

Restorative Justice Implementation Model for the Handling Process of Children Cases in the District Police of Timor

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Abstract: Restorative Justice (RJ) has been stipulated by Law No. 11 of 2012 regarding the Criminal Justice System for Children (CJSC) in Article 5 paragraph (1) to be implemented by the CJSC component through Diversion. Its characteristic is criticizing the work of the general criminal justice system that gives less attention to balance in society. It is still partially implemented. The problem is that there is no standard model in the restorative justice application. The formulation of problem is "How is the model for handling cases of children in conflict with the law based on Restorative Justice in the District Police of Timor" with purpose of identifying and suggesting the RJ application in handling child cases and models used by the officers of District Police Timor. The method used is normative-empirical with qualitative descriptive analysis. The results suggested that there is no similar understanding concerning the application of restorative justice, both regarding the concept and the stage desired. In order to find some Restorative Justice models which are applied, a same perception and tendency to use the model through Focus Group Discussion (FGD) is required.

Keywords: Model, Handling, Children in Conflict with Law, Restorative Justice

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I. INTRODUCTION

One focus of the Restorative Justice application (hereinafter referred to as RJ) is on the children issue, dealing with the law as stipulated in Law No. 11 of 2012 concerning the Criminal Justice System of Children (*State Gazette of the Republic of Indonesia Year 2012 No. 153, TLN of Republic of Indonesia No. 5332*). In principle, restorative justice is a philosophy, process, idea, theory and intervention that emphasizes more on the amelioration of losses caused or showed by the criminal.

The approach used to solve criminal cases committed by children is by involving three main parties, namely the perpetrator / family and the victim / family and society with purpose to find a fair solution that emphasizes recovery as the original state and not retaliation.

Restorative Justice is a paradigm of the developed views regarding how we consider a phenomenon of a child's behavior which is categorized as an act that does not merely violate the applicable criminal rules but an act that violates / damages the relationship between humans living in civilized society, therefore those who suffered losses such as the victim and the community need to be held accountable by the perpetrator which focuses more on recovery and not retaliation (Article 1 point 6 of Law No. 11 of 2012 concerning CJSC). The task of RJ implementation is given to the CJSC component, whereas the police component is a gateway for the entry of child cases. RJ through the police component requires a large commitment from the law enforcement officers who in principle have become accustomed to use punishment paradigm to children.

Through RJ, the police paradigm is directed to the goal of saving children from criminal imprisonment. Imprisonment in criminal law can be interpreted as negative sanctions that have a negative impact on the child's development and future as the existence of family, community, and nation for now and in the future. Thus, knowledge and experience regarding RJ implementation in the children case will create a new perspective for the law enforcement officers, the community, and parties who wish the best in everything for children.

In principle, the law enforcement officers are accustomed to use their authority in handling cases on children based on the Criminal Procedure Code and its implementing rules. Therefore, in RJ paradigm there is a

need to equip the new RJ-based authorities with mechanisms and procedures in addition to the mechanisms and procedures based on the Criminal Procedure Code. The above discourse will be difficult to achieve if there is no design of an RJ implementation model with a Diversion media that uniformly applied to all District Police / County Police, also approaches, stages, and strategies that can be used as guidelines for its implementation.

As already known that in Timor mainland, there are District Polices / County Polices who are obliged to implement restorative justice, where it is likely that not all of them have a similar view regarding the application of restorative justice in the types of cases handled and the model of its resolution.

In considering these problems, it is necessary to study the urgency of RJ implementation in the cases of children conflicted with the law and tendency of the applied models to deal with children conflicted with the law at the police level. It is formulated in the study entitled "*Restorative Justice Implementation Model for the Case of Children Handling Process in the District Police of Timor*".

II. LITERATURE REVIEW

2.1 The Purposes of Punishment in Children

Child is the future investment of the family and nation. In the hands of children, the ideals of the nation can be realized. However, children cannot prepare themselves, not yet able to protect themselves. As the next generation of the nation, children still need special care and protection from family, community, and nation (Article 28 B of the 1954 Constitution).

Reformulated perspective of law enforcement should be directed to the criminal law as an *ultimum remedium* for children conflicted with the law and restorative justice as the best solution to resolve cases of children conflicted with the law.

There are purposes of child punishment based on the developed theory. Traditionally, criminal justice theories can be divided into two classifications, namely:

1. *Absolute Theory* or retaliation (retributive / *vergeldingstheorieen*); according to this theory, punishment is imposed solely because a person has committed a crime (*quia peccatum est*).

2. *Relative Theory* or goal theory (*utilitarian / doeltheorieen*); it considers that convicting is not to satisfy the absolute demands of justice, retaliation itself has no value, but only as a means to protect the interests of society.

According to Muladi and Barda Nawawi Arief, in addition to the traditional classification of criminal theories into absolute and relative theories, as stated above, there is a third theory called "*Combined Theory (verenigings theorieen)*". This integrative theory combines a perspective that the punishment is imposed towards the perpetrator with purpose other than as retaliation and detention for the perpetrator, is also intended for special and general prevention, in the interests of the perpetrators and the society.

Jhon Kaplan stated 4 theories as bases for criminal justification (i.e. the theory of Retribution, Deterrence, incapacitation, Rehabilitation). He also revealed other existing bases for criminal justification, namely: a. avoidance of blood feuds; b. the educational effect; c. the peace keeping function.

2.2 Restorative Justice

According to Didik Endro Purwoleksono, the punishment imposed needs to pay attention to the "balance principle" where the victim interests need to get full attention in the criminal justice process. The restorative model has emerged since more than 20 years ago as an alternative solution for handling criminal cases with child offenders. Juvenile Justice Working Group of the United Nations (UN) defines restorative justice as a process where all parties related to a certain criminal act are sitting together to solve problems and think about how to overcome the consequences in the future. Restorative justice is an attempt to find a peaceful resolution for conflicts outside of the court. Especially for Children in Conflict with Law, restorative justice is an important factor to be implemented because child psychology must be considered.

According to Law No. 11 of 2012 concerning the Criminal Justice System for Children, restorative justice approach is defined as the settlement of criminal cases involving the perpetrators, victims, families of the perpetrators / victims, and other related parties to jointly seek a fair solution by emphasizing recovery as the original state, not retaliation.

2.3 Penal Mediation

a. The concept of Penal Mediation

Victim-Offender Mediation (VOM) is a process that requires all parties to be involved in reconciliation efforts. In the "*explanatory memorandum*" of the European Council Recommendation No. R (99) 19 concerning *Mediation in Penal Matters*, there are several mediation models stated including *victim-offender mediation*.

The mediator is expected to actively give direction towards all parties to reach an agreement. Sharing between parties is directed by mediators who have access to information on the rules: Conflicts Handling; Oriented to processes, Informal processes, and there are active and autonomous participation of the parties.

b. Mechanism and Term of Penal Mediation

The mechanism built by the Women's and Children's Service Unit (Unit PPA) / Police Unit needs to consider the stages of mediation that are appropriate to the needs of many parties. There are five stages of penalmediation suggested by Riskin and Wetsbrok: There is an agreement to go through the mediation process; Understandthe problems; Generate problem-solving choices; Reach agreement; and Implement the agreement.

The above stages of mediation will give good solutions because basically all parties are given the choice to solve problems in a democratic way, where it is expected that the reasoning paradigm of both parties can be directed to respect and accept each other through constructive dialogue without using violence to create harmony.

The agreement taken can be confirmed in a letter of agreement signed by both parties, this can be done by the police unit by adopting the Supreme Court Regulation (PerMA) Decree No. 2 of 2003 article 11 paragraph (1), if mediation results an agreement, all parties with the help of a mediator must formulate a written agreement reached and signed by all parties where the mediation process is taken through four stages: First stage, creating a forum with activities offered; Second Stage, collecting data; Third stage, problem solving; Fourth Stage, Decision Making.

III. METHOD OF STUDY

3.1 Study Object

The RJ implementation by the District Police of Timor was reviewed using several indicators: a) Type of the case committed by children and become priority for using RJ; b) When and how to use Diversion; c) The apparatus perspective regarding the implementation of RJ; d) The agreed RJ mechanism; e) The involvement of many parties in the RJ Process; f) The Agreement compromised; g) Dominant sanctions agreed.

3.2 Study Location:

The study was taken in all District Polices of Timor, KupangDistrict, Kupang City, South Central Timor District Police (TTS); North Central Timor District Police (TTU), andBelu District. The study location was determined by considering similarity of the cultural customs.

3.3 Data Collection and Data Analysis Methods:

Data sources are primary data which directly taken from respondents using interview techniques, questionnaires, observations and secondary data obtained from applicable documents and legislation. Whereasinstruments used are interview guidelines, camera photos and others, observation and documentation, and literature study. Data were analyzed descriptively and qualitatively.

IV. RESULTS AND DISCUSSION

4.1 Implementation of Restorative Justice by the District Police/County Police of Timor

The implementation of restorative justice through diversion is a "process of applying value" in which the process is intended to translate all interests in one media of diversion by adhering to the values of deliberation to consensus, having a commitment to support the principle of the best interests for children and able to deliver utilization and peace values in handling child cases.

As the interview results, it is suggestedin each District Police of Timor, there are several case characteristics that become priority to be ruled out through restorative justice because "not all child cases can be subject to diversion, only certain cases that are required in the Child Criminal Justice System Law and, and it is purposed to achieve peace between the perpetrators and victims and to avoid retaliation from victims and the community to the offender's children "(interview, June 8th of 2018).

The implementation of restorative justice in Kupang City Police, KupangDistrict Police, South Central Timor District Police (TTS); North Central Timor District Police (TTU) and BeluDistrict Police are limited in cases: Beatings (article 170 of the Criminal Code), Persecution (Article 351 of the Criminal Code) and Theft (Article 362 of the Criminal Code), and intercourse (Article 76D of Law No. 35 of 2014 concerning Child Protection).

The study results suggested that there are two models of RJ implementation to achieve peace, namely at the time of investigation. And before the investigation begins. It is not clearly specified in Law No. 11 of 2012, but in Article 27 stated that "in conducting investigations into child cases, investigators are required to ask for consideration or advice from community advisers after a crime is reported or filed".

The article 27 requires consideration and advice from community advisers after the police unit receive a report or complaint. This means that after a criminal act has been reported or filed, the investigator has been able to make a restorative effort if it has received consideration and advice from the community advisers. It means also that the Law requires efforts to obtain restorative justice through diversion at the beginning of the investigation, as stipulated in Law No. 11 of 2012 concerning the Criminal Justice System for Children. For that

reason, it can be described as follows:

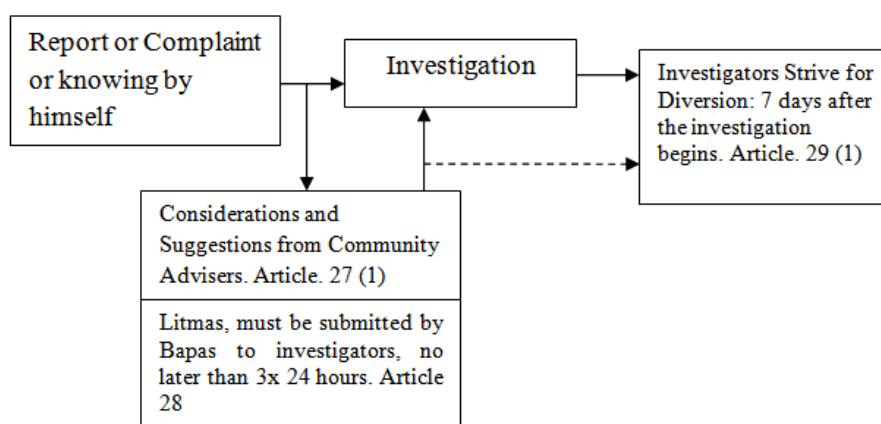


Figure 1. The Criminal Justice System for Children

The illustration above shows that consideration and advice from community advisers are very important in the diversion effort because it can connect the reports or complaints with the diversion efforts. It can be said that the restorative justice will not be carried out without any considerations and suggestions from the community advisers. The problem that will emerge related to community research by the Correctional Institution (Bapas) is the uneven distribution of Bapas in all Regencies / Cities or in the jurisdiction of the District Police of Timor.

East Nusa Tenggara Province is an archipelago province, with a hard topography that is difficult to reach in a short time, where it can be an obstacle in the application of RJ, supported by the limited resources, for example at the NTT Province there are 2 (two) Correctional Centers (Bapas) that accommodate 4 (four) Large Islands with 22 (twenty-two) Regencies / Cities. The two Bapas are:

1. Correctional Centers (Bapas) Kupang with coverage in the Regiona City of Timor Mainland, RoteNdao Regency and SabuRaijua Regency and Regency / City in Alor mainland.
2. Correctional Centers (Bapas) Waikabubak with coverage in Regencies / Cities of Sumba Island and Regencies / Cities in the mainland of Flores.

To overcome the human resources problem, then there is a ' Correctional Centers (Bapas) post' in each prison / detention center where special staff of detention / prisons have been appointed by BapasKupang as social advisers to carry out their duties in the regency / city jurisdiction of the District Police of Timor (Kupang City, KupangDistrict, South Central Timor District Police (TTS); North Central Timor District Police (TTU) and BeluDistrict).

Although there is a Bapas Post and Special Officers appointed, the implementation of its duties must be based on a letter of assignment from the Central Bapas, as stipulated on the procedures and mechanisms of the Bapas Post work in the Circular Letter of the Director General of Correctional Services of the Ministry of Law and Human Rights No: PAS6.PK.01.05-135 in 2014 concerning Procedures and Work Mechanism of yoSE No. PAS-27.PK.01.05.07 in 2016 concerning Improving Post Bapas Services in the Context of Mentoring to Children conflicted with Law

Correctional Centers officers distributed in the Detention Centers / Prisons of Regencies / Cities in East Timor cannot provide services by themselves if needed in providing litmas for the diversion implementation to reconcile the parties. This is happened because the appointmentof the communityadviser who conveys litmas to the police unit is based on the disposition of the BapasHead of Kupang after the District Police / County Police deliver a letter notifying the diversion. It can be an obstacle that slowing down the work of Community Advisers given that the time given by the CJSC Law is only 3 x 24 hours to get the disposition of the Head of CentralBapas in the City of Kupang and to conduct community research regarding children conflicted with the Law

4.2 Handling Profile and Restorative Justice Implementation Model in the District Police / County Police of Timor

The handling profile of child cases based on restorative justice is intended to describe the specific existence of each District Police by explaining the handling component using the reference question 5 W 1 H. The study results regarding the RJ implementation with indicators of handling children conflicted with the law through Restorative Justice in the Mainland of Timor are stated below:

4.3 Child cases which tend to be resolved with restorative justice: Beatings (170 KUHP), persecution (351 KUHP) and theft (362 KUHP), intercourse; Violence against Children (80 paragraph 1 of Law 11/2012); Hostia Vilification (156a KUHP). The tendency to resolve cases in stages: the Investigation Stage although there is also a restorative implementation at the stage before the investigation. The room used: special room of the Reskrim unit and the Women's and Children's Service Unit (Unit PPA) Parties involved: Women's and Children's Service Unit/ Reskrim Unit; Perpetrators / Parents / guardians; Correctional Centers; Social Affairs; Women's and Child Protection Services Office (Dinas P3A); Integrated Services Center for Women's Empowerment and child Protection (P2TP2A) / Shelter; Soe Women's Voice Studio (SSPS); Social Figures; NGOs.

4.4 How to apply RJ:

District Police of Kupang City, Kupang District, South Central Timor (TTS) District; North Central Timor District (TTU) and Belu District are basically giving similar services to the community for children cases, that is through the stages: receiving reports; correspond to the Office of Social Affairs to assist victims by Professional Social Workers (Peksos) and the Correctional Institution (Bapas) for Community Research on the perpetrator child; determining Diversion time, writing to the perpetrators and victims' parents, and carrying out diversion.

In addition, there is a stage where the Women's and Children's Service receives a report or complaint then continued to the scene, gathers the parties to agree reconciliation, contact the social service team and staffs to assist, agree the time of diversion, implement the diversion, the diversion results: some are end with reconciliation and stopped and some were reconciled but continued with the aim of deterrent effects.

There is also another stage where after receiving a report or complaint, both parties are gathered together with Social Workers, P2TP2A; Bapas; Religious Leader (Toga), Social Figures, Indigenous Leaders, parents of victims and perpetrators. The next process is perpetrators and victims are agreeing to reconcile with a statement made by both parties, making a letter of withdrawal request by the victim, carrying out additional checks on the victim and the perpetrator to ensure that both parties are reconciled; mediator from the Women's and Children's Service Unit.

There are two developing views regarding restorative justice:

- First, the restorative justice mechanism through CJSC is appropriate to prevent children from committing crime;
- Second, RJ in its application has not been appropriate with the rules because of a different understanding of Restorative justice in the community, there are 2 versions: a. Reconcile but continue or b. Reconcile and the case is ended; other than these there is no agreement on what is meant by the best interests of the child.

Contents of the agreement between perpetrators and victims are: a. the perpetrator acknowledges his deed; b. the perpetrator will not repeat his deed; c. the victim forgives the perpetrator's deed; d. the perpetrator gives compensation to the victim. Furthermore, the agreed sanctions are: Returning to parents; participate in education programs, constructing and mentoring in government agencies or in Institute for Organizing Social Welfare no later than 6 months; the perpetrator apologizes to the victim; return the stolen items; customary sanctions, means the parties marry off the perpetrator and victim.

In this study, it was found that diversion can be carried out in two main stages, i.e. at the pre-investigation stage and after the investigation as previously mentioned. As for the restorative before the investigation, it was carried out in the case of intercourse between two children (male and female) who were dating, engaged in sexual intercourse, reported by the victim's parents (female) and by the Village Head to the Women's and Children's Service Unit which was followed up with a meeting between the Women's and Children's Service Unit and the Victims' and The perpetrators' Families, holds a case and continued with the investigation. However, with the help of Village Head, both parties are mediated and can be reconciled before the Women's and Children's Service Unit investigators follow up the case at the Women's and Children's Service Unit level. This is happened because both parties (the families of the victims and the perpetrators) have agreed to marry the two children without involving the Women's and Children's Service Unit.

Based on the above discussion, it can be stated that the model is built in the community, which can be said that this model directs the restorative justice process to a form where restorative justice is not inherent in the Criminal Justice System but there is a separate institution in the community that takes a restorative approach. The institution itself is a traditional institution and mediated by leader of the Customary Institution or the Village Head. The model can be illustrated through the chart below:

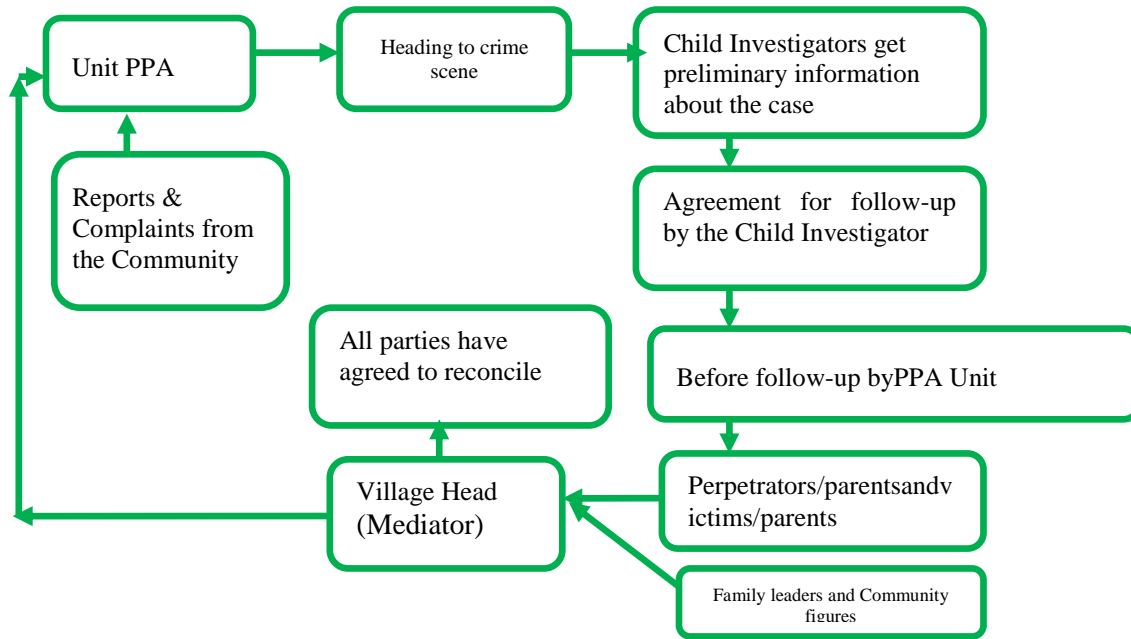


Figure 2. Model of Restorative Justice Implementation before Investigation

4.5 The restorative at the time of the investigation begins

It is applied to cases such as beatings, theft, and persecution. The model found in the RJ application process at the District Police of Timor is shown below:

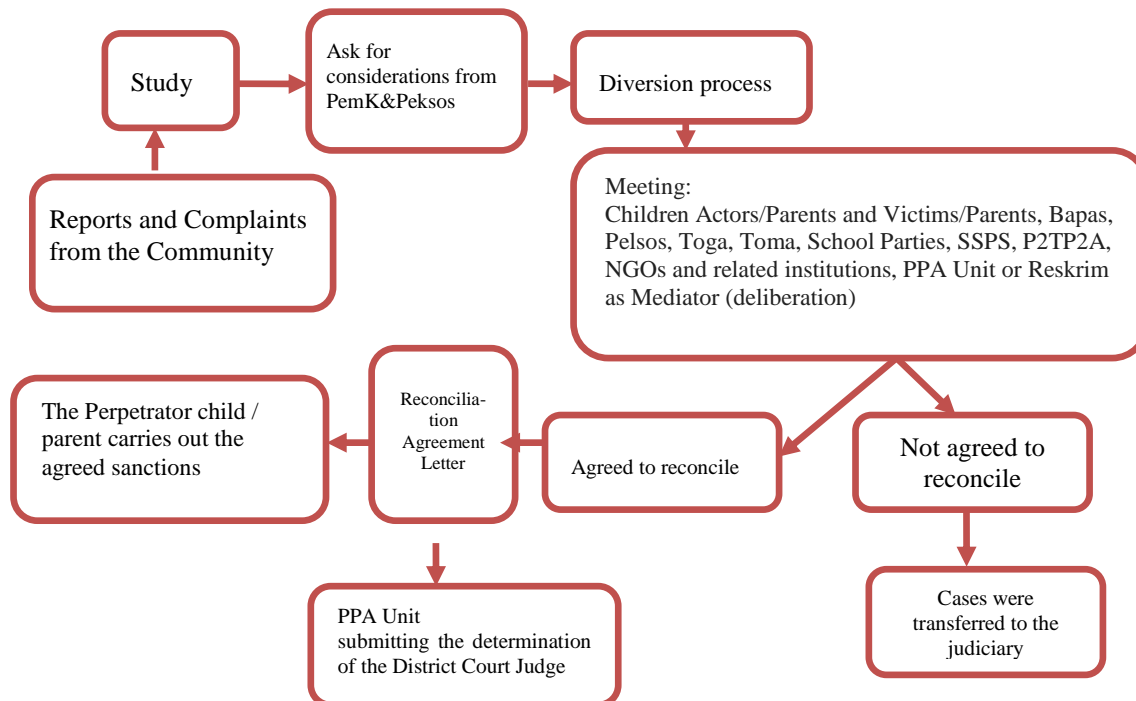


Figure 3. Model of Restorative Justice Implementation at the time of the Investigation

Based on the chart above, it is suggested that in the District Police / County Police of Timor, the implementation of restorative justice in the child cases is taken through several stages: reports or complaints, then the Women's and Children's Service Unit conducts a preliminary study, accompanied by asking for consideration from the Community Advisers and Professional Social Workers; then Women's and Children's Service Unit / the Reskrim unit gathers together perpetrators / families with victims and families with purpose to get consensus deliberations through the case transfer from the process of criminal justice outside of the criminal justice process (Diversion) by involving all relevant parties, both Social Security / Social Affairs and

Community / Bapas Advisors, P2TP2A /Dinas P3A, Shelter, Soe Women's Voice Studio (SSPS), Women's Houses, Community Leaders, Religious Leaders, to find reconciliation. In there is an agreement, a reconciliation statement is made, then the perpetrator carries out the agreement including the compensation as agreed, and the case is stopped; if there is no agreement, then the case is delegated to the Judiciary's level to be diversified at the Judiciary's level.

V. CONCLUSION AND SUGGESTIONS

Based on the results of the above studies, it can be concluded that the implementation of Restorative Justice cannot be separated from the use of Diversion as a media of overriding the case of child crime out of the criminal justice system. There are 2 (two) models of the implementation of restorative justice that are used for handling children in conflict with the law in the District Police / County Police of Timor both in Kupang City Police; Kupang District Police, South Central Timor District Police (TTS); North Central Timor District Police (TTU) and Belu district police. The first model, "Model of Restorative Justice Implementation at the time of the Investigation", is integrated with the Police unit. While the second model, "Model of Restorative Justice Implementation Before Investigation", takes form of accompanying the police either by the initiative of the parties (victims / family and perpetrators / family) based on the customary law applies and mediated by the village head and the customary leader; or returned to both parties by the Police (Women's and Children's Service Unit / Reskrim Unit) to seek peace evidenced by a reconciliation statement submitted to the PPA Unit. A standard model for applying restorative justice is needed in all District Police / County Police of Timor and a Discussion Focus Group (FGD) is very crucial to equate perception and take agreement on the best model to be implemented by all District Police of Timor to for the shake of children and protection of children's rights in the Land of Timor.

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