



RESTORATIVE JUSTICE AS A PARADIGM FOR HUMANE RESOLUTION OF CRIMINAL CASE

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Abstract:

Efforts to provide legal protection and humane justice for victims of crime and their families, as well as to restore the welfare of perpetrators of crime, are carried out using a restorative justice approach. Currently, this approach is considered quite beneficial for perpetrators of crimes, victims of crimes, and/or their families. Resolving criminal cases using a restorative justice approach provides an opportunity for perpetrators to atone for their wrongdoings toward victims and/or their families through amicable resolution through deliberation and consensus. In this resolution, perpetrators may also be required to provide compensation or restitution to victims or their families. The use of restorative justice is an effort to resolve criminal cases amicably through deliberation to reach a consensus, which aims to restore the victim with the main focus of providing compensation to the victim due to the crime committed by the perpetrator. The use of a restorative justice approach requires active participation involving the parties involved in the settlement process, including the perpetrator, victim, family, and community. Regarding the method used in resolving criminal cases with a restorative justice approach, it can be done using the services of a mediator to encourage dialogue and mediation to reach a fair and satisfactory agreement for all parties

Keywords:

Criminal; justice; deliberation

1. Introduction

Efforts to provide legal protection and humane justice for victims of crime and their families, as well as to restore the welfare of perpetrators of crime, are carried out using a restorative justice approach. Currently, this approach is considered quite beneficial for perpetrators of crimes, victims of crimes, and/or their families. Resolving criminal cases using a restorative justice approach provides an opportunity for perpetrators to atone for their wrongdoings toward victims and/or their families through amicable resolution through deliberation and consensus. In this resolution, perpetrators may also be required to provide compensation or restitution to victims or their families.

Resolving criminal cases using a restorative justice approach is carried out through a process where all parties involved in the crime work together to resolve the problem and address its future consequences or implications. Restorative justice is a process that involves all parties involved in a particular crime working together to resolve the problem and address its future consequences or implications. Restorative Justice also aims to empower the parties, namely the perpetrator, the victim and their family, and the community to correct an unlawful act, by using awareness and realization as a basis for creating and improving community life.

However, the restorative justice approach does not have to be applied to all types of criminal cases. If all criminal cases were resolved using a restorative justice approach, it could actually undermine the authority of criminal law as an instrument for resolving criminal cases. This is because perpetrators of criminal acts will assume that all criminal cases can be resolved amicably. Therefore, the use of a restorative justice approach should be limited to certain types

of criminal cases with light penalties or certain types of crimes that are not considered serious crimes. The use of a restorative justice approach in resolving criminal cases is an effort to realize humane justice, as well as protection for perpetrators and victims of criminal acts and/or their families.

2. Discussion

The recent increase in the use of the restorative justice approach in resolving criminal cases is based on the premise that restorative justice is a criminal case resolution model that is expected to provide justice that prioritizes humanitarian considerations for both the perpetrator and the victim, and/or their family. Restorative justice is an approach that abandons the theory of retribution from the victim to the perpetrator. Instead, the hurtful act is healed by providing support to the victim and requiring the perpetrator to take responsibility, with the assistance of family and the community, if necessary. The restorative justice approach aims to achieve a win-win solution, based on the principle of no winners and no losers.

Restorative justice is an approach that responds to developments in the criminal justice system by emphasizing community involvement and victims who feel marginalized by the current mechanisms. The form of case resolution that is oriented towards restorative justice is expected to accommodate the value of legal benefits, because in the case resolution process it is carried out by involving the parties where the victim who has suffered losses, both material and immaterial, is enabled to reclaim his rights that have been taken away by the perpetrator of the crime, while the perpetrator of the crime can try to fulfill these demands in order to restore the situation.

Restorative justice plays a crucial role as a basis for policymaking in resolving certain criminal cases, as it aligns with the philosophical values of Pancasila, particularly humanity and deliberation. Restorative justice can also reflect the value of substantive justice for victims of crime. The purpose of resolving criminal cases using the restorative justice approach is to create harmony within society. Restorative justice arises when the criminal justice system fails to function as expected from the values of justice. This view is actually inaccurate, as if the restoration justice approach is viewed as a method for resolving criminal cases to achieve justice, restorative justice is an effort to provide a sense of justice to the community when the resolution of criminal cases through the judicial process does not or does not adequately meet societal expectations.

Resolving criminal cases using the restorative justice approach is carried out through a process where all parties involved in the crime work together to resolve the problem of how to address its consequences in the future. Restorative Justice is a process that involves all parties involved in a particular crime working together to resolve the problem and address its future consequences or implications. Restorative Justice aims to empower victims and their families, perpetrators and their families, and the community to correct an unlawful act, using awareness and repentance as a foundation for creating and improving community life.

Criminal case resolution through a restorative justice approach is essentially carried out before the case is processed through the courts. However, in developments, it can be resolved while the case is already being processed by the Prosecutor's Office. In this case, the Prosecutor's Office terminates the prosecution of the case while the case is being processed by the public prosecutor. The Prosecutor's authority to terminate the prosecution is based on the principle of *dominus litis*, which states that the Prosecutor is a state apparatus entrusted with the task and authority by law to enforce the law. In carrying out their duties and functions, the Prosecutor is authorized to determine whether or not a criminal case can be brought to court. Furthermore, the Prosecutor may also terminate the prosecution based on the principle of opportunity or the principle of prosecutorial discretion. This principle provides the basis for Prosecutor's ability to resolve criminal cases outside the courts using a restorative justice approach.

The principle of *dominus litis*, also recognized in several countries such as Japan, the Netherlands, and France, holds that the authority to prosecute is a monopoly of the Prosecutor. Based on the principle of *dominus litis*, the prosecutor has the authority to control the case, in the sense that the prosecutor can continue or stop the process of the case being handled, to continue or not to continue the criminal case process to the court. The prosecutor's authority to stop the prosecution is then known as the prosecutor's discretion. However, the prosecutor's discretion, which has the authority to prosecute, in making an indictment that can have a deterrent effect on the perpetrator with the punishment charged by the public prosecutor while still fulfilling the perpetrator's rights.

While the use of a restorative justice approach in resolving criminal cases offers hope for justice and prioritizes humane aspects, it still presents serious challenges. Among these is the widespread criticism of the restorative justice

approach within the criminal justice system, a reality that society must confront. This criticism is based on several detrimental facts, such as trials that are often lengthy, expensive, and complicated, and are often considered inadequate to meet the public's sense of justice. As a system, many factors contribute to the ineffectiveness and inefficiency of law enforcement, legislation, and community legal customs and culture.

Furthermore, the use of a restorative justice approach in resolving criminal cases in Indonesia remains fraught with weaknesses. One of these is the lack of clear legislation, particularly within the law. To address this legal gap, Prosecutor's Office Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice was issued. The Prosecutor's Regulation is a policy that places the Prosecutor in a strategic position and role in the law enforcement process within the framework of an integrated criminal justice system as master of process/*dominus litis*, one of whose functions is to select criminal cases and determine whether or not a criminal case can be forwarded to court proceedings.

The policy of discontinuing prosecution must be implemented by considering three legal objectives: justice, expediency, and legal certainty. The policy of discontinuing prosecution based on restorative justice, as outlined in Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Discontinuing Prosecution Based on Restorative Justice, represents a legal breakthrough by the Prosecutor's Office, granting prosecutors discretionary authority to discontinue prosecution and resolve criminal cases through a restorative justice approach.

Proper resolution of criminal cases cannot be achieved solely on the intellectual intelligence of law enforcement officials, particularly the Prosecutor's Office as the prosecution agency. It must also be grounded in spiritual intelligence, determination, empathy, dedication, commitment to the nation's plight, and the courage to seek alternative paths. Because the resolution of criminal cases is directly related to the fate of the perpetrator, any error in considering all aspects of the criminal act by the Prosecutor's Office will have a detrimental impact on the perpetrator. In this regard, the restorative justice approach in enforcing criminal law is expected to be a wise alternative solution in order to provide a guarantee of balance between the interests of victims and perpetrators of criminal acts in a comprehensive manner that is not only based on formal laws alone.

To further clarify the prosecutor's authority to terminate a prosecution, a reconstruction of the prosecutor's authority is necessary, by interpreting the norms of Articles 4 and 5 of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, which is an effort to achieve reconciliation between the perpetrator of a crime and the victim. To support the use of a restorative justice approach and avoid criminal prosecution, the prosecutor's office must continuously take the necessary persuasive steps to ensure that the perpetrator, victim, and their respective families can obtain justice and restitution.

Article 1, number 1 of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice states that: Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator's family, the victim's family, and other involved parties in collaboration to achieve a just resolution, focusing on restoring the original situation rather than retaliation.

When the Prosecutor refuses to discontinue prosecution based on restorative justice, the Prosecutor must remember or consider the points mentioned in Article 4 paragraph (1) of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The termination of prosecution by the Prosecutor is listed in Chapter 4 concerning Peace Procedures as an effort to terminate prosecution.

To use a restorative justice approach, both parties must agree to reach peace and resolve Restorative Justice outside of court rather than criminalizing the perpetrator of the crime because the agreement was made before they entered the court.

According to Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the peace process is a process carried out voluntarily through deliberation, without pressure or threats from the perpetrator or victim. The Prosecutor assists both parties in the case to reconcile, thus creating a peaceful settlement outside of court. In an effort to optimize the resolution of criminal cases with a restorative justice approach, the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice requires education and training, as well as technical guidance, on the use of the restorative justice approach. This is regulated in Article 16 of the Prosecutor's Office Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.

The enactment of Prosecutor's Regulation Number 15 of 2020, which grants prosecutors the authority to terminate prosecutions based on restorative justice, represents a breakthrough in criminal case resolution. Restorative justice is an approach to resolving criminal offenses that is currently being widely advocated in various countries. Through a

restorative justice approach, victims and perpetrators of criminal acts are expected to reach reconciliation by prioritizing win-win solutions, emphasizing restitution of the victim's losses and forgiveness of the perpetrator. Termination of prosecution based on restorative justice, as stipulated in Article 4 of Prosecutor's Regulation Number 15 of 2020, can only be done by considering :

1. The interests of victims and other protected legal interests
2. Avoiding negative stigma
3. Avoiding retaliation
4. Community response and harmony
5. Propriety, morality, and public order.

The statement in point 1 of Article 4 Paragraph (1) of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020, in the sentence "The interests of the victim and other protected legal interests", means that the interests of the victim in implementing the resolution of the case through restorative justice emphasize obtaining compensation in accordance with the agreement with the perpetrator of the crime.

Based on the explanation as described above, the termination of prosecution by the Prosecutor's Office, as referred to in Prosecutor's Regulation Number 15 of 2020, can be noted that cases that can be resolved through a restorative justice approach include: minor crimes, such as minor theft, minor assault, or minor damage as regulated in Article 364 of the Criminal Code, Article 373 of the Criminal Code, Article 379 of the Criminal Code, Article 384 of the Criminal Code, Article 407 of the Criminal Code, and Article 482 of the Criminal Code. In addition, also cases involving children, whether as perpetrators, victims, or witnesses of criminal acts, the use of a restorative justice approach can help in the process of recovery and social reintegration of children. In addition, in cases of women in conflict with the law, both women involved in legal cases, both as perpetrators and victims, can be facilitated to obtain justice that is more in favor of recovery. Regarding drug abuse, in several cases of drug abuse or distribution involving the perpetrator as an addict or victim of abuse, in narcotics cases, Restorative Justice can be a solution for rehabilitation and recovery of drug abuse.

3. Conclusion

The use of restorative justice is an effort to resolve criminal cases amicably through deliberation to reach a consensus, which aims to restore the victim with the main focus of providing compensation to the victim due to the crime committed by the perpetrator. The use of a restorative justice approach requires active participation involving the parties involved in the settlement process, including the perpetrator, victim, family, and community. Regarding the method used in resolving criminal cases with a restorative justice approach, it can be done using the services of a mediator to encourage dialogue and mediation to reach a fair and satisfactory agreement for all parties. In addition, the reconciliation method can also be used, which is a method that seeks to restore damaged relationships between the perpetrator and victim, as well as between the perpetrator and the community. Restoration of the original state in the sense that the use of this method aims to return the situation to the condition before the crime occurred, as far as possible.

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