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Punishment of Children as Perpetrators of Maltreatment Based on Restorative Justice

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Abstract: The purpose of this study is to examine and analyze the application of criminal sanctions against children as perpetrators of restorative justice-based persecution in Semarang District Court Decision Number 5/Pid.Sus/Anak/2018/PN Smg. The method of approach in this writing is normative juridical. The specification of this research uses analytical descriptive. The data source uses secondary data. Data collection techniques using document studies. To analyze the data, researchers used qualitative analysis methods. The judge in deciding the case of maltreatment committed by a child against a child resulting in serious injury with a restorative justice approach in the Semarang District Court Decision Number 5/Pid.Sus/Anak/ 2018/PN Smg which states that the Defendant ARNES POLINUS SILALAH I alias ARPOL BIN J. SILALAH I is legally and convincingly proven guilty of committing the crime of "Participating in violence against children resulting in injury" as regulated and punishable in Article 80 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is correct. This is in accordance with the charges of the Public Prosecutor and has been based on the facts in the trial, as well as the evidence submitted by the Public Prosecutor in the form of testimony from witnesses that are in accordance with the results of the Visum Et Repertum. And the defendant is considered physically and mentally healthy so that he is considered capable of taking responsibility for his actions. In addition, the legal considerations of the Judge in imposing punishment against the defendant of the crime of violence against children which resulted in serious injury were also appropriate. The judge sentenced the defendant ARNES POLINUS SILALAH I alias ARPOL BIN J. SILALAH I to 5 (five) months imprisonment. The judge has considered both from a juridical point of view, the facts in the trial, the testimony of witnesses, existing evidence, and based on the conviction of the judge.

Keyword: Crime of Violence against Children, Causing Serious Injury, Juvenile Criminal Justice System.

INTRODUCTION

As a social being in society, there are various problems that occur both between individuals and groups. Various criminal acts committed by the perpetrators can have an

impact, both physically and psychologically on the victim. One form of problem that occurs in society is the crime of maltreatment, both mild and severe, which is regulated in Article 351 of the Criminal Code up to Article 355 of the Criminal Code. The settlement of cases of persecution within the family should ideally seek alternatives to restore the situation to its original state so that disputes do not occur for generations. Currently, minor criminal cases can be handled through the Restorative Justice approach. This approach is considered a new method for resolving minor criminal cases and aims to create justice and balance, rather than retaliation and to avoid imprisonment, especially for cases categorized as minor crimes (Handoko, 2015).

The concept of restorative justice, the process of resolving violations of the law that occur is carried out by bringing victims and perpetrators (suspects) together to sit in one meeting to talk together (Surbakti, 2011). During the meeting, the mediator provides an opportunity for the perpetrator to provide a clear description of the actions he has taken. The perpetrator who makes the presentation really hopes that the victim can accept and understand the conditions and causes of why the perpetrator committed a criminal offense that caused the victim's loss (Marlina, 2012).

The juvenile justice system in Indonesia has a different case settlement system from adults as perpetrators of criminal acts. "The juvenile justice system is known for the settlement of children's cases using the Diversion method, which is the transfer of the settlement of children's cases from the criminal justice process to a process outside of criminal justice by considering the best interests of the children who commit criminal acts." (Nashriana, 2013). Law No. 11/2012 on the Juvenile Justice System provides a definition in Article 1 Point 3, which states that a Child in Conflict with the Law, hereinafter referred to as a Child, is a child who has reached the age of 12 (twelve) years, but not yet 18 (eighteen) years old who is suspected of committing a criminal offense. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System regulates the juvenile sentencing system in the imposition of punishment on children through the Diversion pathway.

The substance regulated in the SPPA Law, among others, is the placement of children undergoing the judicial process can be placed in the Special Development Institute for Children (LPKA). "The most basic substance in this Law is the explicit regulation of Restorative Justice and Diversion which is intended to avoid and keep children away from the judicial process so as to avoid stigmatization of children in conflict with the law and it is hoped that children can return to a reasonable social environment, among others, as stated in the General Elucidation section of the SPPA Law." (Gultom, 2012)

One of the cases of criminal acts of violence committed by children and decided by the Court is the Semarang District Court Decision Number: 5/Pid.Sus/Anak/2018/PN Smg. The child suspect Arnes Polinus Silalahi alias Arpol, allegedly participated in committing violence by beating the child victim witness Arif Prayogo bin Suwito who was 16 (sixteen) years old together with other perpetrators including Saparyanto alias Gethuk Vagansa bin Paimin and Yuli Aditiawan bin Darmin and Ucok, where the role of the child Arnes Polinus Silalahi alias Arpol was to stab the victim witness using a sharp weapon type celurit on the head of the victim witness part of the forehead and Yuli Aditiawan bin Darmin kicked the victim witness and Saparyanto alias Gethuk Vagansa bin Paimin stabbed, with 2 (two) stabs on the head of the victim witness the top of the back, where the stab carried out by the child Arnes Polinus Silalahi alias Arpol which was directed at the head of the child victim witness resulted in injuries as described in the post mortem evidence. The crime of violence committed by the child suspect is punishable in Article 170 Paragraph (2) Ke-1 of the Criminal Code and Article 80 paragraph (2) Jo Article 76 letter c of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning child protection.

The judge of Semarang District Court in deciding case Number: 5/Pid.Sus/Anak/2018/PN Smg to the child defendant is in the form of imprisonment for 5

(five months). Based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the case should have applied diversion in its settlement, but the reality on the ground, the child defendant was sentenced to imprisonment for 5 (five) months with the entire amount deducted while the child defendants were in detention with the order that the defendants remain in detention. Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, diversion is implemented if the criminal offense committed by the child is punishable by imprisonment of less than 7 (seven) years and is not a repeat offense. However, in reality, diversion is not always applied in every criminal offense punishable by imprisonment under 7 (seven) years.

The purpose of this study is to examine and analyze the application of criminal sanctions against children as perpetrators of restorative justice-based persecution in Semarang District Court Decision Number 5/Pid.Sus/Anak/2018/PN Sng.

METHOD

In this study, researchers used a normative juridical approach. The normative juridical approach is an approach based on the main legal material by reviewing theories, concepts, legal principles and laws and regulations that are interconnected with this research. This normative juridical approach is also referred to as a literature approach because by studying books, laws and regulations and also other study materials related to this research (Marzuki, 2014). Researchers obtain data sources through knowledge and searches in the form of views of legal experts, scientific works, doctrines, and related legal concepts in order to support the information needed in order to complete this research.

This research uses legal material analysis techniques with deductive syllogism logic. According to Marzuki (2014), the deductive syllogism logic method starts from the submission of major premises (general statements) then minor premises (specific) are submitted, from the two premises a conclusion is then drawn. So what is meant by processing legal material in a deductive way is explaining something from general matters, then drawing conclusions from that which is more specific in nature.

RESULTS AND DISCUSSION

Sitting of the Case

Chronology of the case

The children ARNES POLINUS SILALAH and SAPARYANTO alias GETHUK VAGANSA bin PAIMIN and YULI ADITIAWAN bin DARMIN (both filed in separate case files) on Sunday, November 05, 2017 at 02.00 WIB or at least at some time in November 2017, located next to the North Semarang Sub-district office on Jl. Brotojoyo Timur IV Rt 05 Rw 02 Kel. Panggung Kidul, or at least at a place which is still included in the jurisdiction of the Semarang District Court which has the authority to hear this case, has openly and with joint force used violence against the person namely Child ARIF PRAYOGO bin SUWITO, the act was committed in the following manner:

Starting from an argument and challenges on Facebook for a brawl, ARNES POLINUS SILALAH together with his friends including ADEN alias JENDUL, ADI alias REMON, DAGUL (all three are on the police wanted list), JULIA MANDA SIHOTANG alias UCOK bin KASAN SIHOTANG and ANGGRA DIVI MAULANA bin BUKHARI and SAPARYANTO alias GETHUK VAGANSA bin PAIMIN, YULI ADITIAWAN bin DARMIN looking for the whereabouts of Anak ARIF PRAYOGO then at the time and place as mentioned above managed to find the whereabouts of Anak ARIF PRAYOGO.

At that time, Anak ARIF PRAYOGO was with his friend, JOKO SANTOSO, and then one of the people who were looking for Anak ARIF PRAYOGO was with him. Then one of the people who were looking for Anak ARIF PRAYOGO called the name "Anak ARIF" then Anak ARIF PRAYOGO approached then Anak ARNES POLINUS SILALAH and

SAPARYANTO alias GETHUK VAGANSA pulled out sharp weapons then Anak ARIF PRAYOGO and JOKO SANTOSO ran away but were chased which then JOKO SANTOSO who was also about to be slashed but did not hit managed to save himself but Anak ARIF PRAYOGO was caught up and then ganged up on.

The role of each beater is as follows:

ARNES POLINUS SILALAHl's son slashed using a sharp weapon such as a clurit and hit using a belt with an iron end that hit ARIF PRAYOGO's son. SAPARYANTO aka GETHUK VAGANSA stabbed ARIF PRAYOGO's son using a sharp weapon such as a sickle. YULI ADITIAWAN kicked Anak ARIF PRAYOGO from behind once hitting Anak ARIF PRAYOGO's back when the victim witness was running. ADEN alias JENDUL hit the child ARIF PRAYOGO using a belt. ADI alias REMON hit the child ARIF PRAYOGO using a belt. DAGUL hit the child ARIF PRAYOGO using a belt. JULIA MANDA SIHOTANG hit the child ARIF PRAYOGO using a belt.

As a result of the violence committed jointly by slashing with a sharp weapon, hitting with a belt, kicking the victim witness Anak ARIF PRAYOGO suffered injuries in accordance with the visum et repertum number: 04/B-4/RFL/I/2008 Anak ARIF PRAYOGO with the following conclusion: The witness, a male victim aged sixteen years and eleven months, sustained injuries as a result of blunt force in the form of abrasions to the face, lower limbs, lacerations to the head, upper limbs and an injury which has been treated to the forehead, as a result of which there is an illness or hindrance to carry out work or profession for a while, the injury is expected to heal within seven to ten days.

First Indictment

The acts of ARNES POLINUS SILALAHl and the other perpetrators are as regulated and punishable in Article 170 paragraph (2) to 1 of the Criminal Code.

Second Indictment

The act of ARNES POLINUS SILALAHl and other perpetrators as regulated and punishable under Article 80 paragraph (2) Jo Article 76 letter c of Law No. 35 of 2014 on the amendment of Law No. 23 of 2002 on child protection.

Charges of the Public Prosecutor

The criminal charges of the Public Prosecutor are basically as follows:

1. To declare that the child ARNES POLINUS SILALAHl Bin J. SILALAHl (deceased) has not been proven guilty of committing the crime of "participating in violence against a child resulting in serious injury, as charged in the second count of the indictment";
2. To acquit the child ARNES POLINUS SILALAHl Bin J. SILALAHl (deceased) from the second count of the indictment;
3. Declare that the child ARNES POLINUS SILALAHl Bin J. SILALAHl (deceased) is not proven to have committed the crime of "participating in violence against children, as charged in the Second Sub-sub-sidiary Indictment";
4. To punish the child ARNES POLINUS SILALAHl Bin J. SILALAHl (deceased) therefore with imprisonment for a period of : 8 (eight) months and follow work training /LPKS for 3 (three) months;
5. Stipulate that the period of temporary detention served by the juvenile shall be fully deducted from the punishment imposed;
6. Ordered that the child shall remain in detention;
7. Determine that the defendant shall be burdened to pay court costs in the amount of Rp.2,000,- (two thousand rupiah).

Judge's Decision

1. Stating that the Defendant ARNES POLINUS SILALAH I alias ARPOL BIN J. SILALAH I is not proven to have committed the crime of "Participation in violence against a child resulting in serious injury" as stated in the second charge of Primair;
2. To acquit the defendant therefore from the second charge of Primair;
3. Declare that the defendant ARNES POLINUS SILALAH I alias ARPOL BIN J. SILALAH I is legally and convincingly proven guilty of committing the crime of "Participation in violence against a child resulting in injury".
4. To impose penalty against the Defendant ARNES POLINUS SILALAH I alias ARPOL BIN J. SILALAH I therefore with imprisonment for a period of : 5 (five) months;
5. Stipulate that the period of temporary detention served by the Child shall be fully deducted from the punishment imposed;
6. Ordered that the juvenile shall remain in detention;
7. Charged the parents of the defendant with court costs in the amount of Rp. 2,000 (two thousand rupiah);

Discussion

Based on the defense of the Legal Counsel of the juvenile Defendant, which basically requested that the Judge impose a sentence with a warning sentence or a conditional sentence, namely guidance outside the institution, community service, supervision or vocational training, the Judge was of the opinion that the Defendant's Legal Counsel agreed with the guilt of the juvenile Defendant, therefore there were no juridical matters that needed to be discussed in the defense and the juvenile Defendant was still found guilty. Although the Defendant is found guilty it is necessary to consider whether the Defendant can be held accountable for his actions before the law.

During the trial the Judge had observed the behavior of the juvenile Defendant, who was able to answer and think like a normal human being (not as referred to in Article 44 of the Criminal Code which states that a person cannot be held criminally responsible if he/she is mentally disabled or incapacitated due to illness). Likewise, at the trial the Judge did not see the influence of coercion from the actions of the child Defendant, namely when the child Defendant emotionally committed violence carried out with his own awareness (not as stipulated in Article 48 of the Criminal Code which emphasizes that a person who commits an act due to the influence of coercion is not punishable). Based on all the considerations that have been described, the child Defendant is still found guilty and punished in accordance with his actions.

The imposition of punishment by the Judge is not merely taking revenge for the actions of the child Defendant but rather aims to make the child Defendant realize that his actions are not good to be good and can live in the community well. Regarding the demands of the Public Prosecutor who requested that the Defendant be sentenced to 8 (eight) months imprisonment, the Judge disagreed with the Public Prosecutor because based on the provisions of Article 22, Article 59 and Article 64 of Law Number 23 of 2002 concerning Child Protection that the State and Government are obliged and responsible for providing support for facilities and infrastructure in the implementation of the protection of children in conflict with the law which includes the provision of special facilities and infrastructure and the imposition of appropriate sanctions for the best interests of the child.

The imposition of punishment on children must be carried out carefully and humanely because this punishment aims to foster and protect the Defendant's long future because children are part of the younger generation as one of the human resources who are the potential and successor to the ideals of the nation's struggle, which has a strategic role and has special characteristics and characteristics, requiring guidance and protection in order to

ensure physical, mental and social growth and development in a complete, harmonious, harmonious and balanced manner.

As mandated in Article 16 Paragraph (3) of Law No. 23 of 2002 concerning Child Protection that the arrest, detention, or imprisonment of a child is only carried out if it is in accordance with the applicable law and can only be carried out as a last resort. The punishment that will be imposed below is expected to fulfill justice for the Defendant and for the community.

Before imposing the punishment, it is necessary to consider the aggravating and mitigating circumstances:

a. Aggravating circumstances:

The actions of the Child have disturbed the society.

b. The mitigating circumstances:

- 1) The victim and the juvenile have forgiven each other during the trial.
- 2) The child confessed and regretted his actions and behaved politely in court.
- 3) The child promised not to reoffend and promised to be a good child.
- 4) The defendant is a child (under the age of 18 years) who must be considered for his future sustainability.

Judges in trying cases of violence by children use the Law on the Juvenile Justice System, Consideration of the Results of Community Research, input from the parents of child defendants, as well as aggravating and mitigating circumstances. This is the basis for the judge's consideration in deciding the criminal sanctions that will later be held responsible for the child defendant. According to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, a juvenile offender can be subject to two types of sanctions, namely actions, for offenders under 14 years of age (Article 69 paragraph (2) of the SPPA Law) and criminal sanctions, for offenders aged 15 years and over. Action sanctions that can be imposed on children according to (Article 82 of the SPPA Law) are:

- a. Return to parents/guardians
- b. Handover to someone
- c. Treatment in a mental hospital
- d. Treatment at LPKS
- e. Obligation to attend formal education and/or training held by the government or private entities
- f. Revocation of driving license, and/or
- g. Correction of the consequences of criminal offense.

Criminal sanctions that can be imposed to juvenile offenders are divided into Principal Crimes and Additional Crimes (Article 71 of the SPPA Law):

1. Main punishment for children consists of:

- a. Warning punishment
- b. Conditional punishment consists of: coaching outside the institution, community service, or supervision
- c. Job training
- d. Guidance in an institution, and
- e. Imprisonment.

2. Additional punishment consists of:

- a. Forfeiture of profits obtained from criminal offense, or
- b. Fulfillment of customary obligations.

In addition, Article 21 of the SPPA Law also regulates that in the event that a child under the age of 12 (twelve) years commits or is suspected of committing a criminal offense, investigators, community advisors, and professional social workers make decisions to:

1. Surrender him/her back to parents/guardians; or

2. Include him/her in an education, coaching, and mentoring program at a government agency or LPKS at the agency handling the field of social welfare, both at the central and regional levels, for a maximum of 6 (six) months.

In the Decision, the Judge decided that the Defendant ARNES POLINUS SILALAH alias ARPOL BIN J. SILALAH was legally and convincingly proven guilty of committing the crime of "Participating in violence against a child resulting in injury, according to the author, the elements of the crime of violence against a child resulting in serious injury have been fulfilled along with the Judge's consideration based on evidence, juridical considerations, and supporting trial facts in the trial, so the defendant has been proven to have committed the crime of violence against a child resulting in serious injury and it is appropriate that the defendant is subject to Article 80 paragraph (2) of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. When viewed in this case, the sentence imposed on the defendant who committed violence against a child resulting in serious injury in Article 80 paragraph (2) of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection was sentenced to a maximum imprisonment of 5 (five) months, according to the author is appropriate.

The Judge's consideration in imposing a sentence on the defendant was appropriate considering the mitigating circumstances at the time of sentencing, apart from the fact that the child defendant was polite during the trial, the child was still in school and still had the opportunity to improve himself, and the child had never been convicted. Also considering the aggravating circumstances, that the nature of the actions of the child defendant could disturb the community, the actions of the child defendant caused injury to a person, and the child defendant did not admit his actions, the child defendant was also convoluted in court. So that the decision to be imposed can achieve a sense of justice.

Legal considerations by the judge in handing down a verdict in this case of criminal violence against children, and there must be a sense that it reflects justice to all parties. The judge decides not only based on juridical considerations, but also non-juridical considerations that lead to the background of the criminal offense, the condition of the defendant at the time of the criminal offense, and the consequences of the defendant's actions. Judges are required to have confidence by being linked to valid evidence, as well as creating their own laws based on justice which certainly does not conflict with Pancasila as the source of all laws. So that the decision to be made against the defendant can be based on responsibility, justice, and wisdom.

Based on Article 69 of Law Number 11 of 2012 concerning the Child Criminal Justice System, there is a provision that children who are less than 14 (fourteen) years old are only subject to action, while children who have reached the age of 14 (fourteen) years and less than 18 (eighteen) years old can be sentenced to action and punishment.

The application of Restorative Justice in the crime of maltreatment can be implemented in mild forms of maltreatment. Overcoming criminal cases through the restorative justice system provides a different approach and view in overcoming a criminal offense because basically, the Restorative system leads to recovery to the initial state with the intention and purpose of tricking victims, perpetrators, and families, to correct the mistakes of the perpetrators in the behavior of perpetrators who violate the law through the conviction and awareness of the perpetrators of criminal acts. Restorative justice system in maltreatment or other criminal offenses, can provide the principle of simple trial and low cost. The application of Restorative Justice uses mediation, everything created by the mediation system must be the result of the consent and agreement of the parties.

Restorative Justice implies the restoration of relationships and redemption of wrongs that the perpetrator of the crime (his family) wants to do to the victim of the crime (his family) (peace efforts) outside the court with the intention and purpose that legal problems

arising from the criminal act can be resolved properly by reaching agreement and agreement between the parties (Arief & Ambarsari, 2018). The main principle of Restorative Justice is the participation of victims and perpetrators, the participation of citizens as facilitators in case resolution, so that there is a guarantee that the perpetrator will no longer disturb the harmony that has been created in the community (Muladi, 2019).

Restorative justice is a process of diversion, where all parties involved in a particular criminal offense work together to solve the problem (Senen, 2021). It creates an obligation to make things better by involving victims, children and the community in finding solutions to repair, reconcile and reassure that are not based on retaliation (Handoko, 2015).

In resolving a case according to the concept of restorative justice, the role and involvement of community members is very useful and important to help correct mistakes and irregularities that occur around the community concerned. Settlement with a restorative justice system is expected so that all parties who feel harmed will be restored and there is respect and respect for victims of a criminal offense. Respect given to the victim by requiring the perpetrator to restore the consequences of the crime he has committed (Marlina, 2012).

The concept of restorative justice, the process of resolving violations of the law that occur is carried out by bringing victims and perpetrators (suspects) together to sit in one meeting to talk together. During the meeting, the mediator provides an opportunity for the perpetrator to provide a clear description of the actions he has taken. The perpetrator who makes the presentation really hopes that the victim can accept and understand the conditions and causes of why the perpetrator committed a criminal offense that caused the victim's loss (Marlina, 2012).

Restorative justice offers the best solution in solving crimes by giving primacy to the core problem of a crime. The important resolution is to repair the damage or loss caused by the crime. Repairing the social order of society that has been disrupted by the crime is an important part of the restorative justice concept. (Meyrina, 2017).

Restorative Justice has the meaning of "a rebuilding of relationships from the beginning (restoration of relationships) and responsibility for the wrongs committed by the perpetrator to his victims of criminal acts outside of the court system so that the wrongs of unlawful acts that arise from the actions of the perpetrators of criminal acts can be handled and resolved properly through mutual agreement and consent (Ernis, 2017)." Restorative Justice has the principle that there is participation from the perpetrator and victim, community participation as a provider in handling cases, so as to ensure that the perpetrator does not disturb the peace that already exists in the community (Arief & Ambarsari, 2018). There are 5 (five) principles of Restorative Justice, namely:

1. Restorative Justice involves full contribution and agreement. Both parties must be actively involved in talks to resolve the case as a whole. And also open opportunities for the community to contribute if it is felt that the perpetrator disturbs order during the case.
2. Restorative Justice explores ways to restore and repair damage or loss.
3. Restorative Justice places an obligation on the perpetrator to take responsibility for their actions. The perpetrator is obliged to admit and regret if his actions were a mistake that caused harm to the victim.
4. Restorative Justice serves to reunite the offender as a member of society with his/her community.
5. Restorative Justice energizes the community to prevent the act from happening again.

According to Jonlar Purba in his book entitled "Law Enforcement Against Minor Crimes with Restorative Justice" written in Click or tap here to enter text, Restorative Justice has several forms of methods as practiced in several countries, including:

1. Victim-offender mediation.
2. Family group conferencing
3. Restorative conferencing

4. Community restorative boards
5. Restorative circles or restorative systems.

Persecution is an example of one of the crimes that is growing from year to year, as we see the perpetrators are not only adults, but can also be committed by children. One of the causes is the influence of bad friendships. Criminal behavior can also be called a criminal act, and criminal acts are the basis of criminal law. Based on the increase in criminal offenses in social life described in the formulation of Article 351 paragraph (1) and (2) of the Criminal Code, the positive law on criminal law rules is currently stipulated in Article 10 of the Criminal Code, which consists of main and additional punishment.

Restorative Justice is an effort or approach that is very similar to the principle of deliberation which has become a habit of the Indonesian people from the past to resolve a problem. Criminalization is the last legal effort (*ultimumremedium*), it can be avoided by the two parties who have a conflict to conduct joint deliberations to obtain justice. Restorative can provide the best way (solution) to deal with criminal cases that are personal between one person and another (*natuurlijkepersonen*) or can be through legal entities (*recht personen*), namely by giving power (*primacy*) to a criminal behavior. In resolving a case, the most important thing to observe is the improvement of the social fabric of society that is disturbed by criminal behavior (Wagiu, 2015).

The purpose of Restorative Justice in maltreatment is to empower perpetrators, their families, victims and the community to change their bad behavior by using good thinking and awareness as the basis for improving life in society. Basically, the concept of Restorative Justice in the criminal justice system is very simple, Justice is no longer based on revenge from the victim who is worthy of the perpetrator's actions (either psychologically, physically, or punishment for the perpetrator) but the painful actions caused by the perpetrator can be healed (recovered) by providing support to victims of crime and requiring responsibility from the perpetrator of the crime.

The purpose of Restorative Justice for perpetrators is to create a deterrent effect on the perpetrator, because the perpetrator must pay compensation and be responsible for his actions as he did to the victim, and as agreed upon in the mediation process, while for victims, The purpose of Restorative Justice is to fulfill the right to the situation to the victim as in the beginning (the initial situation) by giving compensation and responsibility from the perpetrator, so that with the enactment of Restorative Justice it can restrain the victim from not being satisfied with the perpetrator's actions so that the victim does not take revenge on the perpetrator for the persecution that befell him.

The main goal of restorative justice empowers the victim, where the perpetrator is encouraged to pay attention to recovery. Restorative justice is concerned with meeting the material, emotional and social needs of the victim. The success of restorative justice is measured by how much harm the offender recovers, rather than how much punishment the judge threatens or imposes. There are two important elements that complement the overall dispute resolution, namely material and symbolic reparation. Material reparation results in a final settlement in the form of a compensation agreement. Meanwhile, symbolic reparation is abstract in nature. The form of repair can be in the form of attitudes and statements of appreciation, respect, regret, and apology.

According to Yusuf (2016), the main factors that become goals in law enforcement are justice (*gerechtigheit*), legal certainty (*rechtssicherheit*), and expediency (*zweckmabigkeit*). Legal certainty is created by law with the aim of creating public order, while society wants the benefits of enforced law. However, law is not the same as justice. The law generalizes its binding force on every individual. In this case, anyone who commits maltreatment in Article 351 paragraph (1) of the Criminal Code deserves to be punished (Hambali, 2019).

According to Roeslan Saleh quoted by Bisma Siregar, justice and legal certainty are two legal objectives that are often incompatible with each other and difficult to avoid in legal practice. A demand for legal certainty makes it more likely that the aspect of justice will be suppressed. According to him, if legal certainty clashes with justice then prioritize justice and expediency over legal certainty. Justice is the root of law so that justice must be incarnated in law enforcement (Siregar, 2010).

CONCLUSION

The judge's consideration in deciding the case of maltreatment committed by a child against a child with a restorative justice approach in Semarang District Court Decision Number 5/Pid.Sus/Anak/ 2018/PN Smg which states that the Defendant ARNES POLINUS SILALAH alias ARPOL BIN J. SILALAH is legally and convincingly proven guilty of committing the crime of "Participating in violence against a child resulting in injury" as regulated and punishable in Article 80 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is correct. This is in accordance with the charges of the Public Prosecutor and has been based on the facts in the trial, as well as the evidence submitted by the Public Prosecutor in the form of testimony from witnesses that are in accordance with the results of the Visum Et Repertum. And the defendant is considered physically and mentally healthy so that he is considered capable of taking responsibility for his actions. In addition, the legal considerations of the Judge in imposing punishment against the defendant of the crime of violence against children which resulted in serious injury were also appropriate. The judge sentenced the defendant ARNES POLINUS SILALAH alias ARPOL BIN J. SILALAH to 5 (five) months imprisonment. The judge has considered both juridical aspects, the facts in the trial, the testimony of witnesses, existing evidence, and based on the judge's belief. Restorative Justice in its process involves all parties concerned, pays attention to the needs of victims, recognition, reintegration of the parties concerned into society, and encourages perpetrators to carry out their responsibilities for what they have done.

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