



Legal Analysis of the Handling of the Crime of Child Abduction by Investigators

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Abstract: This article aims to discuss whether the handling of the crime of kidnapping children by investigators at the Gorontalo City Police is following applicable regulations and the obstacles faced by investigators in handling the crime of kidnapping children in Gorontalo City. This research uses empirical research, and data sources are obtained from primary data and secondary data with observation and interview research methods as primary or primary data. In contrast, secondary data consists of laws and regulations, scientific works, and other relevant sources. This research was conducted at the Gorontalo City Police Station, with the primary respondents being Gorontalo City Police Investigators. The results showed that the handling of the crime of child abduction by Gorontalo City Police investigators was carried out using a restorative justice approach as an alternative to dealing with the crime of child abduction. Meanwhile, in carrying out their duties, investigators certainly experience obstacles such as internal and external constraints.

Keywords : Child Kidnapping Handling; Restorative Justice; Investigative Obstacles.

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How to cite (Chicago Style) :

Siti Meylan Bukusu. "Legal Analysis of the Handling of the Crime of Child Abduction by Investigators" *Estudiante Law Journal* 6 (2), (June 2024): 539-548.

<https://doi.org/10.33756/eslaj.v6i2.16253>

1. Introduction

A criminal act is an act that can be subject to sanctions for the perpetrator who commits the crime. Sanctions against perpetrators of criminal acts have been regulated in various formulations in criminal law. According to Muljanto, one of the things regulated in criminal law is what a person can and cannot do. In the sense that a crime is an act that is not permitted by law, especially criminal law, because it causes harm to the victim who experiences it.

In the discussion of this crime, it is devoted to child abduction. Where the case of the act of kidnapping children is a case that is familiar in the community because this can harm the child or the parents of the child who is the victim of the child kidnapping. Children are the generation that will continue the continuity of a group of people in the future. In addition, children are claimed to have a strategic role for a country in the future. So this needs to get more attention from the whole community.

In addition, referring to the formulation of norms in Law no. 23 of 2002 concerning Child Protection, which was also amended by Law no. 35 of 2014 concerning amendments to the Child Protection Law, the act of kidnapping children is formulated as a form of crime against children (criminal acts). This can disturb the child's mentality and even cause trauma. Rika Saraswati, explained that children are people who are not yet capable enough to protect themselves from various actions that are considered to be able to traumatize them mentally and socially. Therefore, children need to get overall protection from actions that can harm children, especially child abduction. In addition, children are a group of people whose rights and obligations are regulated explicitly in a law-level regulation, namely the Child Protection Law.¹

In 2020, the crime of child abduction experienced a higher increase than before. The commissioner stated this. The National Commission for Child Protection, Arist Merdeka Sirait, told the Jakarta Tribune. However, when confirmed, he did not explain in detail the number of cases nationally and how many children were abducted.

In Gorontalo City, the abduction of children has also been rampant in recent years. In 2019, there was one case regarding the abduction of minors. According to the results from ligo.id, the kidnapping case began with the introduction of a 17-year-old victim with a 30-year-old perpetrator via social media. In a statement written by ligo.id, kidnapping or taking underage victims out of the area is accompanied by sexual abuse of the victim. The victim's family reported this matter to the Gorontalo City Resort police.²

¹ Andi Setiawan, "Analisis Perlindungan Hukum terhadap Anak Korban Penculikan oleh Tenaga Pendidik di Lampung Selatan," 2019, <http://digilib.unila.ac.id/id/eprint/58246>.

² DEVI LIA NINDI SAFITRI, "PERAN KEPOLISIAN DALAM PENANGGULANGAN TINDAK PIDANA PENCULIKAN ANAK (Studi pada Kepolisian Resor Kota Bandar Lampung)," 2019.

In addition to the evidence above, complaints or reports to the Gorontalo City Police Resort (in the future abbreviated as Polres Gorontalo Kota) regarding reports of missing persons and taking people away/abductions carried out by the perpetrators of kidnapping or taking people away. The following is data on the number of cases of missing people/taking people away (kidnapping) that report to the Gorontalo City Police:

Tabel 1. Data on the number of cases of carry-away/kidnapping crimes in the jurisdiction Polres

Year's	2018	2019	2020	2021
Case's	4	5	0	1

Sourcer:

Gorontalo City Police, 2021.

The data above shows that the number of cases regarding people carrying and abducting people, which are believed to be minors in the last 4 (four) years, has decreased since 2018. However, as explained earlier, it is not how many complaints or cases of taking people to run away, but how intense the actions to deal with cases of people carrying and kidnapping children that have been rampant in recent years.

Thus, the police are trying to overcome this kidnapping issue to enforce the law and serve the community's interests. In principle, the police have the right to process these cases legally by arresting, detaining, and even various other forms of law enforcement. Therefore, to overcome criminal acts, especially kidnapping, the police have full right to eradicate as law enforcement agencies. For this reason, it is necessary to conduct this research to determine whether the criminal act of kidnapping children carried out by investigators is following applicable rules and what obstacles investigators will face in handling the crime of kidnapping children. This is because children are the next generation of the nation as well as young seeds which carry the hope of national renewal. Moreover, the existence of children gets special attention from the state in various laws and regulations.

2. Method

This research uses empirical and normative methods in Gorontalo City Police Resort to prevent child abduction. The sample was purposively selected from local police investigators. Data collection techniques include observation, interview, and documentation. With a descriptive analytical approach and qualitative analysis, this research examines criminological theories, analyzes the causes of the increase in drug abuse, and proposes solutions through a case study approach.³

3. Handling the Crime of Kidnapping by Investigators at the Gorontalo City Police Station

³ Zainuddin Ali, *Metode penelitian hukum* (Sinar Grafika, 2021).

Investigators are police officers who are authorized by the Criminal Procedure Code to enforce the law in criminal cases, including the crime of kidnapping children. The authority includes examining people suspected of having committed a crime. In handling the crime of kidnapping children in the jurisdiction of the Gorontalo City Police, several forms of legal handling are carried out by the Gorontalo City Police, and investigators in particular. According to the results of an interview with one of the investigators at the Gorontalo City Police, Brigadier Alhidayat Abas, regarding the question of how the handling the crime of kidnapping children by Gorontalo City Police in dealing with the crime of child abduction, stated as follows :

"If we are investigators, then we have received it as a report. For prevention, it is more to the function of Binmas (Community Development Unit). So for prevention efforts, it is more up to Binmas to handle it by conducting socialization in schools, campuses, and others."

Especially for police investigators, in handling criminal cases, it refers to the provisions of the National Police Chief No. 6 of 2019 concerning Criminal Acts of Investigation, which in handling criminal cases, including criminal cases of child abduction, is carried out following the provisions of the National Police Chief, that investigators handle cases of child abduction when there is an official report from the complainant. Apart from the general procedures, the investigators also took other steps, one of which was to use a restorative justice approach model. Restorative justice is one of the alternative criminal justice systems used to prioritize the rights of the parties involved (victims and perpetrators).⁴

Investigators at the Gorontalo City Police, as respondents in this study, conveyed in interviews that in dealing with the crime of kidnapping children, what will be done is to begin with conducting an investigation first by looking for anyone who knows about the crime of kidnapping in question to find the point. He explained. However, restorative justice may also be used to handle the crime in question. The principle is that the handling of the criminal act of kidnapping children by the Gorontalo City Police Unit always refers to the existing regulations, both in the Criminal Procedure Code, the Police Law, and other regulations.⁵

Gorontalo City Police, in dealing with the crime of kidnapping children, refers to the National Police Chief No. 6 of 2019 concerning Criminal Investigation. In the provisions of the regulation, it is explained that the process of handling a criminal act

⁴ Dinda Rahma Mautiayu, "Pelaksanaan Perlindungan Bagi Anak Korban Penculikan di Wilayah Polrestabes Surabaya" (PhD Thesis, UPN Jawa Timur, 2021), <https://repository.upnjatim.ac.id/2589/>.

⁵ Aroma Elmina Martha dan MH SH, "Pertanggungjawaban Pidana Terhadap Penculikan Bayi di Rumah Sakit," 2020, <https://dspace.uui.ac.id/handle/123456789/31247>.

can be carried out in predetermined stages. In addition, in the formulation of the Perkapolri, there is another provision that the handling of a particular crime can be resolved by means of restorative justice. As stated in interviews with the following respondents:

"There is. It has reached the stage of transferring files to the prosecutor's office. Because we have completed the case file, we will submit the case file and the suspect or stage two. So if you get to stage two (transfer of files and handing over the suspect to the prosecutor's office), there is. There is (also) that we resolve by means of mediation (or) we resolve with restorative justice."⁶

The material requirements include not causing unrest in the community, not having an impact on social conflict, and limiting principles. Meanwhile, the formal requirements include a letter of application from both parties (the reporting party and the reported party), a deed of consent, an examination report, and a recommendation for a special case in which the perpetrator does not object. Regarding the conditions as above, that one of the conditions is an agreement by the parties, this is also always fulfilled, as stated by the Gorontalo City Police investigator in the interview as follows:

"Yes. There is a path of peace too. The way of peace is also automatically a statement, and the name is a statement not only on one side. Because a joint statement means there is a mutual agreement. That is why I said earlier that we would finish with restorative justice. We do mediation. Suppose there is a meeting point, okay? If there is no agreement, then we will process it according to the procedure."

In another study, Dijan Widijowati, and Restu Adhie Charisma found that in the Criminal Procedure Code, no conditions explain the termination of an investigation based on the existence of peace by the parties. However, according to him, although there are alternative settlements based on the interests of the parties, police investigators as people are given the authority, one of which is to make legal discoveries in the form of decisions about whether an investigation into a criminal case is continued or not. This indicates that the alternative settlement (restorative justice) can be determined by the investigator without ignoring the principles of restorative justice and the mechanism of restorative justice as regulated by the National Police Chief on Criminal Investigation.

From the description above, it can be seen that investigators in certain cases can decide whether or not an investigation into criminal acts, especially child abduction, can be carried out. The handling of the crime of kidnapping children by Gorontalo City Police investigators who use methods outside the judicial system, in general, is not wrong. However, of course, with a restorative justice approach, the imposition of laws for perpetrators is no longer a priority because restorative justice will focus on how to fulfill the rights of victims and perpetrators as well as the community. In addition, restorative justice to be applied to the parties, especially to the perpetrators, must not

⁶ Andi Dadi Mashuri Makmur dan Andi Wahyuddin Nur, "Problematika Penyidik Polres Wajo Dalam Penanganan Tindak Pidana Yang Dilakukan Oleh Anak," *Legal Journal of Law 2*, no. 1 (2023): 16–33.

ignore the mandate of the material criminal law that the crime of kidnapping children is a crime that robs minors of their independence.⁷

Referring to the formulation of the provisions of Article 83 of Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection, the criminal threat that can be imposed on kidnappers is a minimum of 3 (three) years and a maximum of 15 (fifteen) years. On the other hand, also referring to the National Police Chief No. 6 of 2019, in carrying out restorative justice, material requirements must first be met, the point being that the crime committed is not serious and can still be resolved in a familial way, and must also meet the formal requirements. Namely, there is an agreement between the parties in it.

Restorative justice as an alternative settlement of criminal cases of abduction of minors is almost common in various regions. In fact, in the research conducted by Islah et al., he explained in his study that one way or alternative for resolving criminal cases of kidnapping against minors is to continue to provide customary criminal sanctions (without sanctions from criminal courts in general) to perpetrators. Moreover, they were continued by marrying both parties. This indicates that mediation is a fairly good path to take by considering things that are felt to positively impact the parties. Because as found in the research of Monica Margaret and Rizky Ihsan, he stated that children are very vulnerable to being victims of a crime (victim of crime), becoming objects of castration, and neglect of children's rights. This is because children are considered unable or powerless to protect themselves. Furthermore, he also emphasized that especially girls are very vulnerable to rape and sexual abuse. Protection of women from crimes of decency is regulated in the Criminal Code Chapter XIV concerning crimes of decency which is the basis of criminal law. Criminal law determines a prohibited act as a crime and the threat of criminal sanctions for the perpetrator. Protection guarantees must also be given to children's potential, which must be developed as well as possible and protected from acts of violence and discrimination so that children's constitutional rights are guaranteed and fulfilled to live, grow, develop, and participate optimally according to their abilities.⁸

Cases that occur for girls who are still underage should be a reference for investigators at the Gorontalo City Police when applying a restorative justice approach for the parties involved. This is because kidnapping, as intended, is accompanied by an act of rape, which of course is also a criminal act as stipulated in Article 328 of the KHUP and, more specifically, Article 83 of the Child Protection Law, where the criminal threat is dozens of years in prison. However, in several cases, the crime of kidnapping often has a kind of confusion that the kidnapping is based on consensual feelings because they are a dating couple. This will certainly create a kind of obstacle for the

⁷ Moch Amron Jayadima, "Implementasi Diversi Dalam Turut Serta Penculikan Anak Perspektif Hukum Pidana Positif Dan Hukum Pidana Islam (Analisis Putusan Nomor 9/Pids. Sus-Anak/2019/PN. Trk)." (B.S. thesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta), diakses 18 Desember 2024, <https://repository.uinjkt.ac.id/dspace/handle/123456789/76142>.

⁸ Satrio Nur Hadi dan Dina Haryati Sukardi, "Analisis Kriminologi Terhadap Tindak Pidana Perdagangan Anak Di Bandar Lampung (Studi Kasus di Polda Lampung)," *Ganaya: Jurnal Ilmu Sosial dan Humaniora* 3, no. 2 (2020): 314–25.

legal process of criminal kidnapping cases involving underage girls as victims. This is also based on the confession of the Gorontalo City Police investigator in an interview: "If my experience was reported as a kidnapping (criminal act), there were also those who reported carrying away. However, after we investigated, it turned out that they are usually dating. But maybe because there is no blessing from parents, or maybe there are other reasons. For example, their parents said that my child should be sent to school first, but yes, the names of the two people (the perpetrator and the victim) already like each other."

Although there is a mutual love between the perpetrator and the victim in the crime of kidnapping minors, investigators must not ignore the fact that when a girl who is still underage becomes a victim of a criminal act of kidnapping or running away. Child abduction, which is handled in a way, one of which is restorative justice, must be reconsidered by referring to the provisions of the formulation in various laws and regulations, especially the Child Protection Law, that children have universal rights as part of human rights, so it is obligatory to protect. In line with that, it is necessary to guide children to foster an attitude of legal awareness in them. The most important thing is to realize his mistake, with the hope that cases like this will not happen again in the future.

The handling of the crime of kidnapping children, which is always carried out by investigators at the Gorontalo City Police, should still refer to what has been formulated in various criminal law formulations, and the practice of the program must also consider the requirements for restorative justice in the form of material requirements and formal requirements are. Furthermore, if you look at the contents and provisions of the National Police Chief No. 8 of 20121 concerning Handling of Crimes Based on Restorative Justice, it can be seen that the application of restorative justice is not for criminal acts, which include criminal acts of corruption, crimes against people's lives. In this case, the case referred to by the researcher means that restorative justice may be applied.

The conclusion is that handling the crime of kidnapping children by the Gorontalo City Police, one of which uses the restorative justice method, must not ignore the rights of each party (victim and perpetrator). The perpetrator should still be held accountable for his actions because he has violated the provisions of the legal norm (Article 76F of the Child Protection Law), which in essence, has caused harm to the victim, who is still underage. In addition, the handling of the crime of kidnapping children using a restorative justice model must involve the community as an integral part of the legal process.

The handling of the crime of kidnapping children in Gorontalo City by Gorontalo City Police investigators is not fully following applicable legal provisions, especially when viewed from the rights of children as individuals who are vulnerable to treatment that is not justified according to legal norms. Therefore, handling the criminal act of kidnapping children using a restorative justice approach must not ignore the legal consequences of the criminal act of kidnapping children,, which is an unlawful act

committed by the perpetrator. However, it is possible that in carrying out the duties of the investigator at the Gorontalo City Police, there are certainly some obstacles that will be discussed later.⁹

4. Obstacles Faced by Investigators in Handling the Crime of Child Abduction in Gorontalo City

1. Internal constraints

Internal constraints here can be understood as obstacles that occur directly from the Gorontalo City Police investigators. Obstacles or obstacles as experienced by investigators at the Gorontalo City Police are not varied enough; where in the interview, the investigator stated the following:

"Perhaps if I am an assistant investigator, my problem when handling (child abduction crimes) here is usually not knowing who the report is; that will be an obstacle for us. There are times when reports from A are missing, suddenly in the end after it turns out to be a boyfriend or someone else. Usually, it's because someone reported it: Sir, my child, has been kidnapped. Suddenly, after we investigated, it turned out that, for example, the one who reported the wife, after we investigated it turned out to be her father, so it can't be because there are child custody rights for both (father and mother)."

As for the obstacle, the investigator team often does not know who the perpetrator is before further processing is carried out,, which will later determine whether the perpetrator is the child's parent or the girlfriend of an underage girl. However, according to the researcher, this is normal due to handling child abduction crimes. In the investigation process, it will only be known whom the reported person will later become a suspect in the case. Therefore, the effort to overcome crime is continuous and continuous, and there will not even be a final effort.

2. External Constraints

External constraints are obstacles that occur outside of the investigators at the Gorontalo City Police. Based on the results of the previous interview, which the investigator explained, other obstacles experienced by his party were caused by the relationship between the perpetrator and the victim. Where when the report was received from the complainant, it turned out that the person who carried out the kidnapping was someone who had a special relationship: be it the child's parents, father or mother, or in other cases, the person who committed the crime of kidnapping was the girlfriend of the victim. This is certainly a serious obstacle, considering the special relationship with the victim. This can be understood as an obstacle beyond what was experienced directly by the investigators at the Gorontalo City Police.

⁹ Diva Justicia Ferdiansyah, "Optimalisasi Penerapan Restorative Justice Oleh Penyidik Dalam Penanganan Tindak Pidana Kekerasan Dalam Rumah Tangga Di Wilayah Hukum Polres Sukoharjo," *Advances in Police Science Research Journal* 1, no. 5 (2017): 1649–1700.

However, if the kidnapping case is carried out by the victim's girlfriend, then the legal process should continue as it should. Because the act of kidnapping, which can be understood as an act of carrying away an immature woman without the will of the victim's parents, can still be threatened with criminal sanctions according to the Criminal Code. Therefore, no reason was found by the researcher regarding the abolition of sanctions for the crime of kidnapping children. According to the Criminal Code, criminal acts that cannot be imposed are criminal acts of overmatch, noodweer, and office orders. Because of that, the criminal prosecution process for the perpetrators, as stated in the interview about what is an obstacle for investigators, should still be processed even though the perpetrator is the girlfriend of the victim.¹⁰

On the other hand, if the perpetrator of the kidnapping is the victim's girlfriend, this can weaken the legal process. Thus this can become one of the obstacles for investigators, moreover, by using a restorative approach that prioritizes the rights of the parties (victims and perpetrators) who are emotionally bound (dating couples). Such a thing will certainly lead to a kind of confusion in the process of handling criminal acts for the perpetrators and victims who are dating partners. The victim (a minor girl) will certainly not be willing if the perpetrator (the victim's boyfriend) is punished for his actions of running away or kidnapping the victim.

5. Conclusion

Based on the discussion regarding handling criminal acts by Gorontalo City Police investigators regarding child abduction in the Gorontalo City area, the law is carried out using general criminal justice methods and special methods. Such as the restorative justice approach as an alternative form of handling the crime of kidnapping minors. However, in carrying out the duties of the Gorontalo City Police investigators, of course, there are obstacles, such as internal and external constraints. The internal constraints come from the Gorontalo City Police Investigators, while the external ones come from the concerned parties.

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¹⁰ GIFFARI ALIF ETRINANDA, "Tindak Pidana Penculikan Anak Yang Dilakukan Oleh Pembantu Rumah Tangga (studi Kasus Di Wilayah Hukum Kepolisian Resor Kota Jambi)" (PhD Thesis, Universitas BATANGHARI Jambi, 2023), <http://repository.unbari.ac.id/id/eprint/3319>.

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