

Restorative Justice for Adults and Minors: A Comparative Study between Indonesia and Thailand

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Abstract

Indonesia and Thailand, as countries that adopt the civil law legal system, also adopt the principle of Restorative Justice in their criminal law systems. This study aims to determine the comparison of the principle of Restorative Justice in the legal systems of Indonesia and Thailand. The research method used is comparative normative juridical against restorative justice regulations in handling criminal acts in Indonesia and Thailand. The results of this study indicate that: (1) Indonesia has a more assertive and detailed legal basis regarding the application of restorative justice to adult perpetrators, especially in terms of the classification of types of criminal acts that can be subject to this mechanism, compared to Thailand. This condition has the potential to cause legal uncertainty in Thailand due to the lack of clear regulations. (2) Diversion in Thailand uses more formal and procedural terminology, which reflects conformity with the applicable legal mechanisms, in contrast to diversion in Indonesia, which is generally implemented through an informal deliberation process. In addition, diversion in Thailand, known as Family Community Group Conferencing (FCGC), emphasizes the active role of the community in the process of resolving children's cases, thereby strengthening community involvement as an integral part of alternative settlement mechanisms outside the courts.

Keywords: *restorative justice, comparative study, diversion*

Introduction

The legal system in a country aims to build a social order that is orderly and fair. The judiciary, as one of the main pillars in the legal system, has a very important role in enforcing the law and providing legal protection to the community.[1] The principle of the right to punish is the basis for judicial institutions in implementing it, namely by giving criminal sanctions to violators of the law and ensuring legal certainty for all citizens.[2]

Many people feel that individuals who commit crimes, especially serious crimes, should be punished even though the punishment may not provide benefits. The principles and models of law enforcement have two perspectives; previously, law enforcement was more focused on punishing the perpetrator (Retributive Justice).[3] However, there has now been a reform in law enforcement that has shifted focus to rehabilitation or handling of victims (Restorative Justice). The shift from the retributive justice model to the restorative justice model includes fundamental changes in the objectives of the criminal system. Retributive justice emphasizes the imposition of punishment as a result of the violation, while restorative justice aims to repair the harm caused by the crime and restore the condition of the victim, perpetrator, and society.[4]

The basic principle of Restorative Justice is the restoration of losses experienced by the victim, reconciliation, and the perpetrator carrying out his/her obligations to participate in the restoration and sacrifice or other agreements by the adage of restitution as a whole (returning the situation to its original state).[5]

In the implementation of Restorative Justice, a consensus is needed between the perpetrator and the victim, meaning that if the victim does not agree to implement Restorative Justice, law enforcement will continue the trial process. If both parties agree to Restorative Justice, then the case can be resolved. Without going through a court, on condition that the suspect compensates for the loss or returns the rights that have been taken from the victim.

The concept of Restorative Justice as a new paradigm in resolving criminal cases is increasingly receiving attention and application in various countries, including Indonesia and Thailand. Although it has received considerable attention in recent years, it has not been universally adopted in many countries.

The implementation of Restorative Justice also varies, from those codified in national law to those based on customary law or customary law. Indonesia and Thailand have adopted the principle of Restorative Justice as an alternative to resolving cases outside the courts,

which shows significant conceptual and regulatory differences between the two countries.

This study is important because of the high number of criminals, including both minors and adults, who are resolved through a restorative justice approach.[6] In addition, Restorative Justice is a relatively new concept in the context of criminal law, having been integrated only in the last few decades. Therefore, the focus of this study is to see how the principles of restorative justice adopted by Indonesia and Thailand are integrated into their national legal systems. In addition, this study will compare how the regulations regarding restorative justice and its implementation are for both adults and minors in both countries.

Based on the previous background explanation, 2 legal issues will be discussed in this article: the first is "How is Restorative Justice regulated for adults in Indonesia and Thailand, and the second is "How is Diversion regulated for Minors in Indonesia and Thailand?"

Objective

1. The purpose of the study is to conduct a comparative analysis of the restorative justice arrangements applied to adults in Indonesia and Thailand. This legal approach analysis will examine the position of restorative justice in both countries, so that we can identify similarities and differences that can be learned from each country.

2. The research aims to conduct a comparative analysis of implementing arrangements (implementation) Diversification in Thailand and Indonesia. By understanding the best practices and unique challenges faced by both countries, the resulting policies can be designed to effectively maximize restorative goals, such as offender rehabilitation and the restoration of relationships caused by juvenile delinquency.

Methodology

This research uses normative legal research methods. With a doctrinal approach related to the laws and regulations that discuss restorative justice in Indonesia and Thailand.[7] Comparative legal analysis is used to examine the application of restorative justice principles in both countries. Data collection involves a comprehensive review of relevant laws, court decisions, and scientific literature from both countries.

Data analysis was conducted qualitatively, using content analysis to identify similarities and differences in the legal framework, the implementation mechanism of restorative justice in both countries.[8] The units of analysis include laws and regulations, court decisions, and

relevant journals. To ensure the validity of the data, triangulation was used, namely, cross-referencing information from various sources. The theoretical framework underlying this research is the theory of restorative justice, which prioritizes victim reparation, perpetrator rehabilitation, and community reconciliation.

Research result

1. The first research objective found that a comparative analysis of restorative justice in Indonesia and Thailand revealed significant differences in the legal basis of both. Indonesia has a stronger legal framework and explicitly supports the principles of restorative justice. In addition, the application of restorative justice to adult offenders in Indonesia also has clearer terms and conditions regarding the types of crimes that can be applied to the restorative justice approach. Meanwhile, Thailand also has regulations related to the application of restorative justice to adult offenders, although limited. Although Thailand recognizes the resolution of cases through restorative justice, legally, Thailand does not have a clear classification regarding what types of criminal acts can be applied to adult perpetrators. This then gives rise to discriminatory treatment against adult perpetrators due to the existing legal uncertainty.

2. The term diversion in Thailand is known as Family Community Group Conferencing (FCGC). FCGC involves active participation from various elements of society. To gain perspective as a consideration, making this diversion process truly open and focused on restoring the relationship between juvenile delinquent perpetrators and victims, and the community. Not much different from FCGC, Process Diversion in Indonesia also involves various parties, but the main focus of Diversion in Indonesia is on preventing stigma and rehabilitating children.

Summary and Discussion

1. Restorative Justice Arrangements for Adults in Indonesia and Thailand

The current paradigm of law enforcement has changed. In addition to prioritizing the aspect of retribution through criminal penalties, the modern justice system has also begun to emphasize victim recovery (restorative justice). The objectives of criminal penalties are increasingly diverse, including: (a) retribution (retribution) as a form of accountability for unlawful acts; (b) community protection (restraint) through isolating the perpetrator from the

community environment; (c) general prevention and specific prevention to prevent similar crimes from occurring; and (d) formation (reform) to improve the behavior of the perpetrator and reintegrate them into society. [9]

Key figures in Restorative Justice, such as John Braithwaite, Howard Zehr, and Mark Umbreit, emphasize the importance of perpetrator responsibility, active victim participation, and the role of the community in the case resolution process.[10] Key elements in Restorative Justice include apology, restitution, admission of guilt, and rehabilitation efforts. The main goal is to achieve reconciliation between the perpetrator and the victim and reintegrate the perpetrator into society.

A. Restorative Justice Regulations for Adults in Indonesia

In Indonesia, Restorative Justice in principle prioritizes restoration and reconciliation, which have long been rooted in the Indonesian customary law tradition.[11] Practices such as deliberation, mediation, and social restoration have become an integral part of dispute resolution mechanisms in indigenous communities. Formal recognition of Restorative Justice in Indonesia's modern judicial system can be seen as an effort to revitalize and integrate the noble values of the customary justice system into the national legal system.[12] The principles of Restorative Justice are integrated through several national legal instruments.

Legally The principle of Restorative Justice is integrated into the Indonesian national legal system through the Joint Memorandum of Understanding of the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Attorney General, and the Chief of the Indonesian National Police Number 131/KMA/SKB/X/2012, M.HH-07.HM.03.02, KEP-06/E/EJP/10/2012, B/39/X/2012 of 2012. The Memorandum of Understanding specifically regulates the implementation of adjustments to criminal limits for minor crimes, the calculation of fines, the acceleration of trial proceedings, and the application of Restorative Justice. Following the issuance of this Joint Memorandum of Understanding, Indonesian law enforcement officers have also been equipped with their internal regulations as guidelines for the application of the principle of restorative justice.[13]

1) Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice

This Police Regulation gives the Indonesian National Police the authority to apply the principles of Restorative Justice from the early stages of investigation.[14]

Based on Article 3-10 of the Republic of Indonesia National Police Regulation Number 8 of 2021 normatively states that to implement restorative justice at the investigation level by the Indonesian National Police, a criminal case must meet certain material and formal requirements. The material requirements include the absence of public unrest, social conflict, radicalism, separatism, and repeated criminal acts. The formal requirement is that there is an agreement between the victim and the perpetrator, except for drug crimes. By focusing on community involvement and mediation between the victim and the perpetrator, Restorative Justice aims to restore harmony in society and prevent criminal acts from occurring in the future.

Based on the police regulation, Restorative Justice cannot be applied to certain categories of crimes. Specifically, crimes against state security, corruption, and human life are not included. In addition, crimes that have mandatory minimum sentences, drug crimes, environmental crimes, and corporate crimes are not eligible for the restorative justice process.[15]

This regulation also gives authority to the Republic of Indonesia National Police to resolve cases (not to refer cases to the prosecutor's office) using a restorative justice approach as long as the provisions referred to in this regulation are met.

2) Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice

On the other hand, the Attorney General's Office of the Republic of Indonesia also annulled the Joint Memorandum of Understanding, which is reflected in the Attorney General's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.

Based on this Attorney General's Regulation, some conditions must be met so that Restorative Justice can be applied: (1) the suspect is committing a crime for the first time; (2) the maximum criminal threat is five years in prison; (3) the value of the loss or damage caused does not exceed Rp. 2,500,000,000.00 (two billion five hundred thousand rupiah); (4) the suspect has made efforts to restore the situation to its original state; (5) there has been peace between the victim and the suspect; and (6) there is positive public sentiment towards the application of restorative justice.[16]

In CHAPTER III Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 states that the Attorney General of the Republic of Indonesia

has the authority to stop the criminal process (prosecution) through restorative justice if peace has been established between the victim and the suspect. The termination of the criminal process can be carried out by considering the interests of the victim and other legal interests; avoiding negative stigma; avoiding retaliation; response and harmony of society and propriety, morality, and public order.

In addition, in the process of terminating the criminal process based on restorative justice at the prosecutor's office level, it is also necessary to consider the subject, object, category, and threat of the crime; the background of the crime; the level of blameworthiness; the losses or consequences caused by the crime; the cost and benefit of handling the case; restoration to the original state and; the existence of peace between the victim and the suspect.

In line with the authority held by the Republic of Indonesia National Police, the Republic of Indonesia Attorney General's Office also has the authority to stop criminal proceedings (not to refer the case to court) as regulated in these regulations.

3) Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 concerning Guidelines for Trying Criminal Cases Based on Restorative Justice

The Supreme Court of the Republic of Indonesia also took a proactive stance in promoting restorative justice by issuing Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Trying Criminal Cases Based on Restorative Justice. This regulation emphasizes the importance of dialogue, mediation, and active involvement of all parties involved in achieving a just and lasting resolution.[17] Of the three regulations set out in Indonesia, the objectives of Restorative Justice can be applied to everyone, both adults and minors.

Article 6 of this Regulation states that judges can apply the guidelines for trying criminal cases based on Restorative Justice if one of these criminal acts is fulfilled:

- The crime committed is a minor crime or the victim's loss is worth no more than two million five hundred thousand rupiah or no more than the local provincial minimum wage ;
- The crime is a complaint offense.
- Criminal acts with a maximum sentence of five years imprisonment on one charge, including criminal acts of jinayat according to qanun;

- Criminal acts involving child perpetrators for which diversion is unsuccessful, or;

- Traffic crimes in the form of crimes.

If a case is not included in the five types of criminal acts regulated in the Regulation of the Supreme Court of the Republic of Indonesia, the judge will carry it out through a regular examination, without using a restorative justice approach. However, if one of the five types of criminal acts is met, the judge will continue the examination by the Guidelines for Trying Criminal Cases Based on Restorative Justice. The results of the examination process using the restorative justice approach at this trial stage, whether a new peace/agreement is achieved or not, will be an important consideration in sentencing.

4) Republic of Indonesia Law Number 1 of 2023 regarding the Criminal Code

In addition to the regulations of the three state institutions that have been explained previously, the new Criminal Code which was ratified by the Indonesian Legislature through Law Number 1 of 2023, in addition to revoking Law Number 1 of 1946 concerning the old Criminal Law Regulations, has significantly increased the role and position of restorative justice in the Indonesian criminal justice system.

Law Number 1 of 2023 concerning the Criminal Code accommodates the spirit of restorative justice, although there is not a single article that explicitly uses the phrase "restorative justice" and explains it in detail as a mechanism for terminating cases, as in the Indonesian National Police Regulations. No. 08 of 2021 or Regulation of the Attorney General's Office of the Republic of Indonesia No. 15 of 2020.

Law Number 1 of 2023 is more integration of restorative justice principles into sentencing provisions and the judicial process, as one of the objectives of sentencing and a factor influencing sentencing.

In Article 51 paragraph (1) letters e and f of Law Number 1 of 2023 states that one of the objectives of criminalization is to resolve conflicts caused by criminal acts, restore balance, and foster a sense of peace and justice; restore good relations between perpetrators of criminal acts, victims, and the community. This article is the most fundamental philosophical basis in Law Number 1 of 2023, which shows an orientation towards restorative justice.

Article 54 paragraphs (1) and (2) of Law Number 1 of 2023 also explicitly direct judges to consider restorative factors such as reconciliation with the victim, the

perpetrator's remorse, and efforts to repair the losses incurred. Although it does not directly stop the case, this consideration greatly influences the severity of the sentence imposed, thus becoming a form of implementation of restorative justice at the judicial stage. [18]

The four main legal instruments that legitimize Restorative Justice in Indonesia reflect Indonesia's seriousness in responding to the shift in the main focus of punishment from retaliation to returning to the original state (restorative justice), especially in general involving adults. In addition, Indonesia also has other legal bases that integrate the principle of restorative justice for minors. So that legally, Indonesia has a strong legal base related to the application of the principles of restorative justice within the scope of criminal law.

B. Restorative Justice Regulations for Adults in Thailand

Philosophically, restorative justice in Thailand is rooted in the principle of restoring relationships between conflicting parties. Through the process of mediation and rehabilitation, perpetrators are encouraged to take responsibility for their actions and receive forgiveness from the victim. This approach aims not only to impose sanctions, but also to restore social harmony. Restorative justice refers to a mechanism in which victims of criminal acts are given space and opportunity to express the impact they have experienced and express their feelings personally.[19] In this process, perpetrators of criminal acts are expected to demonstrate a responsible attitude and actively contribute to fulfilling the victim's right to compensation or compensation relevant to the losses suffered, by the agreement and wishes of the victim.

Institute for Justice of Thailand advisor Kittipong Kittayarak said the concept is in line with Thai cultural values that uphold peace and compromise, as well as Buddhist principles that emphasize the importance of forgiveness and compassion. In addition, the implementation of restorative justice is also a solution to the problem of prison capacity in Thailand.

The concept of Restorative Justice was first introduced to Thai criminologists and criminal practitioners in 2000. However, the implementation of Restorative Justice in Thailand was first initiated by the Department of Juvenile Protection and Supervision in 2003 through the organization of family group conferences. Subsequently, in 2004, the Department of Community Affairs participated in developing a restorative model by implementing victim-offender mediation called “relationship restoration conferences ” for

cases involving adult offenders.[20]

In 2004, Thailand did not yet have a clear legal basis to support the implementation of the rapprochement conference.[21] However, the implementation of the rapprochement conference is supported by the Thai criminal justice system master plan, one of the visions of which is to develop a just, restorative, and peaceful justice system. This shows that restorative justice can be applied based on departmental policies and recognized practices.

The implementation of this rapprochement conference is carried out at the pre-sentence investigation stage.[22] Adult criminal cases referred by the court for pre-sentence investigation are invited to participate in this program. Generally, a relationship restoration conference applies to crimes that can be resolved through peace and with a threat of no more than 3 years, such as traffic violations, minor theft, fraud, and minor assault.[23]

Relationship restoration conference process. This involves the victim, victim supporters, perpetrators, perpetrator supporters, and mediators; in some cases, community participation is also needed. The mediator in this case is a trained community guidance officer who acts as a mediator, and the mediator also invites the relevant parties to a mediation meeting if the victim-perpetrator agrees to participate.

1) Articles 36 – 39 Probation Law, BE 2559 (2016)

In 2016, the Thai legislature then issued its political product regulating Restorative Justice in the Probation Act, BE 2559 (2016). Article 36 of the Thai Probation Act 2016 states that the Probation Department is required to implement a Restorative Justice approach that focuses on efforts to alleviate suffering or resolve disputes caused by criminal acts by providing reparation to victims and the community, increasing awareness and accountability of perpetrators for their crimes, and allowing victims, people in community research, correctional clients, and community members affected by crime to participate in finding solutions.

In this restorative justice process, a Coordinator who has been certified to undergo training in the restorative justice process will be appointed as the person responsible for the implementation process by the Head of the Probation Department.[24] A coordinator is tasked with organizing relationship restoration conferences, identifying conference participants, and other matters relating to restorative justice.[25]

During the probationary period, if the victim and the person under

social investigation or the probationer request a restorative justice process and the other party agrees, the coordinator must consider proceeding with restorative justice, taking into account the impact on the community.[26]

If an agreement is reached as a result of the relationship restoration conference, the community guidance officer is obliged to submit the agreement to the court or the competent authority.[27] The court or competent authority may consider making it a condition of the probationary period, if deemed appropriate.

2) Department of Corrections Regulation on Criteria and Procedures for Implementing Restorative Justice, BE 2560 (2017)

Not long after the Thai Probation Law of 2016 was enacted, in the following year (2017), its implementing regulations were issued in the Thai Department of Corrections Regulation on Criteria and Procedures for the Implementation of Restorative Justice of 2017.

In line with the principles of Restorative Justice, this regulation explicitly states that to implement Restorative Justice, the agreement of the Victim and the Perpetrator is required.[28] After both parties agree to use restorative justice, both parties will ask the head of the probation department to appoint a coordinator to be in charge of the case.

Before the Relationship Restoration Conference is held, a coordinator appointed by the Head of the Thai Department of Corrections will meet with the victim and the perpetrator to convey the important points and the parties who will attend the conference. Relationship restoration conference.

Like the mediation process in general, the relationship recovery conference process is also not much different. The coordinator invites the victim to first convey their feelings and losses experienced, and the victim's needs for recovery or compensation for the losses that occurred. After that, it continues with the perpetrator's delivery regarding the perpetrator's feelings and motives, and proposing a way to restore or mitigate the losses that occurred. In general, this relationship recovery conference is held more than once until an agreement is reached. If this relationship recovery conference reaches an agreement, it will be stated in a memorandum of understanding signed by both parties.

The restoration conference that has been reported by the coordinator to the Head of the Probation Department will be taken into consideration by the court or the competent authority in impose a sentence.

Articles 16 and 17 of the Department of Corrections Regulations of Thailand 2017 provide more detailed information on the application of restorative justice at the investigation and supervision stages. If restorative justice is applied during the investigation and assessment stage, the community service officer handling the case must integrate the results of the rapport conference and the agreements reached into the investigation and assessment report. Furthermore, if restorative justice is used at the supervision and guidance stage, the community service officer must utilize information from the rapport conference report. This data is crucial for rehabilitating the offender and ensuring that the agreement between the offender and the victim is implemented properly.

Based on the regulations related to the principles of restorative justice in both countries, it can be seen that Indonesia has a more significant legal basis. Indonesia has a stronger legal framework to accommodate its recognition of the principle of restorative justice, even with clear regulations in the new Criminal Code. This law firmly places restorative justice as the main alternative for resolving criminal cases. [29]

Not much different from Indonesia, Thailand has also legally recognized the restorative justice approach. In articles 36 - 39 of the Probation Law, BE 2559 (2016). However, both the probationary period law and the probationary period department regulations themselves have not accommodated the exact terms and conditions for what types of crimes can be applied to the restorative justice approach. Because so far, the application of restorative justice to adult offenders still follows the practice of the probation department program before the existence of the probation department regulation (before 2017). This will then create legal uncertainty regarding the restorative justice practices that have been implemented and those that will be implemented in Thailand due to the absence of clear regulations regarding the regulation of which crimes can be applied to restorative justice.

In addition, if examined more deeply, the role of restorative justice in Thailand only serves as a reason for consideration to reduce the number of sentences to be imposed by the court or the authorities. This shows that the results of the restorative justice process in Thailand cannot really resolve cases.

In contrast to Indonesia, the results of the restorative justice process can resolve cases both at the investigation stage by the police and at the prosecution stage by the prosecutor's office. Based on the Republic of Indonesia National Police Regulation Number 08

of 2021, the Republic of Indonesia National Police has the authority to stop the investigation if the restorative justice process is successfully implemented. Likewise, the Republic of Indonesia Attorney General's Regulation Number 15 of 2020 gives the Republic of Indonesia National Attorney's Office the authority to stop the prosecution if the restorative justice process is successfully implemented. This shows that the restorative justice approach in Indonesia is more effective in resolving cases outside the courts.[30]

2. Implementation of Restorative Justice for Minors (Diversion) in Indonesia and Thailand

The Restorative Justice approach can not only be applied to cases involving adult perpetrators but also to minors. Restorative justice, particularly through diversion mechanisms, has become a key approach in handling juvenile cases in both Indonesia and Thailand. Despite having similar goals, namely avoiding formal judicial processes and promoting rehabilitation, there are significant differences in the legal basis, process, and implementation in the two countries.

Diversion itself is the transfer of the settlement of children's cases from the criminal justice process to mechanisms outside the criminal justice system with the aim of protecting the rights of children in conflict with the law.

A. Diversion in Indonesia

The concept of diversion comes from the principle of restorative justice, which prioritizes a persuasive or non-penal approach. The definition of diversion is contained in Article 1, number 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), namely the transfer of the settlement of children's cases from the criminal justice process to mechanisms outside the criminal justice system.

Every child has a fundamental right to legal protection. The minority status and legal incompetence of a child are the main legal basis for a Judge in dealing with child criminal cases, especially in the context of implementing diversion. This concept is a manifestation of the application of restorative justice.

The Judge's decision mandating diversion is legally valid, providing discretionary authority to progressively explore, implement, and interpret the values of law and substantive justice that develop in society. This is also in line with the Beijing Rules Formulation Point 1.1 (SMRJJ-The Beijing Rules Point 1.1), which explicitly states that the diversion of the formal justice process to non-formal channels through the concept of

restorative justice in handling children's problems is the authority of the Judge. Therefore, restorative justice can be used as an essential guideline for Judges in efforts to resolve children's cases.

De jure, the regulation of Diversion itself in Indonesia is regulated in the legal instrument as follows :

1) Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System

The Juvenile Criminal Justice System in Indonesia, referred to in Law Number 11 of 2012, explicitly adopts a restorative justice approach, which in Article 1, number 6 states that Restorative Justice is a process involving the perpetrator, victim, and their respective families, as well as other related parties.[31] The main objective of this approach is to restore the losses caused by the crime and rehabilitate the perpetrator, prioritizing the best interests of the child.

In the context of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the restorative justice process is called “diversion”.[32] Article 6 of Law of the Republic of Indonesia Number 11 of 2012 states that Diversion aims to achieve peace between victims and children; resolve children's cases outside the judicial process; prevent children from being deprived of their freedom; encourage society to participate; and instill a sense of responsibility in children. Furthermore, Article 7 states that for the examination of children in conflict with the law, either at the investigation or prosecution level, Diversion must be attempted.

Similar to the application of Restorative Justice to adults, Diversion also has conditions that must be met to be applied: namely, the crime committed by the child is punishable by imprisonment for less than 7 years and is not a repetition of the crime. However, in practice, diversion is still attempted for criminal acts that are punishable by imprisonment of 7 years or more if there is no other alternative.

The diversion process is carried out through deliberation involving the child and his/her parents/guardians, the victim and/or his/her parents/guardians, community mentors, and professional social workers based on a restorative justice approach, and if necessary, can involve community participation.

In addition to the conditions explained previously, the Diversion process also needs to pay attention to the interests of the victim; the welfare and responsibility

of the child; avoidance of negative stigma; avoidance of retaliation; social harmony; and obedience, morality, and public order.[33] This is an application of the principle of restorative justice to the diversion process.

Law enforcement officers conducting diversion must consider the category of crime committed by the child, the child's age, the results of community research from the correctional agency, and support from the family and community environment. The Diversion Agreement must obtain the approval of the victim and/or the child victim's family, and the willingness of the child and his/her family. In some cases, the diversion process does not require approval, such as crimes in the form of non-criminal violations, minor crimes, crimes without victims, or the value of the loss experienced by the victim is not more than the local provincial minimum wage.

The results of the diversion agreement can be implemented in various forms, but generally in the form of peace with or without compensation; return to parents or guardians. In the case of diversion that does not involve victims, it can be in the form of restitution of losses if there are victims; medical and psychosocial rehabilitation; participation in education or Social Welfare Institutions for a maximum of three months; or community services for a maximum of three months. If the diversion process is unsuccessful, then it will be continued with the juvenile criminal justice process as regulated in the Republic of Indonesia Law Number 11 of 2012 concerning the juvenile criminal justice system.

In addition to the Republic of Indonesia Law Number 11 of 2012 concerning the juvenile criminal justice system, Diversion is also regulated in the Republic of Indonesia Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children under the age of twelve. This government regulation is a derivative of the Law on the Juvenile Criminal Justice System in Indonesia, which functions as an implementing regulation.

2) Government Regulation of the Republic of Indonesia Number 65 of 2015 Regarding the Guidelines for the Implementation of Diversion and Handling of Children Under 12 (Twelve) Years of Age

In 2015, the Indonesian government again issued a political product through Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (twelve) Years of Age, which specifically regulates further regarding the diversion and handling of children under 12 years of age. [34]

In addition to the principles and objectives of diversion, which are emphasized, this regulation also increases the maximum number of additional community service hours as a result of diversion to three months, with the total previously being a maximum of three months, becoming six months. [35]

The diversion process is carried out through a Diversion deliberation by the investigator as facilitator and the community guide as the facilitator's representative within a maximum period of thirty days from the date the diversion begins. Diversion deliberations are conducted by involving investigators, children and/or their parents or guardians; victims or child victims and/or their parents or guardians; community mentors; and professional social workers. If desired by the parties, religious figures, teachers, community leaders, advocates, or legal aid providers may be involved.

The entire diversion process, whether successful or not, the investigator will be conveyed through the diversion report. If the diversion process is successful, the investigator will ask the parties to implement the diversion agreement after receiving the diversion agreement determination from the head of the district court.

The Community Guidance Officer is tasked with compiling a report on the successful implementation of the diversion agreement. If the agreement is successfully implemented within the specified period, this report will be the basis for issuing a letter of termination of investigation. Conversely, if the diversion agreement is not implemented within the specified period, the Community Guidance Officer is required to report in writing to the Investigator's direct superior. This report aims to follow up on the case in the criminal justice process, with a copy to the Head of the local District Court, and then continued by the Public Prosecutor.

Article 31-48 of Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (twelve) Years of Age, means even diversion process at the prosecution stage. The process and flow of diversion at the prosecution stage have substantial similarities with the investigation stage. In terms of mechanism, there are no significant differences; the only difference is in the implementing subject, where the authority that was originally in the hands of the investigator is now transferred to the public prosecutor. Likewise, articles 49-66 of this regulation regulate the diversion process at the trial stage by the court.

Regulation Number 65 of 2015 Concerning Guidelines for the

Implementation of Diversion and Handling of Children Under 12 (twelve) Years of Age provides special treatment for children in conflict with the law who are under twelve years of age. In the case of a child under 12 (twelve) years of age committing or suspected of committing a crime, the Investigator, Community Guidance Officer, and Professional Social Worker will make a decision to return the child to the parent/guardian; or to include the child in an education, coaching, and guidance program at a government agency or LPKS at an agency that handles social welfare, both at the central and regional levels, for a maximum period of 6 (six) months. [36]

Children in this age category (under twelve years old) cannot be subject to arrest, detention, or criminal prosecution. If there is a suspicion that the child has committed a crime, a diversion process must be carried out. If the diversion is successful, the child will be returned to his/her parents or guardian. However, if the child does not have parents/guardians or such return is not possible, the child will be handed over to the Ministry of Social Affairs or the Social Welfare Institution (LPKS). Fundamentally, children under 12 (twelve) years old cannot be held criminally responsible.

The practice of diversion as a form of restorative justice has been implemented in Indonesia. As regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Government Regulation Number 65 of 2015, diversion is mandatory for children who are threatened with imprisonment and have no previous criminal record. [37]

The diversion process involves a collaborative effort between the juvenile offender, the parents or guardians of both parties, the victim, community counselors, and professional social workers. The process, rooted in the principles of restorative justice, aims to resolve conflicts through dialogue and mediation rather than through formal legal processes. In certain cases, social welfare workers or community members may be involved to ensure a comprehensive approach. In certain cases, children under the age of twelve receive special treatment in the implementation of the diversion process.

B. Diversion in Thailand

Modern criminal justice systems around the world are increasingly shifting from a retributive approach that focuses solely on retribution and punishment to a more humanistic and restorative paradigm. This shift is reflected in the adoption of the concept of diversion, a mechanism for resolving cases outside the formal justice system that emphasizes victim recovery, perpetrator accountability, and social reintegration.

The term Diversion in Thailand is better known as Family Community Group Conferencing (FCGC). Family Community Group Conferencing (FCGC) is one of the most widely and successfully implemented Restorative Justice models in Thailand. This model involves families, communities, and other stakeholders in the process of resolving criminal cases, especially those involving children. FCGC offers a more humane and effective approach compared to the conventional criminal justice system. [38] has demonstrated its commitment to integrating the principles of restorative justice through various policies and regulations, including the implementation of diversion. Some legal instruments that regulate Diversion in Thailand :

1) Thailand Law No. 2534 of 1991 on the Establishment and Procedures of the Juvenile and Family Court

Thailand's Law No. 2534 of 1991 on the Establishment and Procedures of the Juvenile and Family Court does not explicitly use the term “restorative justice” in it. However, in principle, this Law adheres to the principle of restorative justice in its process and resolution.

Article 50 of the Law of Thailand No. 2534 of 1991 on the Establishment and Procedures of the Juvenile and Family Court mandates that arrested children must be transferred to a protection center within 24 hours. This is followed by Article 63, which empowers the director of the child protection center to recommend non-prosecution to the prosecutor. This provision is in line with the basic principles of restorative justice, which prioritizes a diversionary and non-litigation approach for juvenile offenders, emphasizing rehabilitation and reintegration rather than punishment. [39]

In principle, in this Law there are several things that must be fulfilled so that diversion (FCGC) can be carried out :

- First, juvenile delinquency is punishable by a maximum of 5 years in prison and has never committed a crime before.
- Second , The teenager admitted and regretted his actions and was willing to atone for his mistakes.
- And the last is a basic requirement, namely the agreement of the victim and the perpetrator, because if the victim does not agree to diversion, then Restorative Justice cannot be implemented. In addition, if the perpetrator of the crime If the teenager does not agree to undergo rehabilitation as a form of accountability for his/her

delinquency, then diversion will not be successful and will then be continued with the legal process.

The diversion decision was based on the consideration that the child can be rehabilitated without going through the judicial process, and the child's willingness to undergo guidance under the supervision of an institution that aims to provide a second chance for the child.

2) Law Number 2553 of 2010 concerning Child and Family Courts and their Procedural Law

In 2010, Law Number 2553 of 2010 concerning Child and Family Courts and Child Protection Law The event which updated the previous Law, namely Law Number 2534 of 1991, also integrated the concept of Restorative Justice. In this Law, the concept of Restorative Justice is increasingly concretized.[40]

Article 86 of this Law states that the Director of the Center for Observation and Protection of Youth may order the preparation of a rehabilitation plan for youth suspected of committing a crime that carries a maximum prison sentence of five years, and who have never been sentenced to prison.

This decision takes into account various factors such as age, history, behavior, intelligence, education, mental health, employment, economic conditions, and motives for the crime. This aims to provide an opportunity for teenagers to improve themselves without going through the criminal justice process, as long as they show remorse for their actions and have an agreement with the victim.

The Director of the Center for Observation and Protection of Youth must involve various parties, including victims, perpetrators, parents or guardians of both parties, psychologists, or related parties such as village representatives, in preparing a diversion plan. This plan must be tailored to the needs of the individual child and aims to improve behavior, provide restitution to victims, and maintain community security.

Diversion can only be done after obtaining written approval from the victim and the perpetrator. The public prosecutor has the authority to assess the diversion plan. If approved, the public prosecutor will submit it to the court. Conversely, if not approved, the public prosecutor can request a revision or continue the prosecution process. The public prosecutor's decision will be conveyed to all related parties, including investigators. [41]

The diversion plan must be in writing and submitted to the prosecutor within 30 days. The plan must include specific goals, such as improving behavior, restitution, and preventing reoffending. In addition, the plan must include appropriate developmental programs, such as counseling or skills training.

The Diversion plan will be supervised by the relevant parties. The rights and freedoms of children must be respected during the diversion process. Restrictions on rights or freedoms may only be made if necessary in the best interests of the child or to protect society. The Director of the Center for Observation and Protection of Youth has the authority to determine the methodology and further provisions regarding the implementation of diversion. [42]

Teenagers who participate in the diversion program are required to comply with all provisions stated in the diversion plan. Any violations will be reported to the public prosecutor. After completing the program, children can request an evaluation report.

If the Public Prosecutor considers the child to have shown remorse and made efforts to improve, then the prosecution can be stopped. The decision to stop the prosecution is final. However, the victim can still file a civil lawsuit.

During the diversion process, children may not be interrogated or made suspects. Time spent in diversion is not included in the calculation of detention time. [43]

If the Court deems that the proposed rehabilitation plan is contrary to the law, the Court is authorized to issue a relevant order. The order must be issued by the Court within thirty days after the report is received. Furthermore, the Chief Justice, with the approval of the Supreme Council, will establish guidelines to ensure the consistency and effectiveness of the application of this provision by the Court. [44]

If a juvenile delinquent is brought to court on suspicion of committing a crime with a maximum sentence of 20 years in prison, and has never served a prison sentence before, the court may consider a rehabilitation program.

This consideration will be given if the victim of the crime agrees to rehabilitation efforts, the crime committed does not pose a serious threat to society, and there is a possibility that the child or teenager will change for the better. If these conditions are met, the court will decide to implement a rehabilitation program.

The court will then assign the Director of the Center for Juvenile Observation and Protection or another party deemed appropriate to prepare a rehabilitation

plan. This plan must involve the child, the parent, or the party responsible for the child, and must be submitted to the court within 30 days.

If the court approves the rehabilitation plan, the legal process will be temporarily suspended. If the court rejects the proposed rehabilitation plan, the case will continue through the customary court process. After the rehabilitation program is completed, the Director of the Center for Observation and Protection of Youth must submit a report to the court. If the court agrees with the results of the rehabilitation, then the case is canceled, and the confiscated evidence can be returned.

In addition, Article 93 Law Number 2553 of 2010 concerning Child and Family Courts and Child Protection Law The event states that if the rehabilitation plan preparation efforts fail and legal efforts against the teenager must be continued, then all information obtained during the process of preparing the plan cannot be used as evidence in court. This applies to information obtained by the provisions of Article 86 and Article 90 of Law Number 2553 of 2010 concerning Child and Family Courts and Child Protection Law. The event.

Comparison	Indonesia	Thailand
Legal Foundation	Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explicitly mandates diversion as an effort to divert the settlement of juvenile cases from the criminal justice process to a process outside the courts. This applies from the investigation stage, through prosecution, to examination in court.	Although the term "diversion" is not always used explicitly, as in Indonesia, Law Number 2553 of 2010 concerning Child and Family Courts and Child Protection Law, the program provides a legal framework for the diversion of children's cases from the formal justice process. The concept of "Family Community Group Conference" (FCGC) is a key manifestation of this restorative approach.
Key Terms	Diversion	Family Community Group Conference (FCGC)
Implementation	From investigation, prosecution,	Generally, at an early stage,

Comparison	Indonesia	Thailand
Time	to trial.	before formal prosecution.
Crime Criteria	Criminal threat < 7 years & not a repeat.	Criminal threat < 5 years & first crime (generally).
Main Focus	Prevention of stigmatization & rehabilitation of children.	Community restoration, rehabilitation, and conflict resolution.
Parties Involved	Perpetrators of juvenile delinquency, parents or guardians of both parties, victims, community counselors, and professional social workers.	Child victim and perpetrator, parents or guardians of both parties, psychologists, social workers, community representatives, correctional officers, investigators, prosecutors, and facilitators.

At first glance, the process of implementing Diversion for children in Thailand and Indonesia is not much different. However, if examined more deeply, the term diversion process in Thailand is more formal than in Indonesia. FCGC involves various elements of society and other parties to obtain perspectives from various points of view and considerations on how to practice the diversion implementation process. In addition, one important component that must be involved in the discussion is the Community. The community here plays a fairly important role because children as perpetrators of crimes are part of a community, be it their residential environment or their village.

Therefore, when children commit crimes, they not only harm their victims but also damage their relationships with their communities. So that the participants in the deliberation are more diverse, consisting of victims, Perpetrators, Parents or Guardians of both parties, psychologists, social workers, community representatives, police investigators, public prosecutors, and the Director of the Center for Observation and Protection of Youth as conference facilitators.

Different from Diversion in Indonesia, which only uses the term deliberation involving the victim and the perpetrator, parents or guardians of both parties, community counselors, and professional social workers. Even if the parents or guardians of

the parties are not present, they can be replaced by community counselors or professional social workers. In addition, the requirements needed to carry out diversion in Thailand are more specific so that it can guarantee the reconciliation of relationships due to diversion.

The comparison shows that the diversion process in Thailand significantly emphasizes the restoration of community harmony after the settlement of the case. The spirit of restorative justice in Thailand is reflected through the implementation of community and family conferences (Family Community Group Conferences/FCGC) for child offenders. This process actively involves various parties, ensuring that harmonious relationships are maintained in the community after diversion is carried out.

Conclusion

Indonesia has a more explicit legal basis to accommodate the recognition and provision of the principle of restorative justice in its criminal law system. The limitations of the rules that Thailand has resulted in legal uncertainty regarding the application of restorative justice for adult offenders. Both countries have a cultural heritage that supports restorative values, so that the practice of restorative justice has become part of the justice system of each country.

The diversion process in Thailand is known as Family Community Group Conferencing (FCGC), which involves active participation from various parties, including the community, thereby creating a more comprehensive deliberation atmosphere compared to Indonesia. But the spirit of restorative justice underlying diversion in both countries is the same. In addition, diversification in Thailand prioritizes the Restoration of relationships, rehabilitation, and community conflict resolution. While diversion in Indonesia focuses on the Prevention of stigmatization & rehabilitation of children.

Suggestion

Based on the research findings, the following policy recommendations are proposed:

1. To ensure legal certainty, the Thai Probation Department needs to enact regulations that explicitly regulate the provisions for classifying the types of crimes that can be applied to restorative justice for adult criminals. So that there is no discrimination due to the existing legal vacuum.

2. To improve the effectiveness of diversion programs in Indonesia, authorities should consider adopting elements of Thailand's Family Community Group Conferencing (FCGC) model. By encouraging active community and community participation in the diversion process, social bonds can be strengthened, and the potential for recidivism can be minimized. Given that community involvement in the diversion process, as regulated in Government Regulation Number 65 of 2015, is still not optimal compared to the FCGC model in Thailand.

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