

**SIMULATION MODEL OF RESTORATIVE JUSTICE  
IMPLEMENTATION IN THE PROCESS OF HANDLING CHILD CASES  
CONFLICT WITH LAW IN THE RESORT POLICE/CITY RESORT  
POLICE OF TIMOR MAINLAND**

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**Abstract**

Restorative Justice Approach (Restorative Justice) plays a very important role in dealing with children in conflict with the law (CCL), the tendency of the CCL handling model will ultimately lead to crime as ultimum remedium as a form of special protection for children in the best interest of children. 2 CCL handling models have been found at the East Timor Resort Police / City Resort Police, namely the handling model before the investigation, that is before using Diversi and the handling model at the time of investigation (using Diversi). The two models were simulated using the Focus Group Discussion method to revise the model/reformulation of the implementation of restorative justice models in handling the CCL in East Timor Police / Resort Police. The results obtained that in the application of the Restorative Justice approach through diversion requires the fulfillment of the elements that are obliged to pay attention to the Case Category; Age of child; criminal threats; social research results from Bapas; family and community environment support, and the determination of judges on the outcome of the agreement. The simulation results of this model, contribute to the protection of the CCL in the criminal justice process at the mainland police station / Resort Police in East Timor. Furthermore, these results are disseminated and can in turn be tried out in the process of handling the CCL

**Keywords:** Model Simulation, Children in conflict with the law, Restorative Justice

**I INTRODUCTION**

In the first phase of the research, a Restorative Justice Implementation Model was established and a Model for the Management of Children in Conflict with the Law was held in the Resort Police/City Resort Police of East Timor. The approach used to resolve criminal cases experienced by children involves three main parties, namely perpetrators/families and victims/families and the community with the aim of seeking a fair solution that emphasizes recovery in its original state and not retaliation. The Restorative Justice Implementation Model is formulated as the "Pre-Investigation Implementation Model and the Implementation Model at the Investigation Stage". At this stage, the Model Simulation is continued to obtain input from all components related to handling children in conflict with the law and rebuilding/revising the Model.

**II. LITERATURE REVIEW**

**Purpose of Child Criminalization**

Children are the future investment of the family, nation and state. It is in the hands of children that the ideals of the nation can be realized, but children cannot prepare themselves, have not been able to protect themselves. As the next generation of nation ideals, children still need special care and protection from family, community, nation and state (Article 28 B of the 1945 Constitution)

Reformulation of the perspective of law enforcement should be directed at: as far as possible the criminal constitutes an ultimum remedium for children dealing with law and restorative justice in the best interest of the child to be the goal of resolving cases of children dealing with law

The purpose of child punishment is based on a developing theory. Traditionally, criminal theories can generally be divided into two groups of theorists, namely: Absolute Theory or retributive theory (retributive/vergeldings theorieën); according to this theory criminal imposed solely because people have committed a crime or a crime (quia peccatum est) and the Relative Theory or goal theory (utilitarian/doel theorieën) provides the view that punishment is not to satisfy the absolute demands of justice, retaliation itself does not have value, but only as a means to protect the interests of society. According to Muladi and Barda Nawawi Arief, in addition to the traditional division of criminal theories, as stated above namely absolute and relative theories, there is a third theory called "Combined Theory (verenigings theorieën)" Combined (integrative) theory, this theory combines the view that the crime is imposed on the offender with the purpose other than as retaliation, the deterrence of the offender is also aimed at special and general prevention, in the interests of the offender as well as the public interest.

John Kaplan, put forward 4 theories which become the basis of criminal justification (ie theory of Retribution, Deterrence, incapacitation, Rehabilitation) also stated there are other basics of criminal justification, namely: a. to avoid revenge (avoidance of bloods feuds); b. the influence that is educational (the educational effect); c. has the function of maintaining peace (the peacekeeping function)

### **Restorative Justice**

If related to the view of Didik Endro Purwoleksono that, the criminal imposed must pay attention to the "principle of balance" in which the interests of the victim need to get full attention in the criminal justice process.

The restorative model has emerged more than 20 years ago as an alternative settlement of criminal cases with child offenders. The United Nations Children's Judicial Working Group (UN) defines restorative justice as a process of all parties dealing with certain criminal acts 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 to conflicts outside the court. Specifically for AKH, restorative justice is important to apply because children's psychological factors must be considered.

### **III. RESEARCH METHODS**

#### **Research Object:**

The simulation model of the Implementation of Restorative Justice (RJ) by the Polres / Polres of the Mainland of Timor was examined using indicators:

- a) The Sustainability Strategy for the implementation of the Restorative Justice model at the Polres/Polresta of Timor Mainland
- b) Model Simulation application of the Restorative Justice model in the handling of children in conflict with the law in the Polres/Polresta Mainland Timor

**Processing and data analysis:**

The data source is primary data directly obtained from respondents using Focus Group Discussion (FGD) techniques, interviews preceded by exposure to concepts from criminal law experts (Professor of Criminal Law, Faculty of Law, Airlangga University: Prof. Dr. Didik Endro Purwoleksono, SH, MH). Secondary data obtained from documents and regulations that apply and the tools used are interview guides, camera photos and others, observation and documentation and literature study. Data were analyzed descriptively-qualitatively.

**IV. RESULTS AND DISCUSSION**

A. The Sustainability Strategy for the implementation of the Restorative Justice model at the Resort Police / City Resort Police of East Timor

Simulation model of handling cases of children in conflict with the law (CCL) in the resort police/city resort police of Timor Mainland, is a step taken in an effort to implement and equate perceptions regarding models of handling children in conflict with the law based on restorative justice as mandated by Law NO 11 of 2012 concerning the Justice System Criminal Crimes (known as SPPA Law). There are two models that have been built in this simulated handling practice. the model is a representation of the process of handling children in conflict with the law in the resort police/city resort police mainland Timor since the enactment of the SPPA Law. The two models are: the model of implementing Restorative Justice before the investigation begins and the model of applying Restorative Justice at the time of the investigation.

The continuity of handling children in conflict with the law based on the restorative justice model that has been found requires knowledge and readiness from the mainland Timor Police so that the handling model that has been considered appropriate can provide benefits and justice for the parties, especially for the best interests of children and children kept away from conviction (criminal as ultimum remedium)

The sustainability strategy is based on an analysis of strengths and weaknesses assessed from the internal services of the Women and Children of the resort police/city resort police of mainland Timor. In addition, it also presented opportunities and challenges faced in handling children in conflict with the law. The strengths owned are that:

**Institutional and Human Resources**

- a. The handling of children in conflict with the law is carried out by a special unit within the police: The Women's and Children's Services Unit (more popularly known as PPA ) Institutionally is a unit inherent in the Indonesian Police that has its own operational standards in handling the problems of women and children.
- b. Human resources contained in the PPA Unit, have been specially prepared, have the knowledge, experience and special skills that are responsive to children

### **Legal Basis of Establishment**

The whole resort police/ city resort police and Institutions related to child handling efforts are formed based on a Decree to each Unit for the Protection of Women and Children in every Regency, that is Kupang Regency, Kupang City, East Timor South Police, East Timor North resort police with Perkap. No. 10 of 2017 concerning the Work Procedures of Women's and Children's Service Units.

As for the Internal provisions and the Joint Decree of the National Police with several ministries: Decree Chief of Police No.Pol: KEP / 54 / N / 2002 dated 17 October 2002 concerning the Work Unit of the Organizational Unit at the police level; Police Chief Regulation No. Pol: 10/2017 concerning the Organization and Procedures of the Women's and Children's Services Unit (PPA); Telegram of Indonesian Police Headquarters No. TR / 1124 / XI / 2006 6 dated 16 Sep 2006 concerning Guidelines for Handling of Children Who Are Confronting the Law; Telegram Republic of the State Police Criminal Detective Agency No. Pol. : TR / 395 / DIT-I / VI / 2008 dated June 9, 2008, concerning Guidelines for the Process of Investigating Children in Confront of the Law; Telegram Republic of the State Police Criminal Detective Agency No.TR/772/IX./2009 concerning Handling Children Against the Law; the National police Criminal Newspaper No. Pol: B / 2160 / IX / 2009 concerning Guidelines for Handling Children Against the Law; Law No. 11 of 2012 concerning the Criminal Justice System for Children (SPPA)

### **Infrastructure**

Generally, the resort police/city resort police does not yet have a separate building but has a separate room within the building of the resort police parent location; supporting facilities such as office equipment, operational vehicles are still attached to the police station; this is as contained in the Kupang District Police Station, East Timor South (TTS), East Timor North (TTU) and Belu, which has its own room and does not yet have its own building even has its own room but is still adjacent to the Criminal Investigation Unit but for LMS and P2TP2A Shelter and TTS Regency, has its own building.

### **Network/Coordination among institutions**

Resort Police / City Resort Police has established networks with: Prosecutors, Courts; Legal Counsel, Social Service, Psychiatrist; Hospital, Bapas; LPKA, P2TP2A and NGOs, Child Observer and Child-related Stake Holders; on the contrary both NGOs/ Soe Women's Voice Studio (or SSPS) and Shelter P2TP2A have also built networks to the grassroots, namely to community organizations and village community groups, including with the Sector Police in each sub-district.

However, coordination still needs to be improved among network groups to share information related to data and problems faced in the service or handling of children through a restorative justice approach.

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**Obstacles in the implementation of restorative justice in the Resort / City Police in the Timor Land**

The obstacles faced can be specified as follows:

1. The implementation of restorative justice is not good because there is no common view regarding the concept of the best interests of children and there are still differences of opinion in the community regarding the peaceful status of a child offender, where peace is interpreted as having ended after the parties agreed to peace and signed an agreement in peace. and carry out the witnesses agreed
2. Human Resources are still limited and have not yet fully gained capacity related to handling children with legal problems through Restorative Justice.
3. The view of the community who considers that although they have been reconciled, the criminal process continues with the aim that children become deterrent.
4. The jurisdiction of each regency, especially Kupang regency is very wide where the distance between one sub-district and other sub-districts and from village to village is very far, plus the distance to the Babau Police Station; adequate transportation is needed.
5. Lack of facilities and infrastructure that supports the implementation of handling cases of children properly and in accordance with children's privacy

**Opportunities that are owned**

1. Police (PPA Unit) get support from all components of society to provide the best treatment for children.
2. There have been various police service centers that can reach up to the community and family level: Community Police (Community Police), Police Posts, bringing the Police closer to the community to provide services to the community.
3. Opportunities that greatly reach the community are the availability of information technology to facilitate internet access and village information service centers and ownership of communication facilities (cell phones, internet, radio, mass / electronic / TV media, etc.) that shorten information paths from the community to the PPA Unit apparatus for giving quickly reach out to children problems especially to children in conflict with the law.

The sustainability strategy to deal with children in conflict with the law through a model of implementing restorative justice based on the data presented above provides a clue that there is a commitment from the resort police/city resort police of Timor to provide services to CCL in the best interest of children by efforts to increase their potential as strengths and minimize weaknesses. with the existing potential and use the applicable laws and regulations and community support and coordination between institutions related to child protection and the values adopted regarding justice and benefits as well as the best interests of children and balance in society.

**B. Results of the Simulation of the Restorative Justice Model in the Management of the End of Life in the Resort Police of the mainland Police of Timor**

Model Simulation results will be displayed in the form of a flowchart based on thoughts that have developed in the Group Discussion Group (FGD) involving all institutions handling CCL, East Timor Police Force, institutions related to the protection of CCL, Penitentiary, NTT Province P2TP2A, Child Support Institutions / NGOs, Soe Woman's Voice Studio (SSP),

Religious leaders, public figure, Youth Figure. In principle, the two proposed models are acceptable but the model of implementing restorative justice through diversion (second model) needs to be revised by including components that are mandatory in applying restorative justice through Diversion. For this reason, it is necessary to pay attention to several important notes which were presented by Prof. Dr. Didik Endro Purwoleksono, S.H., M.H. These important notes are:

1. Basically, the results of this study are not only useful for the Resort / East Timor Police, but can also be useful for police throughout Indonesia,
2. The Police Apparatus is a single unit (Article 5 of Law No. 2 of 2002 concerning the Indonesian National Police,
3. On the other hand the Police Apparatus is the first or foremost apparatus in the context of handling cases of children who are dealing with the law,
4. The leading function is through the investigation and investigation functions,
5. Strictly regulated in Article 1 number 1 of Law No. 11 of 2012 concerning the Criminal Justice System for Children (LN RI of 2012 No. 153, TLN Number 5332, hereinafter abbreviated to SPPA) that "The juvenile justice system is the whole process of settling child cases which dealing with the law from the investigation stage to the guidance stage after undergoing a crime.
6. The concept introduced by the SPPA Law is Children who are dealing with Law. Article 1 number 1 of the SPPA Law confirms that Children in Confront with the Law are children who are in conflict with the law, children who are victims of criminal acts and children who are witnesses of criminal acts (there are 3 predicate given by the SPPA Law)
7. SPPA Act recognizes the Restorative Justice Approach (Restorative Justice) Restorative Justice is the settlement of criminal cases involving the perpetrators, victims, the perpetrators/victims and other parties involved to jointly seek a fair solution by emphasizing restoration to its original state and not retaliation (article 1 number 6 jo Article 5 paragraph (1) of the SPPA Law
8. Implications of the restorative justice approach, namely in the SPPA Law, there is a diversity known by investigators and public prosecutors (Articles 6-15, 29,42,96)
9. Related to the theme "Simulation Model of the application of Restorative Justice) in the Process of Handling Cases of Children Confronting Laws in the resort police/resort police of Mainland Timor", the following can be noted:
  - a. There are three groups of criminal offenders who are in practice: 1) Less than 12 years of age; 2) Age 12 - Less than 14 years; 3) Ages 14-18 years.
  - b. Age less than 12 years based on Article 21 of the SPPA Law: cannot be investigated, let alone prosecution, which can be done is investigators, social advisers, and professional social workers take the decision to hand it back to parents/guardians or include it in educational programs, guidance, and guidance in government agencies or LPKS in institutions that deal with social welfare both at the central and regional levels for a maximum of 6 (six) months.
  - c. Age 12 - less than 14 years based on the SPPA Act: arrest can be done (Article 30 of the SPPA Law) and through a **contrario** interpretation (Article 32 of the SPPA Law) cannot be detained.

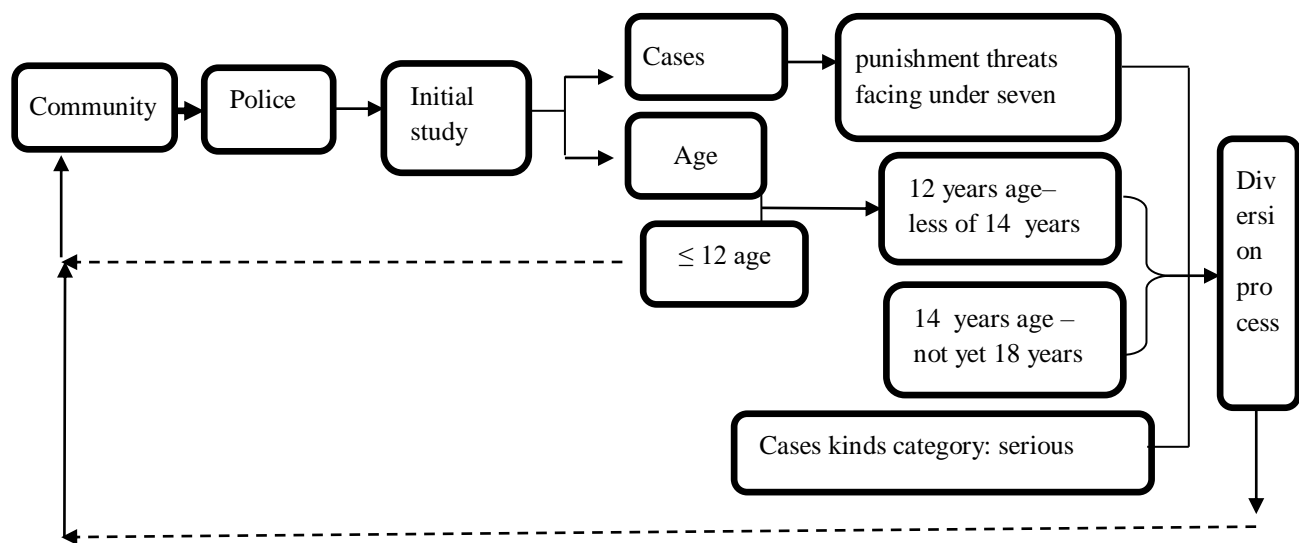


- d. Ages 14-18 years based on the SPPA Law can be arrested (Article 30 of the SPPA Law); Detention can be made, provided that (Article 32 of the SPPA Law) provided that there is no guarantee from parents/guardians and or institutions that the child did not run away; does not eliminate or damage evidence; not repeat a crime.
10. Through the restorative justice approach (ie in the SPPA Act, there is known Diversity, including the consequences if the diversion process is not carried out by investigators and public prosecutors (Articles 6-15, 29, 42, 96)

Based on the points of view above, it is concluded that: The function of restorative justice is: Settling criminal cases involving the perpetrators, victims, the perpetrators/victims' families, and other related parties; To jointly seek a fair solution; Emphasizing recovery back to its original state; not retaliation; Prioritized children's interests. According to Prof. Dr.Dididk Endro Purwoleksono, S.H., M.H. For the purposes of Criminal, a "Balance Theory" is proposed, which is a balance between the interests of the perpetrators, the community and victims or families of victims of criminal acts.

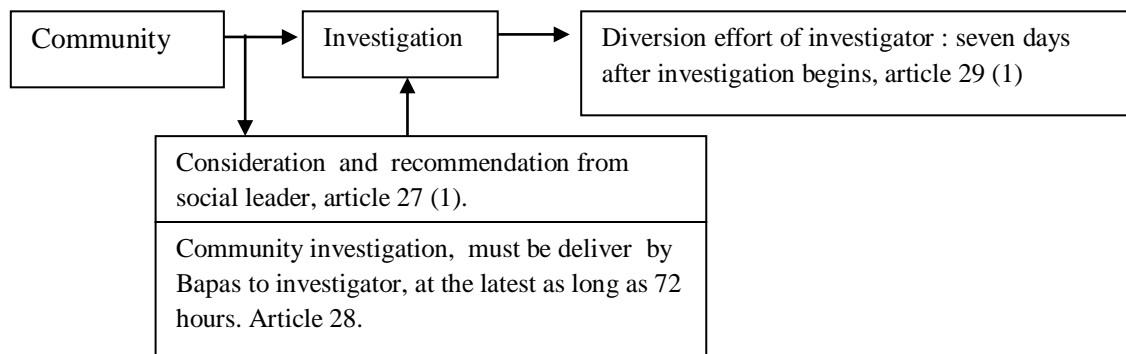
The application of restorative justice through diversification based on elements of the type of case and age of the child; The categories of cases and criminal threats can be seen in the following chart below:

Chart1. Implementation of Restorative Justice through diversification based on the type of case and age of the child; criminal cases and threat categories



Furthermore, the mandatory requirement for children is to get community research from the Penitentiary, can be seen in the Chart below:

Chart 2. Community Investigation by Bapas in Restorative Justice implementation



Based on the picture above, it can be said that diversion efforts to achieve peace can be carried out at the investigation stage. whether carried out before the investigation begins or at the time of the investigation, for the case of children has been determined in a limitative manner in Law No. 11 of 2012 in article 27, it is determined that "in conducting an investigation of a child's case, the investigator is obliged to seek consideration or advice from the social adviser after the crime has been reported or complained. " Below, the Revised Model of Restorative Justice Implementation Model will be presented before the investigation and the Investigation stage obtained from the Simulation Model for RJ implementation:

Chart 3. Restoratif Justice Revision Model Before Investigation

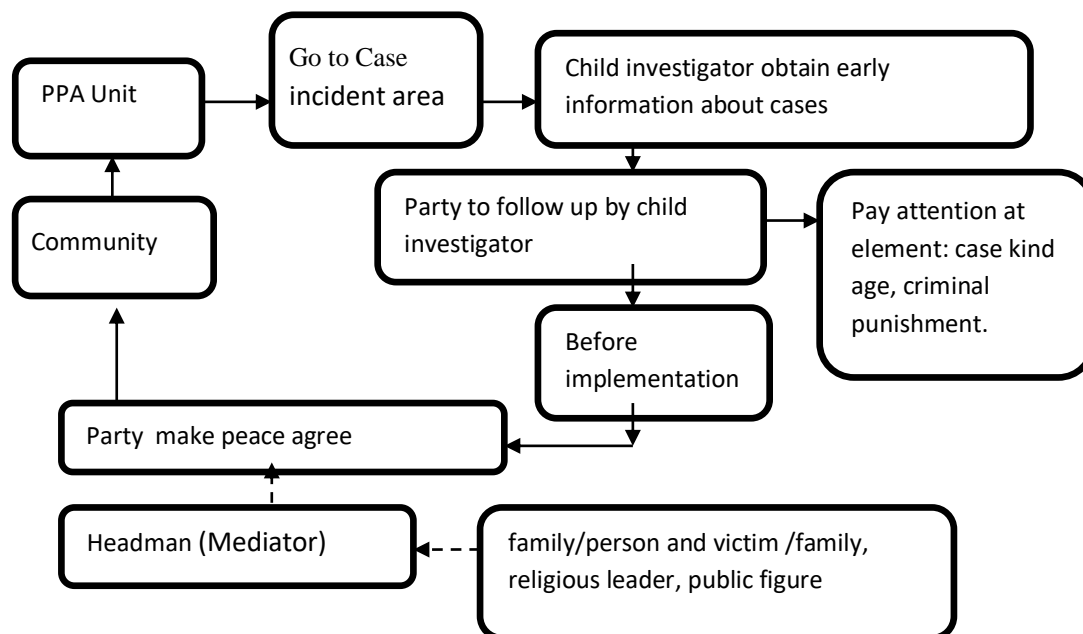
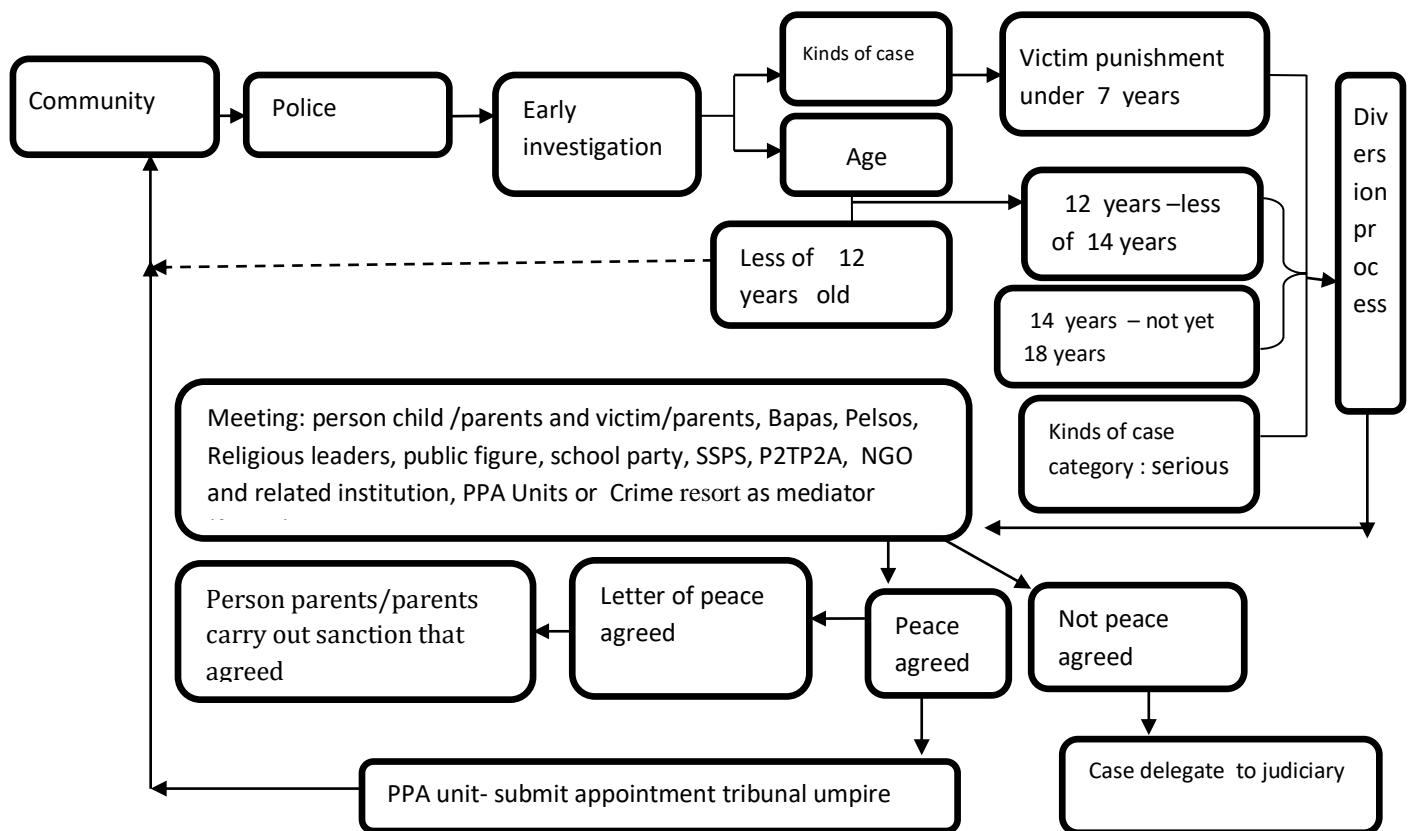




Chart 4. Restoratif Justice Revision Model Implementation at investigation Stage



Based on the model revision chart as above, it shows that in the resort police / city resort police Timor compliant, Implementation of restorative Justice in child cases through stages, reports or complaints, then the PPA Unit conducts a preliminary study, accompanied by asking for consideration of Community Guidance and Professional Social Workers; The PPA/Criminal Unit unit brings together perpetrators/families with victims and families with the aim of reaching consensus through the transfer of cases from the criminal justice process to exit the criminal justice process (Diversion) by involving all relevant parties, both social worker/social service and Community Guides/Bapas, P2TP2A/PPPA Office, TTS Shelter, Soe Women's Voice Studio, Women's House, Community Figure, Religious Figure, to seek peace by paying attention to the elements: Case Type, Case Category, Criminal Threat, Child Age, community investigation from Bapas, Family and Community Involvement (FGD) , 22 July 2019)

If an agreement is made, a statement of peace is made, the perpetrators carry out the agreement including compensation as agreed, and the case is stopped; If no agreement is reached, the case will be transferred to the Prosecutor's Office for diversion at the Prosecutor's Office.

### The dominant model was found in the application of RJ in the Timor resort resort police/City resort police

As a result of the research, there are 3 models of the application of restorative justice practiced at the resort police / city resort police in mainland Timor, namely:

- a. Before the investigation: submit to the parties accompanied by social work and social assistance with the mediator determined by the parties themselves, the case has not been under investigation; The PPA Unit only gets reports or complaints, takes action to go to the scene, agrees on the time for further action but is subsequently taken over by the parties to "make peace" without agreement with the PPA Unit
- b. At the time of the Investigation: since the stage of receiving a report or complaint the PPA Unit has been actively seeking diversion by applying restorative justice

Based on the application model found above, it appears that the dominative model of restorative justice used in the resort police / city resort police on the mainland of Timor is the "Model of the Investigation" by involving elements of Case Type, Case category, Criminal Threat, Age of child, community investigation from Bapas, Family and community involvement. This model is dominantly applied considering that, if an agreement does not occur, the case of a child committing a crime can easily be followed by an investigation according to the Criminal Justice System, or the case of a child being returned to the Criminal Justice Process by the Police.

## **V. Closing**

### **1. Conclusions**

- a. The model of implementing Restorative Justice in handling children in conflict with the law (CCL) requires a sustainability strategy that is based on situations and conditions (strengths, weaknesses, opportunities and challenges) that are owned and faced by the Police in the Land of Timor, as well as data, as an opening insight for revised the restorative justice application model for CCL that has been found, namely the "restorative justice application model prior to investigation (not using diversion)" and "the restorative justice response model at the investigation stage (using diversion)" so before applying the revised model then the mainland police force needs to correct and improve and understand its potential to increase its potential or minimize the problems and challenges faced.
- b. The revised model of the application of restorative justice in the handling of CCL, built based on input in the simulation model that has been found. The simulation results found that, the revised model must pay attention to the type of case, category of case, criminal threat, age of child, community investigation from Bapas, family and community involvement. Based on this input, in handling cases of children in conflict with the law through restorative justice, the police on the mainland of Timor do not only look at the process of handling children with diversion in general but specifically include the mandatory elements mentioned above so that the best interests of children can be realized, especially the recovery of victims, perpetrators and Public.

### **2. Suggestions**

- a. Simulation Results of the Implementation of the AKH Management Model based on restorative justice by the Police on the mainland of Timor involving perpetrators and families, victims and families, all components of the community / religious leaders/ public figure, related agencies and social institutions, child companions, professional social workers, social welfare workers, by therefore we need a common perception of this

implementation model, through socialization, training and problem-based coordination efforts for each component in responding to the CCL problem.

- b. The results obtained at this simulation stage require follow-up activities, it is necessary to conduct a study on the application of the revised model in order to get an answer regarding the effectiveness of the implementation of restorative justice models in handling children in conflict with the law in the resort police / city resort police of East Timor.

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