correctional Institution* report for perpetrator (need assessment for external and internal delinquency indicators);
- b. Criminal Policy: Efforts to overcome the problem of perpetrators, victims, and the society that have been diversified, however in the constitution of juvenile criminal justice system it is standard that diversion is carried out only once, thus, there should be an evaluation mechanism for the effectiveness of crime prevention against Psychological Report of Victims and correctional institution to carry out any recovery;
- c. Law Enforcement Policy: carrying out legal reforms in judicial review of Juvenile Criminal Justice System Law and Standard Operating Procedures in calculating the program for social rehabilitation and reinterpretation of crime victims.

However, diversion cannot be implemented for children who did frequent criminality or heavy criminality (Ernaningsih, Novianti, & Murty, 2017). The application of a victim protection for the benefit of the analysis approach to legal regulations and aspects of medical rehabilitation, crime prevention policy calculates the costs and benefits of material and immaterial losses within the Cost Benefit Analysis (CBA) approach by Bekker through the calculation of the benefit cost by direct crime prevention and prevention budget (insurance for victims of mental health services, compensation for job losses, death costs, legal advisor claim and consequences labeling cost). The classification of the cost benefit concept study design according to Martin and J. Bradley on handling and overcoming a crime is to calculate tangible costs (medical costs, costs of lost wages, and court, treatment costs for care and prison services) and intangible costs (monetary calculation of victim recovery costs).

The theory of economic approach to the criminal aspect, which called as decision theory (George Tsebelis) and the game theory (Becker) help to reduce the probability of police in tackling crime. Thus, alternatives policies are needed (Pradiptyo, 2011), such as:

- a. Determine the calculation of the classification on severe penalties with a small probability of arrest (the heavier a penalty borne by taxpayer, the higher penalty payment required);
- b. Determines a light sentence but the probability of arrest is quite risky.

The Economic Analysis of Law as an economic approach to law is needed to make a regulation of legal products of crime, perpetrators, victims, and society that can be seen from the characteristic, ability, quality, and precision on the preparation of legal product progressively, effectively and efficient. Several principles for analyzing the economics in legal terms include:

a. Principles of Equilibrium Composition

Emphasize on this principle and the disparity of rationality towards definitions, perceptions of interests and objectives which basically divided into two criteria, definitions that have criteria for the interests of people and a country condition. Gaps in regulations and legal provisions are prepared and promulgated that there is a gap in rationality starts from the definition, and enforcement does not become efficient, and there is no balance value for common goals.

b. The Gap-Filing Principle

This principle is emphasized on the participation of law enforcement officers and law users in realizing and implementing the provisions of law. Within the efficient legal product, it is able to contain all legal provisions in an explicit, understandable, and accessible manner. Explicit contains the provisions of prohibitions, permissions and exceptions.

c. Principles of Hypothetical Bargains

The principle describes the benefits that have flexibility of meaning such as profit (monetary and non-monetary), benefits, advantages, gains, improvements. Quite economical when a legal provision is enacted or enforced, it is used by legal subjects. This principle emphasizes on the effectiveness of legal provisions as supporting tool related to the substance supported by consistency and stability by the consideration of responsiveness. Responsiveness considers that legal subject is familiar to a regulation and legal provisions and factual understanding, able to achieve the objectives of enforcement.

d. Correlated Productive Principles

This principle emphasized on the level of productivity of legal arrangements through the legal awareness increase of every level in society regarding the existence of legal sanctions against any legal deviation. Law enforcement does not exist in legal sanctions, but exist in the provision of laws and legal consequences. In applying the meaning of legal objectives achievement, include:

- (1) Reduce the tendency to abuse legal provisions;
- (2) Reduce the negative effects of illegal acts;
- (3) Strengthen the influence of punishment in mind (full awareness) as to reduce the report of offenders;
- (4) Improve the quality of difficulties to escape from legal sanctions;
- (5) Assessment of compliance and protect those who comply the law.

The assessment of cost benefits for the prevention and overcome the juvenile crime is adjusted to the operational standards of each institution in juvenile criminal justice system that regulated inside the Law Number 11/2012 concerning on the juvenile criminal justice system is technically regulated. Minister of Empowerment regulation from the State Minister for Women's Empowerment and Child Protection Number 1/2010 concerning on Minimum Service Standards for Integrated

Services for Women and Children, Decree from the Minister of Law and Human Rights Number M.HH-03 was carried out by the Ministry of Law and Human Rights, Correctional Institution, Ministry of Social Affairs, Government Regulation Number 44 concerning on the provision of compensation, restitution and assistance to witnesses and victims, East Java Governor Regulation 53/2014 on the implementation of victim protection.

The application of medical, social, psychological rehabilitation of work (Vocational Rehabilitation) for the handling of crime victim is carried out related to the report on the implementation of child case response assistance by social workers which includes: child's identity, case description, condition of child and parents, process and results of case observation, follow-up plans and recommendations, legitimized notes by the head of local social services and social workers. The rehabilitation and reintegration policy program is adapted to assist the child victims as medical rehabilitation cluster carried out by general health observations and special therapy, social rehabilitation programs advance on the nursing system, community-based non-nursing systems provided by the assistance of voluntary social workers that comes from village community resilience institution, social cottage systems (social settlements for physical re-functionalization, mental and social development), vocational rehabilitation to train the independence and skills of job training.

4. Conclusion

Legal arrangements related to the social rehabilitation and reintegration of child as a crime victims are regulated in the international instrument regulations of the Convention on the Child's right, Beijing Rules, Tokyo Rules which integrated to the national Child Protection of Law, Child Criminal Justice System, and the evaluation of rehabilitation policies weaknesses. and reintegration of victims by maximizing re-functionalization of victims' social protection shelters and reversal mechanisms of service providers, law enforcement officials, social workers, families, and social institutions and the budget support to maximize any performance. The application of rehabilitation and reintegration of victims in the perspective of cost benefit analysis considering any national regulations by determining the calculation and the classification of heavy penalties within a small probability of arrest (the heavier a penalty by the taxpayer, the higher amount of penalty for paying fines) and light punishment but the probability of arrest is quite high. Compensation as legal considerations for the official law enforcement.

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