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Implementation of Restorative Justice in Criminal Cases in Indonesia

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Abstract

Restorative justice has received attention in settlement of criminal cases in Indonesia. The settlement of cases in restorative justice has not been regulated in the Criminal Code and the Criminal Procedure Code. This concept is only regulated through regulations set by law enforcement agencies in the criminal justice system. The question of this research is how to implement restorative justice in solving cases in Indonesia? What is the model of restorative justice in the regulations and applied to customary law communities in Indonesia? This research is a doctrinal or normative legal research method. Restorative justice has been implemented in indigenous peoples in various parts of Indonesia, such as the Balinese indigenous peoples, the Bajawa indigenous peoples, Flores East Nusa Tenggara, the Lampung indigenous peoples and the Karo Batak indigenous peoples. The model of restorative justice that the Indonesian people have practiced is known as the Safeguard System. A model designed to handle case resolution through a restorative approach. Communities have various restoration programs as the primary means of dealing with various problems. The concept of restorative justice, applied in investigation, prosecution and court, adheres to a dual-track system model. This model is an alternative companion to the criminal justice system. The conflicting parties will be given the freedom to choose how to settle criminal cases. If the efforts through the restorative approach are successful, the settlement through the criminal justice system will be abolished.

Keywords: Restorative Justice and Criminal Cases

1. Introduction

Restorative justice has received attention in settlement of criminal cases in Indonesia. The concept of case settlement in restorative justice has not been regulated in the Criminal Code and the Criminal Procedure Code. The concept of restorative justice has been regulated in Law Number 11 of 2012 concerning the Criminal Justice System against children. This law has implications for the settlement of children's cases with a peace agreement from the parties, namely the perpetrators, victims and the community. Regulations on restorative justice for ordinary crimes have begun to be accommodated at the level of investigation, prosecution, and court regulations in the criminal justice system.

Restorative justice at the investigation level is regulated through the Letter of the Chief of the Indonesian National Police Number.pol.B/3022/XII/2009/SDEops, dated 4 December 2009 regarding Case Handling Through Alternative Dispute Resolution (A.D.R.). Then it was followed up through the Letter of the Head of the Criminal

Investigation Agency of the Republic of Indonesia Number. ST110/V/2011 dated 11 May 2011 concerning Guidelines for the Implementation of Alternative Dispute Resolutions in the Criminal Investigation Division of the Indonesian National Police. Furthermore, the Letter of the Head of the Criminal Investigation Agency Number. STR/583/VIII/2012 dated 12 August 2012 concerning the Concept of Restorative Justice and Circular Letter SE/8/VII/2018 dated 27 July 2018 concerning the Application of Restorative Justice in settlement of Criminal Cases. In 2019, the National Police of the Republic of Indonesia stipulated Regulation of the Chief of the Indonesian National Police (P.E.R.K.A.P.) No. 6 of 2019 concerning Criminal Investigations, which regulates restorative justice (Poeloengan, 2021).

Regulation on restorative justice at the prosecution level through the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on restorative justice. While at the court level through the Decree, the Supreme Court Director-General of the Republic of Indonesia Np.1691/D.J.U./PK.00/12/2020 concerning the Enforcement of Guidelines for the Implementation of Restorative Justice.

2. Problem Statement

Although there have been provisions for the concept of restorative justice for ordinary crimes, not all crimes can be resolved with restorative justice. The research results from the Indonesian Central Statistics Agency show the high number of criminal case settlements in the 33 Regional Police in Indonesia, in 2017 of 62.99%, in 2018, of 64.94% and 2019 an increase of 68.17%. (<https://www.bps.go.id>, 2021) Pujiyono, (2019) in his professorship inauguration speech, proposed to find a model of settlement with restorative justice in the criminal justice system in Indonesia. Based on the description above, the problems in this research are; How is the implementation of restorative justice in solving cases in Indonesia? Furthermore, what is the model of restorative justice that is in the regulations and applied to indigenous peoples in Indonesia?

3. Research Objectives

The object of the study is the legal reality in the form of Regulation of the Chief of Police of the Republic of Indonesia Number .6 of 2019 concerning Criminal Investigation and Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and Decree of the Director-General of the Supreme Court of the Republic of Indonesia Np.1691/DJU/PK.00/12/2020 concerning the Enforcement of Guidelines for the Implementation of Restorative Justice.

4. Literature Review

Braithwait (2002) argues that the concept of justice has developed and been practised in the traditions of ancient Arab, Greek, and Roman civilizations that accept a restorative approach to solving problems even to the crime of murder. The term used is not restorative justice but if this concept has been put into practice. The history of civilization also shows that a restorative approach was also practiced by Indian Hinduism and the Buddhist, Taoist and Confucian traditions that North Asia influenced. The famous motto is "he who atones is forgiven." It means he who redeems is forgiven. (Braithwait, 2002).

Albert Eglash is a psychologist who first initiated restorative justice in 1977 (James Dignan, 2005). Eglash argues, there are three (3) categories of the criminal justice system. The first is concerned with "retributive justice," in which the primary emphasis is on punishing offenders for what they have done. The second relates to what he called "distributive justice," in which the primary emphasis is on the rehabilitation of the offender. The third is concerned with "restorative justice," which he broadly equals with the principle of restitution (James Dignan, 2005). If interpreted, the main emphasis of "retributive justice" is to punish the perpetrators for what they have done. The main emphasis of "distributive justice" is on the rehabilitation of perpetrators. Whereas "restorative justice" is broadly equated with the principle of restitution.

Joshua Drassler (2002) emphasized that restorative justice emphasizes the importance of the role of crime victims and community members, holding offenders directly accountable to the people they have violated. Restoring victims' emotional and material losses and providing a range of opportunities for dialogue, negotiation, and problem-solving can lead to a greater sense of community safety, conflict resolution, and closure for all involved (Joshua Drassler, 2002). Dressler's concept of restorative justice is the importance of the role of victims and community members to encourage perpetrators to be responsible to victims, restore emotional and material losses to victims, encourage dialogue or negotiations to resolve problems that have occurred to save communities from prolonged conflicts.

The concept of restorative justice is in line with Braithwaite's reintegrative Shaming proposed by the idea that reintegrative Shaming is that disapproval is communicated within a continuum of respect for the offender. A fundamental way to show respect is to be fair, listen, empower others with process control, and refrain from bias based on age, sex, or race. More broadly, procedural justice communicates respect (John Braithwaite, 2002). Reintegrative Shaming can be interpreted as disapproval or rejection, which is then communicated with full respect to the perpetrator for the violation he has committed. The key to showing respect is fairness, listening, empowering others by monitoring the process and refraining from age, gender or race bias. More broadly, procedural fairness is communicating respect.

Howard Zehr, known as the architect of the development of restorative justice, stated that restorative justice is a process to involve the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible (Muladi and Sulistyani, 2010). Restorative justice is a process to involve, as far as possible, those who have an interest in a particular offense and to identify and address the harm collectively, need, and liability, to heal and put things in the best possible way.

Merkel Meadow (2007) stated that restorative justice is the name given to various practices, including apologies, restitution, and acknowledgments of harm and injury and other efforts to heal and reintegrate offenders into their communities, with or without additional punishments. Restorative justice usually involves direct communication, often with a facilitator of victims and offenders, often some or complete representation of the relevant affected community (Meadow, 2007). Restorative justice is a concept practiced in many different ways, including apologies, restitution and confession of guilt, and efforts to heal and reintegrate perpetrators into society again with or without additional punishment. Restorative justice usually involves direct parties in the community with facilitators, victims, perpetrators and some representatives of the community or society as a whole affected.

5. Methodology

This scientific paper is doctrinal legal research, which conceptualizes law as a norm with a scope, *ius constituendum*, *ius continuum* and judge-made law (Wignyosoebroto, 2002; Suteki, 2017). This legal research is descriptive-analytical, which uses secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials, as binding legal materials, consist of regulations regarding restorative justice established by law enforcement agencies. Secondary legal materials consist of textbooks, expert opinions, research results, and seminar results. At the same time, tertiary legal materials are legal materials that support primary and secondary legal materials, including print media, online media, encyclopedias and other tertiary legal materials. All data are collected, processed, and then analyzed qualitatively to find hidden meanings behind the object to be studied.

6. Data Analysis

The list of criminal acts in 2017-2021 successfully pursued by restorative justice in the Police, Prosecutors and Courts is shown in the following table.

No	Origin of the case	Number of Cases	Types of criminal acts or laws violated	Restorative Justice Settlement
1	Gorontalo High Court	4 cases	Violation of Article 80 paragraph (1), Article 82 paragraph (1) of the Child Protection Act, Article 170 paragraph (1) of the 2nd Criminal Code, and Article 351 paragraph (1) of the Criminal Code	Two (2) cases were successfully diverted at the investigation level, 1 case was successfully diverted at the court level, and 1 case was S.K.P.P.
2	Lebak State Prosecutor	1 case	Article 80 paragraph (1) of the Child Protection Act	Successfully resolved with restorative justice
3	Bangka Belitung High Court	9 cases	Traffic accidents, criminal acts of abuse, criminal acts of child abuse, unpleasant acts and fiduciary crimes	Successfully resolved the case with restorative justice at the District Attorney's level
4	Manokwari State Prosecutor	1 case	The crime of theft in the family	Successfully resolved the case with restorative justice at the District Attorney's level
5	Dairi District Attorney, North Sumatra	1 case	The crime of defamation	Successfully resolved the case with restorative justice at the District Attorney's level

The author from tertiary legal materials processes the data source.

The table above shows the application of restorative justice at the level of investigation, prosecution and court examination. This study found 16 (sixteen) criminal acts, both criminal acts by child perpetrators with child victims and ordinary crimes in which the perpetrators were adults with children as victims and adults. Based on this number, there are 2 (two) criminal acts that have been successfully implemented by restorative justice at the investigation level. A total of 13 (thirteen) criminal acts have been successfully implemented by restorative justice at the prosecution level. Meanwhile, 1 (one) criminal act was successfully implemented by restorative justice at the court level.

Restorative justice is applied to several criminal acts regulated in the Criminal Code and the Child Protection Act. The types of criminal acts consist of; the crime of theft in the family, the crime of defamation, the crime of traffic accidents, the crime of ordinary molestation, the crime of torture resulting in serious injuries, the crime of violence against children and the crime of molestation against children.

7. Discussion and Conclusion

7.1. Implementation of Restorative Justice in Case Resolution in Indonesia

Restorative justice has been applied to resolve the problem of a brawl between two (2) Vocational High Schools in Tasikmalaya. The mechanism for resolving problems is through the Deliberation and Peace Forum by the Al Fatah Islamic Boarding School and the Islamic Boarding School Silaturahmi Forum based on the principles of Islam taught in Islam (2006). The concept of restorative justice is not a new right in the history of the Indonesian nation. This concept has long been practised through the application of customary law. Its application is to solve problems in society so that harmony and balance are maintained in society. In the indigenous Bajawa community, Flores, East Nusa Tenggara, it has long been known that settlement through an institution called "Babho" (Djawa, 2003; Wangga, 2016). This institution has roles such as the police, prosecutors, and judges in resolving criminal and non-criminal cases, whether the perpetrators are children or adults (Djawa, 2003). The vision promoted by this institution is peace, nurturing, impartiality, embracing all community members, and solving problems thoroughly (Djawa, 2003).

The implementation of restorative justice is also seen in the traditional Balinese community in resolving disputes between residents outside of criminal justice, both between residents (krama) of one Banjar or between different Banjar krama (Natangsa Surbakti. 2012). The concept of restorative justice is also applied in the Lampung Menggala community. The mechanism for resolving disputes among community members is known as the "inherited" customary institution. This institution adheres to a comprehensive settlement scheme for a dispute marked by the agreement of the two disputing parties to forgive each other, forgetting past disputes, make repairs for the losses incurred and the agreement of both parties to acknowledge and consider both parties as brothers (Natangsa Surbakti. 2012).

The Karo Batak community, Langkat Regency, North Sumatra, also has a dispute resolution institution known as "*purpur sage*" (Natangsa Surbakti. 2012). The mechanism for resolving disputes between fellow citizens occurs in a special ceremony accompanied by relatives of each disputing party. An apology marks *Purpur Sage*, a statement of regret and a pledge to improve oneself and not repeat the disgraceful act of the party who has committed the offence. *Purpur Sage* will be achieved when the parties have agreed, reconciled and considered the dispute resolved. The main essence of *Purpur sage* is repairing the damage (restoration) and the realization of the restoration of relations between the two parties (Natangsa Surbakti. 2012).

7.2. Restorative Justice Models in Indonesian Regulations

Various communities in Indonesia have applied restorative justice that has been described in the previous section. In its development, law enforcement agencies in Indonesia began to regulate restorative justice at the stage of Investigation, Public Prosecutors and Courts. Restorative justice at the investigation level is regulated through the Chief of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigations. This regulation regulates several materials and formal requirements to apply restorative justice at the investigation and investigation level. The material requirements consist of; does not cause public unrest, does not result in social conflict, there is a statement from all parties involved to object and relinquish the right to demand it and has a limiting principle.¹ While the formal requirements include; a letter of request for reconciliation by both parties (the reporting party and the reported party), a statement of reconciliation (*akte dading*) and the settlement of disputes between the litigants (the reporting party and the reporting party's family, the reported party and the reported family and representatives of community leaders) are known to the investigator's superiors. Other requirements are minutes of additional examination of the litigating parties, after the settlement of the case through restorative justice, recommendation of a particular case title that approves the completion of restorative justice and the perpetrator does not object and is carried out voluntarily responsibility and compensation.

The concept of restorative justice at the prosecution level is regulated through the Chief of the Indonesian National Police Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.² This regulation regulates several considerations that should be considered in terminating prosecutions based on restorative justice, namely; subject, object, category and threat of crime, the background of the crime, level of disgrace, loss or consequences arising from the crime, costs and benefits of handling cases, restoration to its original state and peace between the victim and the suspect. The conditions that must be met so that criminal cases³ can be closed for the sake of law and have their prosecution terminated based on restorative justice are; the suspect has committed a crime for the first time, the crime is only threatened with a fine or is threatened with imprisonment of not more than 5 (five) years, the crime is committed with the value of the evidence or the value of the loss caused as a result of the crime not more than Rp2. 500,000, - (five million five hundred rupiah), there has been a restoration to its

¹The limiting principle consists of; a) on the perpetrator, namely the level of error of the perpetrator is relatively light, namely the error in the form of intentional and the perpetrator is not a recidivist; b) on criminal acts in progress; investigation and investigation before the order for the start of the investigation is sent to the public prosecutor.

²Termination of prosecution based on restorative justice is carried out by considering several things, including; the interests of victims and other protected legal interests, avoidance of negative stigma, avoidance of retaliation, response and community harmony and obedience, decency and public order.

³For criminal acts related to property, it is necessary to have criteria or circumstances that are casuistic according to the considerations of the public prosecutor with the approval of the Head of the District Prosecutor's Office for restorative justice to be carried out. Meanwhile, criminal acts committed against persons, bodies, lives, and independence and crimes committed due to negligence are excluded from restorative justice.

original state carried out by the suspect employing⁴A peace agreement between the victim and the suspect and the community responds positively. Some criminal cases that cannot be carried out by restorative justice are criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly countries and their representatives, public order and morality. Besides that, the criminal case acts threatened with a minimum criminal threat, narcotics crimes, environmental crimes and crimes committed by corporations are also covered. If the victim and the suspect reject the peace effort through restorative justice, the public prosecutor will do that, namely, including in the minutes of the non-achievement of peace efforts, make a memorandum of opinion that the case is transferred to the court by stating the reasons and submitting the case file to the court.

The court institution stipulates the Decree of the Director-General of the General Judiciary Agency of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Enforcement of Restorative Justice Guidelines. Restorative justice as an alternative for resolving criminal cases which in the mechanism of criminal justice procedures focuses on punishment which is converted into a process of dialogue and mediation involving perpetrators, victims, families of perpetrators/victims and other related parties to create an agreement on the settlement of criminal cases jointly fair and balanced for the victims and perpetrators by prioritizing the restoration to its original state and restoring the pattern of good relations in society. The concept of restorative justice outlined in this guideline is for minor crimes, child crimes, women's crimes, and narcotics cases. During the trial, the judge will seek peace and prioritize restorative justice in his decision.

Observing the concept of restorative justice that has been practised by the Indonesian people even though it is only based on customary law, it is a model of restorative justice which Van Ness calls the Safeguard System (Pujiyono, 2016). A model designed to deal with case resolution through a restorative approach, in which restoration programs are used as the primary means of dealing with various problems. The concept of restorative justice, regulated at investigation, prosecution, and court, adopts a dual-track system model (Pujiyono, 2016). Van Ness explained that the dual-track system is an alternative companion to the criminal justice system. The conflicting parties will be given the freedom to choose how to settle criminal cases. If efforts through a restorative approach are successful, settlement through the criminal justice system will be abolished (Pujiyono, 2016). For the future, so there is a common concept of restorative justice in law enforcement agencies, it is necessary to establish laws and regulations that can apply at the investigation, prosecution and court levels.

8. Conclusion

Restorative justice has received attention in settlement of criminal cases in Indonesia. The settlement of cases in restorative justice has not been regulated in the Criminal Code and the Criminal Procedure Code. This concept is only regulated through regulations set by law enforcement agencies in the criminal justice system. Restorative justice at the investigation level is regulated through the Chief of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigations. The concept of restorative justice at the prosecution level is regulated through the Chief of the Indonesian National Police Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The court institution stipulates the Decree of the Director-General of the General Judiciary Agency of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Enforcement of Restorative Justice Guidelines. Restorative justice has been implemented in indigenous peoples in various parts of Indonesia, such as the Balinese indigenous peoples, the Bajawa indigenous peoples, Flores East Nusa Tenggara, the Lampung indigenous peoples and the Karo Batak indigenous peoples. The model of restorative justice that the Indonesian people have practised is known as the Safeguard System. A model designed to handle case resolution through a restorative approach. Communities have various restoration programs as the primary means of dealing with various problems. The concept of restorative justice, applied in investigation, prosecution and court, adheres to a dual-track system model. This model is an alternative companion to the criminal justice system. The conflicting parties will be given the freedom to choose how to settle criminal cases. If the efforts through the restorative approach are successful, the settlement through the criminal justice system will be abolished

⁴Return the goods obtained from the crime to the victim, replace the victim's loss, replace the costs incurred due to the criminal act, and repair the damage caused by the criminal act.

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