33 Tahun

UNTIRTA
MENGABDI
UNTUK NEGERI

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Kata Pengantar

Puji syukur alhamdulillah, penyusunan buku Dies Natalis Ke-33 Universitas Sultan Ageng Tirtayasa pada akhir tahun 2014 ini dapat diselesaikan.

Buku dengan judul ***33 Tahun Untirta Mengabdi untuk Negeri*** ini, dimaksudkan untuk memberikan informasi sekilas mengenai perkembangan terkini Universitas Sultan Ageng Tirtayasa sebagai sebuah Perguruan Tinggi Negeri yang telah memasuki usia 33 tahun pada 1 Oktober 2014, yang dikemas dalam bentuk informasi singkat profil, sejarah singkat, perkembangan terkini dan rencana pengembangan Untirta, serta tidak lupa cuplikan karya ilmiah dosen di lingkungan Untirta, yang bergelar Doktor lulusan tahun 2014 baik dari Perguruan Tinggi di dalam negeri maupun luar negeri, serta beberapa rangkaian kegiatan dan momentum lainnya yang dikira perlu untuk dikemas dalam buku dan dipublikasikan pada kesempatan momentum Dies Untirta ke 33.

Harapan kami, semoga buku ini bermanfaat sebagai informasi dan dapat dijadikan pelengkap database yang dimiliki Universitas Sultan Ageng Tirtayasa.

Terima kasih kepada tim yang telah bekerjasama menyusun, terutama para mitra dari beragam institusi, yang telah berkenan menjadi sponsor dalam penerbitan buku 33 Tahun Untirta Mengabdi untuk Negeri. Dirgahayu Untirta ke 33, Menuju Universitas Sultan Ageng Tirtayasa yang Maju, Bermutu dan Berkarakter dalam Kebersamaan pada tahun 2025.

Serang, 1 Oktober 2014
Ketua Panitia Dies Untirta ke 33,

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Juvenile Criminal Justice System Act of Republic of Indonesia, Lessons Learned from Local Wisdom, Raju, and AAL Cases.[1]

(Theme 2: Strengthening the existing mechanism and exploring methods of redressal Sub-themes Restorative Justice: Initiatives and Innovation in Justice Delivery)

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Abstract: Prior to Dutch colonization, many of Indonesian people resolve conflicts with *musyawarah mufakat* (mediation/consensus). It is Indonesia's typical conflict resolution mechanism. The court, for most of Indonesian people, is the last resort that should be conducted only if *musyawarah mufakat* fails to mediate the conflict. Unfortunately, the implementation of modern law (court system) often creates social problems. Juvenile delinquency's law enforcement is one issue that so far has increased societal tension. Recent cases attracting widespread concern are the Raju and AAL cases. In the sense of modern law, a crime is a crime, laws should be enforced. However, most Indonesian people believe that the cases mentioned above are too insignificant to be tried in court, which can negatively impact the children's future. Recently a new act, namely Juvenile Criminal Justice System Act, has been enacted. A new hope for resolving juvenile cases wisely will be started.

Keywords: Juvenile Criminal Justice System Act, Restorative Justice, Diversion

1. Brief History on Indonesian Law

In regard to the legal family, Indonesia has been categorized as a civil law country as opposed to a common law country. Civil law is Romano-Germanic Law, which is differentiated from Anglo-Saxon Law. The big difference between civil law and common law is that civil law relies less on court precedent and more on legal codes, while common law places more emphasis on court precedent.[2] Hence, choosing the legal system to be established in a country is a critical matter having its own consequences. The civil law system, because of its heavy reliance on codes, is more rigid in the context of law enforcement. Once one's behavior is stipulated as a criminal offense, the criminal justice system will be set in motion and be responsible for settling the case.

The choice of legal system in Indonesia was made by its former colonizer (the Netherlands) and was built based on the civil law tradition. This includes the field of criminal law. The civil law tradition was adopted and maintained by the Indonesian government after its

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[1] Presented for The 33rd Anniversary of Sultan Ageng Tirtayasa University. This paper is a small part of my dissertation and was presented at 5th International Conference of Asian Criminological Society, Mumbai India 14-16 April 2013. The research has been financed by Directorate General of Higher Education, Ministry of Education and Culture of Republic of Indonesia and Kanazawa University.

[2] Tom M. Fine. *American Legal System: A Resource and Reference Guide*. Ohio: Anderson, 2002. Pag 3

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independence.[3] The first codified Indonesian criminal code was entitled *Wetboek van Strafrecht voor Netherlands Indische/WvSNI* (Criminal Code for Netherlands Indie[4]), which was established in 1915[5] and began operation on 1 January 1918. The code applied to everyone who committed a criminal offense in Netherlands Indie. After the Independence of 1945, the Indonesian government adopted *WvSNI* as the Criminal Code of Indonesia with the establishment of Act No. 1/1946 which was upheld by Act No.73/1958. The name of the code has since been changed to *Kitab Undang Undang Hukum Pidana/KUHP* (Criminal Code). Several changes have been made to adjust the criminal code due to societal developments. Though there have been some amendments, for the most part, as a whole it remains the same as the old code, i.e., *WvSNI*.

The brief history of Indonesia law mentioned above has become a cornerstone for Indonesian people to utilize modern law as a means to settle criminal cases, proposing a relatively new system of settling criminal disputes for the Indonesian people. Previously, most of Indonesian people used the indigenous *adat law* and Islamic law. In fact, most adat law is influenced by Islamic law. Adat law is similar to customary law in light of its common law tradition. *Musyawarah* is one of the methods of the *adat law* used to resolve conflicts.

Soekarno, the first president of Indonesia, mentioned *musyawarah* as one of three great indigenous assets that exist in Indonesia. The other two are *gotong royong* and *mufakat*. *Gotong royong* can be simply defined as helping each other by working together. The terms *musyawarah* and *mufakat* tend to be used together as one package. *Musyawarah* is the process of non-coercive negotiation involving all interested parties.[6] In the present context, all persons involved in a crime, that is to say, the victim, offender, and also the community, [illegible] affected by the crime and can participate in *musyawarah*. *Mufakat* is the result of the negotiation process, the fruit of the *musyawarah* process and the unanimous consensus of the community. From the description above, we can say that *musyawarah* shares the same [illegible] restorative justice which I will explain later in this paper.

Musyawarah is a local wisdom which has a significant role in conflict resolution [illegible] Indonesia for hundreds of years before the advent of modern law. Since the introduction of 'modern' criminal court, the role of *musyawarah* has slowly been replaced by the criminal justice system, mainly for serious crimes (felonies). However, most Indonesian people continue to use *musyawarah* in their daily life as a means to resolve conflict, usually for less serious crimes. Now, the problem is that, even though Indonesia has *musyawarah*, without a blanket provision there is no guarantee that those who utilize *musyawarah* will be free from the possibility of double jeopardy.

1. Juvenile Cases

In regard to juvenile case, in 1997, Juvenile Court Act[7] was established. With this act (Act No. 3/1997, hereinafter written as JCA), the general provision for children which was regulated under the KUHP, was abolished and replaced by the act. The act also stipulates children

[3] Roelof H. Haveman. *The Legality of Adat Criminal Law in Modern Indonesia*. Jakarta: Tatanusa; 2002. Pag.2
[4] Netherlands Indie is the name for Indonesia before Independence.
[5] Declared by Crown Ordinance (*Koninklijk Besluit*) of 15 October 1915. Ned.Stb.33; declared in Indonesia by Ind. Stb.1915 Number 732.
[6] Peter Burns. *The Leiden Legacy: Concepts of Law in Indonesia*. Leiden: KITLV; 2004. Pag. 244
[7] Translated from *Undang Undang Pengadilan Anak*

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between the ages of eight to under 18-years-old fall within the jurisdiction of the juvenile cou[rt] is the act which differs from the new act, i.e. Juvenile Criminal Justice System Act[8] (Act N[o.] 11/2012, hereinafter JCJSA) that is going to replace the Juvenile Court Act in next 2014.

The practice of juvenile law enforcement in Indonesia revealed that these 'rigid' leg[al] systems, rooted from the Dutch, do not fit with Indonesian values. Frequently, law enforcem[ent] trigger dissatisfaction and anger among the Indonesian people, as with the recent cases [to] mention a few, of Raju and AAL, minors who had to face adjudication by the juvenile crimi[nal] court. These cases prove that there are weaknesses in the current (juvenile) criminal justic[e] system. In some cases, this system is not suitable for the Indonesian legal culture.

2.1. The Raju Case: A Young Detainee[9]

Iswandi, a third grade elementary school student, had been staying home for ten days. He did not want to go to school because he was afraid of being bullied by Raju, his classmate at 05663 Elementary School, in Langkat, North Sumatera Indonesia. Raju used to *menokok*[10] Iswandi's head. Ani, Iswandi's mother, reported the bullying to the school. Jamal, a teacher at the school, summoned Raju in order to address the situation. The teacher's investigation became contentious. Raju denied that he bullied Iswandi. Jamal lost control and slapped Raju's face. Raju, upset with his confrontation with the teacher, looked for Iswandi in order to take revenge, but found only Armansyah, Iswandi's elder brother, who was a 6th grade student at the same school. They fought and both were injured, with Raju suffering a bloody lip and a scratch to his face. Armansyah was more severely injured. Based on a doctor's *visum et repertum* Armansyah sustained a bruised hip and ribs. His mother, Ani, then visited Saedah, Raju's mother, asking that Saedah be responsible for Armansyah's medical care. Ani took Armansyah to a paramedic, but the pain did not stop and the paramedic suggested that Ani see a doctor. Since Saedah refused to fund further medical treatment, Ani reported the case to the police, after which the Raju case went all the way to the Stabat District Court, Langkat, North Sumatera.

Three times Raju failed to appear in court as summoned by the public prosecutor. When Raju finally appeared in court a week later than his last required court appearance, Justice Tiurmaida found Raju and his parent to be in complete disregard of the court and the victim's interests, decided to detain Raju. This decision incited considerable public tension and gained public interest because Raju there was no detention house for children in North Sumatera and was apparently under eight years old. Therefore, Raju would have to share a room with an adult detainee. Sudjono Evi, chief of the Pangkalan Brandan Detention House, administered a special policy for Raju. Even though Raju was officially detained, Sudjono released Raju and disobeyed the Stabat District Court order. Justice Tiurmaida finally suspended his decision to detain Raju after Raju's parents paid one million rupiah to Armansyah's family as redress. Raju was later found guilty, but returned to his parents without punishment.[11]

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[8] Translated from *Undang Undang Sistem Peradilan Pidana Anak*

[9] Antaranews.com. *Berawal dari Permintaan Berobat ke Dokter, Kasus Rajupun Merebak*. 1/03/20[..] <http://www.antaranews.com/berita/1141214462/berawal-dari-permintaan-berobat-ke-dokter-kasus-raju-pun-merebak>. Accessed 21/052012

[10] A North Sumatera term for humiliating someone by knocking their head

[11] Based on Article 24 (1) Act No. 3/1997

2.2. *Controversy Concerning Raju's Age*

According to Article 1 JCA, a person who has reached the age of eight, but is not yet 18 and is unmarried, is considered a child for the purposes of juvenile court. Raju's exact age could not be clarified since several versions of his age exist. Based on Raju's mother's testimony in the police investigation report, Raju was born in May of 1997, which would make him eight years and three months old at the time he committed the assault. His family card, however, indicated that he was born on 9 December 1997, which would mean that he was just seven years and eight months old when the incident occurred. Therefore, the court could not try him and there could be no criminal responsibility against Raju. The prosecutor sought further evidence and found that Raju was born on 5 December 1996 based on his educational report book in his elementary school, meaning he was eight years and eight months old when the case happened.

Raju's actual age was critical to determine whether he was old enough to be tried in juvenile court. In the end, the court determined that Raju met the age requirement to be tried in juvenile court based on the police investigation and Raju's educational book reports. However, public opinion held that Raju was too young to be tried and detained, since a family card is also significant and considered as legal document.

This case became a study case for amending the minimum age for a child's criminal responsibility. Eight was considered to be too young to bear criminal responsibility. The minimum age stipulated in Art. 1 JCA has been amended by the constitutional court to 12.

2.3. *The AAL Case*[12][13]

A 15-year-old boy, identified only as AAL, became a symbol of law enforcement injustice in Indonesia. The case began when AAL and his friend found a pair of sandals ne[illegible] of police officer First Brig. Ahmad Rusdi Harahap. Simply, AAL took the sandals [illegible] into his bag. Later, in May of 2011, Rusdi summoned AAL and charged him with [illegible] sandals. Rusdi's partner, First Brig. Simson Jones Sipayung, who accompanied [illegible] informal interrogation, then beat AAL in order to obtain a confession. AAL's parents [illegible] beating to the police internal affairs division. The Central Sulawesi Police [illegible] found against Rusdi and Simson, and sentenced them to 21-days incarceration [illegible] detention center. In retaliation, Rusdi filed a charge of theft against AAL.

AAL was never detained, but the public was outraged by this case. Though [illegible] believed guilty of stealing the sandals, the majority felt that criminal court was not the best solution for this case since the crime was not serious and AAL was only a teenager. A court process would too harshly stigmatize him as a thief. During the trial, many people, non-governmental organizations, and the National Commission for Child Protection, a government agency concerned with children's issues, supported AAL and collected thousands of pairs of sandals as a symbol of the perceived injustice. The movement was called '1000 sandals to free

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[12] The Jakarta Post. *Palu Boy Found Guilty; Freed by Court.* 5/01/2012. <http://www.thejakartapost.com/news/2012/01/05/palu-boy-found-guilty-freed-court.html>. Accessed 30/07/2012

[13] The Jakarta Post. *Flip-flop Boy Testifies at Komnas PA.* 12/01/2012. <http://www.thejakartapost.com/news/2012/01/12/flip-flop-boy-testifies-komnas-pa.html>. Accessed 30/07/2012.

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AAL' and became a symbol of law enforcement injustice. This movement spread throughout the archipelago, even though the case occurred in Palu, Central Sulawesi, and continued further beyond Palu and Sulawesi Island. People from Jakarta, Solo, and Jogjakarta voluntarily took part in this movement.[14]

The collected sandals were given to law enforcement agencies, such as the police and the prosecutor's office, as these agencies were believed to be the most responsible for processing and passing the case to court.

Justice Rommel F Tampubolon, a judge at Palu District Court, finally found AAL guilty of stealing "someone's"[15] sandals. As with the Raju case, Justice Rommel returned AAL to his parents without imposing punishment.

3. Diversionary System for Juveniles in Conflict with the Law

3.1. *Restorative Justice as a Safeguard for Protecting Children's Futures*

Raju and AAL were just two cases among many other juvenile delinquency cases. The great and widespread support from the community reflects the general opinion that the criminal court process is an inappropriate way to settle criminal disputes involving juvenile delinquents especially for petty crimes.

What was felt by society is reflected in the United Nations (UN) Standard Minimum Rules for the Administration of Juvenile Justice (Resolution 40/33), often called the Beijing Rules. In Point 6 of the general part of the resolution, it is stated that "in view of the varying special needs of juveniles, as well as the variety of measures available, an appropriate discretionary scope shall be allowed at all stages of proceedings and levels of juvenile justice administration, including investigation, prosecution, adjudication, and the follow up of disposition."[16]

According to the Beijing Rules, discretion is permitted in juvenile cases in order to divert out of the criminal justice system at all stages and levels. Such diversion can be understood since juveniles play a very important role as the next generation in light of a state's sustainability. This notion corresponds to the Declaration of The Right of the Child (UN General Assembly Resolution 1386), which states that children shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable them to develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner and under conditions of freedom and dignity. In the enactment of laws for this purpose, the best interest of the child shall be the paramount consideration.[17]

Based on this idea, we should determine the best settlement for juveniles in conflict with the law in order to create a safeguard that protects the children's future. One such method is what we know as restorative justice.

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[14] The Jakarta Post. *Indonesia Gets Failing Grade for Juvenile Justice*. 28/07/2007 <http://www.thejakartapost.com/news/2007/07/28/indonesia-gets-failing-grade-juvenile-justice-system.html> Accessed 23/05/2012

[15] The sandals actually submitted as evidence in court were a different brand than the victim's. Rusdi's sandal brand is Eiger, while the sandals in evidence were the Ando brand.

[16] United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Adopted by General Assembly Resolution 40/33, 29 November 1985

[17] Paulus Hadisuprapto. *Delinkuensi Anak: Pemahaman dan Penanggulangannya*. Malang: Bayumedia; 2008. Pag. 236.

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3.2. *Restorative Justice*

There are many definitions of restorative justice, but for ease I will propose the definition of Tony Marshall. Marshall says that "restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future."[18] Paul McCold underlines the minimum requirement for a restorative justice program based on Marshall's definition: *First*, victims and their offenders have a face-to-face meeting. *Second*, they determine the outcome.[19] Generally, McCold's minimum requirement leads to Victim-Offender Mediation, a form of restorative justice. However, the development of the form of the restorative justice program can be variable and flexible. For example, there are also other forms such as Family Group Conferences (FGCs), where the victim and offender meet, and either the victim or the offender, or both, bring along a family member/supporter.[20] In addition to FGCs, there is indirect mediation. This form tends to be used when the victim does not want to meet the offender, but still wants to join in the restorative justice process in order to resolve the conflict, which, in this form, is generally limited to an apology and practical reparation.[21]

Proponents of restorative justice believe that restorative justice can alleviate the incompleteness of the formal criminal justice system, which tends to leave the needs of the victims, offenders, and communities unmet and the harm caused by the wrongdoing unrepaired, while restorative justice is an integrated process that addresses all of the parties' needs. To better understand the restorative justice process, please refer to the table below, created by Howard Zehr, which clearly differentiates restorative justice from criminal justice.

Table 1 Two Different Views of Justice[22]

Criminal Justice	**Restorative Justice**
• Crime is a violation of the law and the state • Violations create guilt • Justice requires the state to determine blame (guilt) and impose pain (punishment) • Central focus: Offenders getting what they deserve	• Crime is a violation of people and relationships • Violations create obligation • Justice involves victims, offenders, and community members in an effort to put things right • Central focus: Victim needs and offender responsibility for repairing harm

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[18] John Braithwaite. Restorative Justice and Responsive Regulation. New York. Oxford University Press. 2002. Pag.11.

[19] Paul McCold in Dennis Sullivan and Larry Tifft (Eds). Handbook of Restorative Justice. New York. Routledge. 2008.Pag.23.

[20] Daniel W Van Ness and Karen Heetderks Strong. Restoring Justice, an Introduction to Restorative Justice (4th Ed). New Jersey. Andersen Publishing. 2010. Pag. 28.

[21] Lyle Keanini. (comment) *ADR in Hawai'i Courts: The Role of Restorative Justice Mediators*. 12 Asian-Pac. L. & Pol'y J. 174. 2011

[22] Mark Umbreit and Marilyn Peterson Armour. Restorative Justice Dialogue, an Essential Guide for Research and Practice. New York. Springer. 2011. Pag.8

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The restorative justice process was inspired and developed from indigenous law. Fo example, the United States, which developed their system of restorative justice from the N Nation, which inhabits three states (Arizona, Utah and New Mexico).[23]

Similar to the United States, indigenous law inspired New Zealand to exercise resto justice. In New Zealand, the restorative justice program was designed primarily for juven Historically, the New Zealand Department of Justice was advised to allow the Maori Na use their own local wisdom to resolve conflicts among them. In 1989, the practice of F Group Conferencing, which was partly based on the Maori justice practices and philosop was established for youth offenders.[24] Through the Children, Young Persons, and Families Act 1989 (CYPFA), law enforcement agencies in New Zealand may use FGCs in of formal criminal justice proceedings for handling cases of juvenile delinquency.[25]

4. JCJSA: New Chapter in Handling Juvenile Cases

As I described in the first part of this paper, the influence of civil law tradition has rende most legal provisions in Indonesia less flexible, including juvenile law, which is rigid provides for no possibility of discretion or a diversion program. Even if the case has alre been solved through *musyawarah* among the parties, since there is no legal basis *musyawarah* in juvenile law, the state can exercise jurisdiction and re-indict the ca Conversely, there are many cases that are not serious and can be solved with *musyawara* which has the same values and ideas as restorative justice.

Cases such Raju, AAL and the phenomenon mentioned above have triggered the bir new act the so-called JCJSA which has been passed by Indonesian Parliament and enacted 30 July 2012 by Indonesian Government. JCJSA has been formulated based on the basic that juvenile whom in conflict with the law should have right to get special protection.

JCJSA categorizes minors into three categories: juvenile (as delinquent), victim child victim); witness child (as witness). Unlike JCA which does not provide a diversionary syste lieu of criminal court, JCJSA does provide.

JCJSA has 15 chapters consisting 108 articles. The provision regarding diversion restorative program, is regulated in chapter two. The objectives of diversion are stated in arti 6 which declare:

a. To achieve reconciliation between victim and juvenile;[26]
b. To settle juvenile case outside of the court process;
c. To divert juvenile from freedom deprivation;
d. Encouraging community to participate; and
e. To instill a sense of responsibility to the juvenile.

The diversion is obligatory to be applied on criminal offenses that subject to be senten not more than 7 years imprisonment and is not recidivism.[27] Outcomes of the diver

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[23] Gerry Johnstone, *Restorative Justice: Idea, Values, Debates*. 2nd ed. New York: Routledge; 2011. Pag. 36

[24] Ibid

[25] A. J Becroft, *Restorative Justice in The Youth Court*. The LEADR 9th International Conference on Altern Dispute Resolution, Wellington. 19/09/2007. <http://www.justice.govt.nz/courts/youth/publications-and-media/speeches/restorative-justice-in-the-youth-court#d>. Accessed 20/05/2012

[26] Juvenile here refers to child in conflict with law (child as delinquent) according article 1 of JCJSA

[27] Article 7 subsection 1 JCJSA

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agreement that provided by JCJSA may be: reconciliation with or without redress; returned to parents/proxy; participation in an educational institution or training; Exertion of Social Welfare Institution (*LPKS/Lembaga Penyelenggaraan Kesejahteraan Sosial*) not longer than 3 (three) months; or community service.

Musyawarah as I mentioned previously in this paper is going to be used in JCJSA as a mechanism for implementing diversion as stated in article 8 subsection 1:

"Diversion process is conducted trough *musyawarah* involving juvenile and parents/ its proxy, victim and/or parents/ its proxy, probation officer, and professional social worker based on restorative justice approach"[28]

If we look to the diversion form above, we can realize that *musyawarah* shares the same idea with FGC. With JCJSA, *musyawarah* now meets its legal base.

What makes JCJSA unique is that there are three efforts and chances for juvenile getting restorative settlement through diversion: at investigation stage, prosecution stage and adjudication stage.[29] This is another word to say that conventional criminal trial is the last resort for settling the case if diversion fails to be conducted. One thing should be noted that those efforts, diversion process, are obligatory to be exercised by law enforcement agencies otherwise they are subject to be sentenced for not more than two years imprisonment or fine maximum two hundred million *rupias* if they pass the diversion process.[30] The result of diversion agreement is guaranteed by district court determination. This is to ensure that the agreement acknowledged by the law.

Challenges on Enforcing JCJSA

Restorative Justice is a relatively new method for handling conflict, especially in criminal matters. Some countries have been employing and recognizing restorative justice earlier than Indonesia. Though there were several successful and satisfying statistic numbers that had been evaluated, some disappointing numbers had been emerged as well. Take for example Charles Barton who cited Maxwell and Morris works. Maxwell and Morris have studied both victims and offenders side that attended FGCs. From the samples of victims researched, they found only 41% case that victims willingly attended the FGC. There was 49% case that the victims, who attended FGCs, felt satisfied with the outcome. About 25% of victims felt worse for attending the FGC.[31]

In the context of offenders, Maxwell and Morris found that only a third of young offenders get involved and often said little in their FGCs. While there was 26% of a sample of 14 – 16 years old referred to FGCs in 1990 – 91 had been reconvicted within 12 months, 64% of them had been reconvicted after just over four years, and 24% of them had been persistently reconvicted over the same period.[32]

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[28] Translated from art 8 (1) *proses diversi dilakukan melalui musyawarah dengan melibatkan anak dan orang tua/walinya, korban dan/atau orang tua/walinya, pembimbing kemasyarakatan, dan pekerja sosial professional berdasarkan pendekatan keadilan restorative.*

[29] Art. 7 (1), 29, 42, and 52 of JCJSA

[30] Art. 96 JCJSA

[31] Charles Barton. *Empowerment and Retribution in Criminal and Restorative Justice* in http://www.voma.org/docs/barton_emp&re.pdf. Accessed 31/01/2013

[32] Ibid

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Those 'pessimistic' numbers emergence gave an important lesson for law enforcement agencies, and stakeholders who involved in order to employ JCJSA in near future. Some factors have been evaluated due to the unsatisfying number of FGC's result. Lack of preparation, untrained mediator, disempowerment, had been considered as factors that causing FGC failure.

In practice, *musyawarah* itself is not an easy task to do. Sometimes it needs time and suffice preparation to hold a satisfying *musyawarah*. A rush effort can easily meet failure. Raju case would be the best example of this matter. Jamal, the teacher, who tried to settle down the case failed to reach pacification and agreement. The worse thing happened as he could not control his own anger. Obviously, Jamal lacks of impartiality and training to be a good mediator. Impartiality is one important key that assures *musyawarah* is fairly conducted. Once a party feels that *musyawarah* is mediated by partial mediator then it would be the first sign that *musyawarah* will run unfair and fail.

5. Conclusion

JCJSA is just like 'a dream come true', an act that predicted will protect children's future. Based on legal history, Indonesian people would not find difficulty to exercise diversion as stated in JCJSA since they have been conducting *musyawarah* in their daily life coping dispute. However, several things should be in consideration that up to now there were no statistic numbers of how extent *musyawarah* have succeeded to resolve conflict in Indonesia. Restorative Justice itself still has been evaluated, some data showed successful number, some other meet failure. One thing for sure that restorative justice is not a panacea, but since the current criminal justice system itself contains negative impact for juvenile, employing restorative justice for juvenile would be the best choice handling juvenile cases. To minimize the failure of restorative justice several preparations should be done. Well-trained mediators, safety and neutral place both for victim and offender, and impartiality would be the critical factors that determine a successful restorative justice.