

THE CONSTRAINTS OF THE IMPLEMENTATION OF RESTORATIVE JUSTICE ON CHILDREN CONFLICTING WITH LAW (AKH)

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ABSTRACT

This study aims to identify and analyze the implementation of Restorative Justice Constraints as an alternative to the settlement of lawsuits in conflict with the law. (AKH) in the criminal justice system, this research was conducted in Kendari city of Southeast Sulawesi, including law enforcement institute that have direct relevance to the handling Children in conflict with law, this research is descriptive with approach of normative law research and sociological law

The results showed that; Implementation of restorative justice in the settlement of cases of children in conflict with the law (AKH) in the criminal justice system, in Kendari city is still constrained by the limited facilities and infrastructure owned by law enforcement institute, both physical and nonphysical, inadequate law enforcement resources factor and incapable understanding of the implementation of Restorative Justice on Children in conflict with the law (AKH) or there is still a legalistic paradigm, lack of socialization of existing rules. Also Legal Cultural Factors; There are still paradox factors of the culture of society which positions that when the child is faced with the law, the law enforcement officer who handles them is positioned the most correct, the society also treats children with criminal and malicious categories such as those committed by the adults, the high demand for compensation by Victim, that cannot be fulfilled by the perpetrator.

Keywords: Child, Constrained, Restorative Justice

BACKGROUND

The child is a trust and gift of God Almighty, which must always be guarded and protected because in the child attaches dignity and degree and human rights that must be upheld. The child is the next generation of the nation, for that child needs to get extraordinary attention, not only by the State but also by the world community. As a child as the most matter in the world of the child, all countries in the world think, to find the best alternative form of settlement for Children in Conflict with the Law (hereinafter abbreviated as AKH).

The handling criminal matters involving children do not always refer to the penalty for wrongdoing, but to take into consideration the lesson and experience aspects that will be useful for the child's positive psychological development. The specificity of handling the problem of child mischief because of to child mischief is an anti-social act that can disturb the community, the issue of handling a child suspected of committing a crime is a common phenomenon that must be accepted as a social fact.

Various government regulation that have been enacted in Indonesia is proof of how great the attention of the Indonesian state to children without exception to AKH. Before the birth of the SPPA Law, the settlement of children's cases regulated in the Juvenile Court Law has various disadvantages, particularly concerning the regulation of a criminal case, in which the classical influence of the retributive justice of paradigm (retaliation) as the objective of punishment still seems very inherent. Therefore, the application of criminal to child in conflict with law does not reduce the number of criminal acts committed by children and does not prevent children from committing crime

One form of treatment of AKH is provided in Article 16 paragraph (3) of the Child Protection Law stating that the arrest, detention or imprisonment of children is only done if it is in accordance with applicable law and can only be done as a last resort. This regulation is in accordance with the Convention of the Right of The Child which has been ratified by the Indonesian government with Presidential Decree No. 36 of 1990 on Convention on the Rights of the Child by stating that the legal process is carried out as the final step and for the shortest and most appropriate period.

Juridical protection of children is an attempt aimed at preventing children from being abused either directly or indirectly in order to ensure the survival, growth and development of the child, physically, mentally and socially.

The basic philosophy of the treatment of AKH in the criminal justice system is for the best necessity of the child, which make the SPPA Act established since July 30, 2012 and valid two years later is July 31, 2014 essence for the benefit of children who are dealing with Law, one of them AKH.

The most fundamental substance in the SPPA Law as a fundamental change of the law is the strict regulation of restorative justice through the Diversion system intended to avoid and keep children away from the judicial process so as to avoid stigmatization of children in conflict with the law and back into the social environment fairly.

According to Tony F. Marshall (1999) on the definition of restorative justice is *“Restorative Justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.”* (Restorative Justice is a process by which the parties concerned in a particular violation solve collectively how to deal with the consequences of the offense and its implications for the future).

Restorative Justice is a Diversion process, that is, all parties involved in a particular crime jointly solve problems and create an obligation to make things better by engaging victims, children and the community in finding solutions to improve, reconciliation, and reassurance that is not based on retaliation. As Article 1 point 7 of the SPPA Law, it is formulated that Diverse is the transfer of the settlement of a Child's case from criminal justice process to proceedings outside the criminal court.

Diversion system is a criminal case solving path outside the formal legal process based on the concept of restorative justice. One variation of the restorative justice mechanism is the diversion system. According to Jack E. Bynum (Yutirsa Yunus, 2013: 236), the diversion system is an attempt to divert, or channel out, youthful offenders from the juvenile justice system. Since the enactment of the SPPA Act to date, it is still very taboo for law enforcers to seek diversion through a restorative justice approach to solve the child's case, generally the AKH case in the process until it reaches imprisonment. From the past to the present time, lawbreakers are still seen as parties who must get retaliation, detention and imprisonment. Imprisonment should be the last resort, but the fact is still the prima donna and the most commonly applied alternative by law enforcement.

Based on the results of interviews with the author of the Head of Detective Unit and Criminal Police Department Kendari that the data in Kendari Police show criminal acts committed minors in the area occupies a fairly high order in Southeast Sulawesi, so he thought the role of parents and the environment is very important because those who closer to the child and can directly monitor it. However, besides the parents and the environment, it is necessary to awareness and the important role of the government and law enforcers in contributing to

improve or restore AKH to the community by prioritizing the approach of restorative justice as mandated by the SPPA Law.

In the SPPA Law, it is obligatory for law enforcers to prioritize restorative justice approaches at all stages of the legal process of the criminal justice system and must seek diversion. Restorative justice approaches to the criminal justice system are implemented in accordance with the Law of the Republic of Indonesia Number 8 of 1981 on Criminal Procedure Law (hereinafter abbreviated as Criminal Procedure Code), the SPPA Law, At the level of Child Crimes investigation will be implemented by the police, namely the Law of the Republic of Indonesia Number 2 Year 2002 on the Police of the Republic of Indonesia (hereinafter referred to as the Police Law), the level of criminal prosecution of the Child by the Attorney, Indonesia Number 16 of 2004 on the Attorney of the Republic of Indonesia (hereinafter abbreviated as the Law of the Prosecutor), the court of the Child conducted by the judge namely the Law of the Republic of Indonesia Number 48 Year 2009 on Judicial Power (hereinafter referred to as the Judicial Law).

Police cases handled by the police and processed in court from year to year show an increase so that impressed every act of child can always be always processed through legal channels. This is certainly very contrary to the philosophy of handling children who put the necessity of children above all else. If so, if criminal punishment should be imposed, it is necessary to realize that criminal sanction is a process of repressive action of the criminal law enforcement system. Thus, the legal treatment of children should be taken seriously, however the child is the future of a nation. Therefore, in every legal consideration of AKH, law enforcement must be sure that its judgment can be a solid foundation for returning and managing the child to a good future and developing himself as a responsible citizen for the life of the nation.

For the sake of the best necessity of the children, law enforcement officers should apply restorative justice approach from now on. There is a need for comprehensive coordination between law enforcement officers in order to realize an Integrated Criminal Justice System to equate perceptions in the handling of AKH. It takes awareness of law enforcement officials who have an important role in providing a sense of justice, child welfare and AKH's future in its consideration. Law enforcement in its consideration needs to pay attention to social Justice (legal justice) in addition to considers legal justice (justice based on legislation) so that the achievement of precise justice (the highest award for justice).

Juridical, the application of restorative justice to the treatment of AKH has been accommodated, although not yet comprehensively. In reality, however, many AKHs who commit minor crimes are then processed in legal procedures without prioritizing the diversions so that AKH gets criminal sanctions. And the victim of a crime committed by a child does not get any recovery from the crime. On the other hand, an increase in criminality by children is increasing and varies both mode and type of crime.

Another phenomenon is the existence of values living in communities that have local wisdom in handling children there is how to deal with AKH has not become a primary consideration of law enforcement officers. Law enforcers prefer the juridical judgment that is formally limited and inflexible in fulfilling the changes of society. From the phenomenon, it is alleged that there are still obstacles in the implementation of restorative justice in the settlement of children in conflict with the law on the criminal justice system,

PROBLEMS

Based on the background mentioned above, then in detail the problems to be solved in this research are:

"How far is the implementation of restorative justice in the settlement of children in conflict with the law in the criminal justice system in Kendari City?"

RESEARCH METHODS

The type of research that the writer uses is descriptive research type with normative legal method, and sociological research (socio legal research). The approach used by the researcher is a combination approach between normative research and research Sociological (socio legal research),

The location chosen as the research area is: Kendari Police, Kendari Base, Kendari State Attorney, Kendari District Court, Populace in this research is all law enforcement officers are police, prosecutor, bass and judge and child as victim, samples drawn in research This consists of: Police of children, Prosecutors children, Judges children of conflict with the law (AKH), the families of the victims, To obtain primary data will be collected directly from the respondents through questionnaires and interviews directly with the respondent While to obtain secondary data in Collect through searches in related literature archives and periodic reports and annual reports. The overall data and information obtained from primary and secondary data were processed and analyzed qualitatively.

DISCUSSION

Restorative justice is a fair settlement involving perpetrators, victims, their families, law enforcement officers, and communities, collectively seeking solutions to such crimes and their implications, emphasizing recovery rather than retaliation.

The SPPA Law contains the concept of restorative justice that prioritizes the necessity of children in conflict with the law. Based on Article 5 Paragraph (1) stating that "The Criminal Justice System of the Child shall prioritize the approach of restorative justice", so the punishment of children shall be the last resort in dealing with children in conflict with the law. This Regulation was created in lieu of the Juvenile Justice Law which is no longer in accordance with the development and legal needs of the community, because it has not been widely and fully providing protection to children in conflict with the law, so that the need for new arrangements and systems for children in conflict with the law.

Restorative justice must be done to find alternatives to imprisonment that would have a bad impact on the child, restorative justice for child offenders is not eliminating the punishment for the child as the perpetrator but the regulation of the child is healed by providing support for the victim and requiring the perpetrator to be responsible with family assistance and society.

Contains issues that one of them is a criminal offense whose threats under 7 years may be diversified or resolved outside the legal process and require a restorative justice approach involving the perpetrator (AKH), the victim's family, the parents of the perpetrator and others related to the motivation to prioritize the problem solving together without putting forward retaliation. Diversion should also be pursued in every legal process by law enforcement as set forth in the Diversion agreement and its implementation supervised by law enforcement.

The juvenile justice system is all elements of the criminal justice system involved in the handling of mischief cases. First, the police as a formal institution when the first brat is in contact with the judicial system, which will also determine whether the child will be released or take a legal action. Secondly, the prosecutor and parole institution will also determine whether the child will be released or processed to the child's court. Third, the Juvenile Court, the stage which the child be placed in choices, it's from being released to inclusion in the

institution of punishment. The last is institution of punishment. Based on the results of the research, it is found that there are constraints on the application of Restorative Justice to children in conflict with the law, (AKH) constraints in the implementation of Restorative Justice handling of children in conflict with the law.

From the results of research conducted, found some obstacles in applying Restorative Justice to Children in conflict with the Law (AKH), namely:

The Facility and facilities either it Physical and Non Physical : that is still limited

Whereas in general the facilities and infrastructures for the protection and fulfillment of children's rights in the implementation of restorative justice for children in conflict with the Law (AKH), in Kendari City both at the level of investigation, appointment and examination on court proceedings are still very limited (such as unavailability , or the limited child special examination room (RPK) or child custody room, or mediation room, at the level of investigation in the Police of facilities and infrastructure has not been support to provide protection for child abusers, unavailability of mediation room and child waiting room, combined with an adult, as well as the state prosecutor's office of Kendari has no special detention room for children, on the grounds that the prosecutor's inmate is "only transit" during the transfer from the police, then the prisoner is transferred to the prison or child prison (Interview with prosecutor Muh .Jufri date, 18 April 2017) For the court institution as well, not except the Kendari District Court, even though it has had a mediation chamber but has no children's waiting room and not yet equipped with adequate facilities and infrastructures. For more details can be seen in the table below:

Table 1. List of Facilities and Infrastructure of Special Service Room (RPK) In Handling Children in Conflict with the Law In the Research Area

No	Facilities and Infrastructure	The Institutions				
		Kendari Police	Class II Kendari Base	A Kendari Attorney	State	Kendari District Court
1	Child special examination room (RPK)	√	--		√	√
2	Child Waiting Room	√	-		√	-
3	Mediation room	-	-			√
4	Child Custody Room	-	-		-	-

Data processed, year. 2017

Based on the table it appears that in Kendari Police Department although there is already a special examination room for children, but there is no child waiting room and child mediation room and child special detention room, which during this handling of children in Polari Kendari detention is still mixed with adults. Similarly, the state prosecutor's office Kendari, although there is already a mediation room but the child waiting room, as well as the child's special detention room does not yet exist, according to prosecutor Muh. Jufriadi, that child custody to the prosecutor's office is only a transit, and his detention will be entrusted to a classroom prison (interview 18 April 2017) as well as to the District Court Kendari for the mediation chamber and the special examination room of the child already exists, .

In addition to physical facilities and infrastructure, also non-physical, where there is no mentoring program by psychologists and child experts and religious counselors to conduct counseling in solving problems of children in conflict with the law. Every substance of enforcement during the process of investigation, prosecution and examination in the Court.

Human Resources (HR) Law Enforcement Apparatus

Factor constraints related to human resources of the police apparatus is that there is no unequal and inadequate understanding of the rights of children, the Law on human rights and the protection of children in conflict with the law, as well as understanding the concept of diversion and restorative justice among police officers. Whereas in the Indonesian criminal justice system, the police are the gates, the fate of children begins and is determined by the attitude of the police when the child has already been involved in a conflict with the law.

In addition to the unevenness of police officers' knowledge and understanding of the diversion and restorative justice and the inconsistency of the police as investigators in implementing the Chief of Police Department Telegram's provisions, the obstacles are caused by the very limited personnel of the police, prosecutors and judges both strongly and qualitatively assigned In particular as an officer dealing with children's issues, and very limited police officers who handle children who are still with secondary education background so that in conducting investigations still tend to hold and oriented to formal juridical technical only, and still ignore analysis of non juridical / non formal considerations despite considerations Non-formal / non juridical is also already part of the formal juridical.

There are still investigators who have not understood the nature of the goal of restorative justice which in its application prioritizes the principle or principle of best necessities for the child, although in theory understand but in its application still remain formal procedures that must be major. Here are the results of interviews with police members Ms. Briptu Nasiha PPA member of Kendari Police Department explained:

"That not every child case cannot be approached with restorative justice system or can be terminated its legal process, I always seek first for peace, consultation between victim, perpetrator, victim's family and family of perpetrators and local community leaders before the report is made. Besides of sexual violence, outrage, severe persecution and murder cases. If the deliberation does not reach an agreement, cannot be reconciled, then made a complaint report, there are cases of children stealing motorcycles, although still under age but because the child has often committed the theft, then the case continues to the Attorney "

In addition to the quality of human resources, law enforcement officers, especially the police, quantitatively or the number of police personnel are also very influential on the success of restorative justice as one alternative in the process of criminal justice system. The position of Police as personnel of Women and Child Service Unit assigned to handle child in conflict with law based on Chief Police Department Regulation Number: 10 year 2007 about Organization and Working Procedures of Unit of Woman and Child Service in Environment of Police of Republic of Indonesia on July 6, 2007 can be describe among others as in the table as follows:

Table 2. The List of Personnel Unit of PPA Assigned to handle Troubled Children in Kendari Police Department

<i>No</i>	<i>Position</i>	<i>Degree</i>	<i>Amount</i>	<i>DEC</i>
1	Ka. Unit PPA	Ipda	1 Person	
4	Protection Unit Division	1Brigadir+ Briptu+ 1 Bripda	1 3 Persons	
5	Investigation Division	Unit 1 Briptu+2 Bripda	3 Persons	
	Amount		7 Persons	

Source: Kendari Police Department processed Year 2017

Based on the data in figure 5 above, it can be seen that the number of police personnel who are conceptually for the level, Police of Kendari amounted to 7 people, who handled technically directly to the problem of children and divided into two functions, namely that handle the field of Protection As many as .3 people and who handle the field of investigation as much as 3 people. Led by 1 person kanit PPA

According to the opinion of the researcher, the number is not sufficient considering the wide of legal area of each area which is the responsibility and the increasing number of cases of children both qualitatively and quantitatively also increasing. So, according to the researcher, substantial factor of law substance is very influential to the implementation of restorative justice as an alternative in the settlement of the case against children in conflict with the law.

The substance of law at the level of police force that tackles the problem of children should be based on the characteristics of the region based on population density and population development of the number of children and cases of children in conflict with the law, it will also determine the quality of handling of child cases, so it is expected the attention of investigators in dealing with children can be closer Hope to realize the implementation of the investigation which is protection perspective to children.

According to the researcher substantially the human resources factor is too influence on the implementation of restorative justice as one alternative in the implementation of punishment for children in conflict with the law either quantitatively or quantitatively

Furthermore, the Prosecutor's Office, in the case of children in conflict with the law, prosecutors only continue prosecution based on the BAP of the law, prosecutors often feel that they have no authority to terminate cases, except with the permission of the AGO. Fear of suspicion of accepting a bribe, becomes an obstacle to the cessation of prosecution for cases of children facing the law. Opportunities for the implementation of restorative justice at the level of the prosecutor office are basically open through the circulation of Circular Letter of high public prosecutor RI Number; SE / 002 / j, a / 4/1989 on Prosecution of the Child. This Circular Letter stipulates that, if the suspect is not yet 10 years old, the prosecutor (the prospective prosecutor) approaches the investigator not to proceed with the investigation but to provide wise guidance to the suspect as well as to his / her parent / guardian so the case does not need to be sent To the prosecutor's office, whereas if the suspect is detained, it should be suggested to be immediately released through the suspension / transfer procedure, whereas if it is deemed necessary to carry out the detention, it is recommended that the detention place in the detention / institution is not united with the adult detainee.

In the prosecution section of the same circular (part 2) point "b", it is said that in the case of a suspect detained, the public prosecutor shall require a minimum jail term equal to the duration of detention. This provision shows that the suspect of a detained child is presumed to be a "guilty person" so that for a detained child it seems "the principle of pressumssion of innocent is void" does not apply. Thus it becomes so unlikely that the child is declared innocent and disconnected.

The existence of prosecutors' demands for minimum criminal sanction in accordance with the period of detention also shows that the judicial system does not provide a special mechanism, in case of a miscarriage of the child suspect. The state is always positioned as the "right" party, so there is no mechanism of compensation and restoration of a good name for the child suspect. The provisions on minimum demands also show that the effort of placing children within the institution for the shortest period becomes difficult. In practice the prosecutor with consideration for the smoothness of the examination duties, then the detention of the child remains done. The prosecutor did not want to be bothered to present the children whose cases

are still being processed before the court. The prosecutor considers that detention in prisons or detentions is interpreted as the convenience of his work.

The reluctance of the prosecutor's office to seriously implement restorative justice is also captured from the results of interviews with the prosecutor at the state prosecutor's office, among others, as follows:

"... The Attorney's Office is very difficult to release the child from the formal process if the child has been investigated by the police, let alone he has undergone a period of detention, this can be a boomerang for the prosecutor handling the case of the child, Because the public is not all know about restorative justice, even prosecutors Accused of accepting bribes in handling the case of this child, other than that the prosecutor also does not have discretionary authority as owned by the police, the prosecutor's solution still proceeds to the level of prosecution and we demand by taking into account the period of detention ".

Based on the description of the mapping above, in the substance of the prosecutor's office, it is observed that although the prosecutor has implemented diversion through restorative justice approach, it is still not optimal, because there are still many cases of children whose prosecution proceeded to court with criminal prison demand, Researchers, prosecutors still emphasize attempts to impose jail sentences on children rather than allowing them to divert.

-The Human Resources of the Court Apparatus (Judge)

The high rate of criminal detention of children in conflict with the law in Indonesia appears to be related to the judge's knowledge of the concept of diversion and restorative justice. In addition, several obstacles also arise from within the environment of the criminal justice system itself. For example, the reluctance of a judge to decide less or different from the prosecutor's claim because of the possibility that the prosecutor will appeal, the judge's conviction that the child's actuality has been detained so that the verdict is made "according to the duration of the detention and the fact that if the judge decides to divert to an alternative place, other than those already mentioned are also caused by the case of a child who repeatedly commits a violation of the law.

The following interviews with judges at the District Court Kendari relate to an understanding of the application of restorative justice through the application of judiciary diversion;

"Diversion is the diversion of cases of children who violate the law from the formal process to the informal system through the mediation path as a form of restorative justice implementation". At the District Court Kendari, the implementation diversion is adapted to the Criminal Justice System Law "(Law No.11 of 2012) (Interview with Judge" Bd) ".

The diversion intended for the handling of child cases at the court level is to apply restorative justice by applying the use of detention (in accordance with Article 31 of the Criminal Procedure Code), carrying out city / house arrest (in accordance with Article 22 paragraph 2 and 3 of the Criminal Procedure Code), and dropping an alternative criminal by (In accordance with Law No.11 of 2012) for a child such as returning to a parent or submitting to a Social Home to attend skills education and training in the form of coaching.

In general, there are still many judges who do not know deeply about the concept of restorative justice, although there are a number of judges in the research area who already know the concept of restorative justice after receiving training on restorative justice and diversion held both by the Supreme Court and by several agencies Associated with Unicef. If in the judicial process in the police department and in the attorney office has been detained against the child, then at the level of the detention of the child remained. This process of

detention exerts a very strong influence on judicial convictions on the child. Although in a short time, "confirmed" with the period of detention that has been passed children.

The judge's decision is also influenced by the seriousness of the law violations committed by the child. The seriousness of the law violations sometimes obscures the judge's understanding of the child's age limit and the special treatment that should be imposed on a child who is unlawful in the criminal justice process, especially when the child's offense brings the victim to another child. Restorative justice and protection for children who violate the law are preferred to children who violate the law of light (petty crime).

The limited knowledge and ability of judges to understand the legislation and instruments both nationally and internationally related to child handling strongly influence the judge's decision to be imposed. Differences in perspective and interpretation that tend to harm children facing the law. For example, in cases of violation of the law is the child and the victim is also a child, then the perpetrator will be charged with Child Protection legislation. Thus the consequences that arise is the child actor will get a more severe punishment. Conversely, if the victim is a child and the perpetrator is an adult, then the offender will be prosecuted using the articles in the Criminal Code. Thus, an adult law violator will get a lighter threat of punishment than the child offender charged with Child Protection law. The different interpretive guidelines need to be straightened out and confirmed in a technical directive guide so that the child is not harmed and the judicial system can act on "The best necessity of the child". Ultimately children's rights and protection for children facing the law should be part of the judge's education curriculum.

- Human Resources Officer of the Correctional Institution

Officers of Correctional Institution as one of the substance of legal structure in the effort of protection, enforce law and justice for children which is very strategic, among others, which is assigned to Correctional Institution (BAPAS) and Here some tasks performed on Breath. Community Care Officer (PK) On Breathing. The Role of Public Supervisor (PK) breathing in the criminal justice system is basically very strategic in providing protection for children in conflict with the law. PK Bapas duty to help expedite investigators, prosecutors and judges in the case of naughty children, both inside and outside the congregation of children by making reports of research results community (litmas). But in reality the role and capacity of the bass are often ignored by law enforcement officers (police, prosecutors, and judges) Many in many police surveillance sites do not contact the breathing apparatus for the preparation of litmas for child custody or there is a child congress that goes without Breathing lithmas, especially in areas that are geographically difficult to reach, as well as judgment decisions that do not comply with the recommendations of Breaths.

From the perspective of child protection, Bapmas Bapas is expected to provide recommendations that keep children away from the judicial system and the placement of children in prison / prison. Based on the data, recommendations provided by PK Bapas are still widely recommended to be given a criminal, though added the words "criminal light-mild" for children or imprisonment within a certain period. Very few conditional mandatory conditionals (PiB) or returns to parents (AKOT) filed by the BCP are granted by the Judge in deciding on a child's case, let alone a free recommendation or innocent child. The free recommendation to give Didana to the child is inseparable from the demands of the prosecutor and the detention of the child. The tendency of the prosecutor to prosecute the child, as if it has become an 'impossible' condition for the BCA to provide free or innocent recommendations to the child, especially if the child has been detained since the police, The recommendation of the BCP only revolves around the lightest criminal case. This recommendation ultimately does not give meaningful consideration to the judge in deciding

upon the child's case. Anjection of the recommendation to make a recommendation of a breath is ignored, the judge tends to provide a criminal verdict based on the consideration of the period of detention that has been done in the previous process

Factors affecting the implementation of restorative justice as an alternative in the implementation of punishment for children in conflict with the law, is related to the carrying capacity of human resources quality of staff and officers will be limited in understanding the concept of restorative justice in the implementation of tasks of guidance and protection and the fulfillment of the right- Rights of the child. Although it was found that the officers' initiative was excellent in coaching the children, it was apparent that the breathing officers in various areas studied the need for an understanding of children's rights and the protection of children in conflict with the law. Giving birth its need for more emphasis on coaching.

Legal Cultural Factors

Within the legal approach and perspective, culture is a form of implementation of the role of the criminal justice system that will be empowered, while legal culture is a mechanism that goes both within the community and among law enforcement officials who are the drivers of the criminal justice system. In an effort to apply restorative justice as an alternative implementation process of criminal justice system to children in conflict with law is influenced by how many factors, among others, as follows:

- A. The paradoxical factor of the society culture that positions when the children have problems with the law of the state institution (law enforcement officers positioned the most correct). Those dealing with them and the public tend to treat children with criminal and malicious categories, as do adults
- B. The cultural factor of society, which often assumes that children are "hers" of adults, families, or the property of parents and is a "private domain" and personal is still inherent in the practice of everyday life.
- C. The strong public perception that every criminal act should be avenged by punishment / imprisonment,
- D. The high demand for losses from victims, so the perpetrators cannot fulfill.

In relation to the above, from the Interview Result of the researcher with the Criminal Police Case of Kendari (interview 3 April 2017) said that :: Implementation of Diversion through Justice restorative approach is a priority always done by the investigator by mediating between victim's family and perpetrator / Children who have not reached the age of 18 years, and criminal acts committed under penalty under 7 years and not recidivis, but the agreement is sometimes not achieved because the demand for compensation by the victim is too high so the perpetrator / family of the perpetrator cannot afford to pay compensation , So that the perpetrator is still being processed or the case is transferred to the AGO.

Furthermore, Kanit PPA Polres Kendari states that the Police in this case the investigator always mediate the victims and perpetrators, but the victim or the victim does not want, and if in the mediation by the police succeed, but the compensation requested by the victim or The victim is too high so the offender does not agree.

- E. The victim has not been willing to forgive the child of the perpetrator of the crime that is associated with the suffering experienced by the crime committed by the perpetrator.

The following is the opinion of the community which is a cultural paradox in responding to the conflicts of children in conflict with the law, following the victim's / victim's family's

views on implementing restorative justice for children in conflict with the law through interview with the author as follows:

1. I am not willing if the perpetrator is released just like that, because my son's future has been destroyed, it's a matter of pride and cannot be replaced with anything, and he (the perpetrator) must be in justice so that he feels. After he redeemed his mistake in prison, yes maybe I can accept to provide a coaching program outside the prison, for his good"

(Interview August 2017, with "SY" of the victim's family (victim's parents) in a child abuse case with initials Zfri) Kendari City

2. "He committed theft and it was a crime, every crime must be processed by law, and his sanctions should be punished" (Interview April 2017, with the victim "Sr" motorcycles committed by a child, in Lakidende Kendari. It has done when the victim was checked by the Police investigator).
3. "In principle I agree that children who commit regulations of unlawful law should be given guidance so that later no longer violate what law he is still in school, but also should be given lessons in custody even though briefly, so he felt that doing sanctions violate sanctions law In prison (Interview April 2017, with "Hdr" theft victim in Kendari City.

The paradox of the culture of the community that the researcher intends is the values built by the deep-rooted society and the benchmark of an issue that occurs in the community's life and is agreed upon by the society in which they are domiciled. The cultural paradox of the community in assessing the handling of children in conflict with the law considers that every regulation of violation of law, confectionary until its settlement must be given sanction, that is by punishment / imprisonment. This paradox no longer sees the impact or effect of criminal prosecution on children, this paradox is growing deeper and eventually the society justifies and becomes a culture that is difficult to eliminate, so they are difficult to accept the implementation of restorative justice as an alternative in the implementation of punishment for children who In conflict with the law.

CONCLUSION

The implementation of restorative justice in the settlement of cases of law conflicted children (AKH) in the criminal justice system is still constrained by the limited facilities and infrastructure of law enforcement agencies, both physical and non-physical, law enforcement resources (HR) There is a uniform understanding of the application of Restorative Justice to Children in conflict with the law (AKH) or there is still a legalistic paradigm, lack of socialization of existing rules. And Legal Cultural Factors; There is still a paradoxical factor in the culture of society that positions that when children are faced with law, the law enforcement agencies that handle them are positioned the most rightly, society also treats children with criminal and malicious categories as do by adults.

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