

RESTORATIVE JUSTICE IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM

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ARTICLE INFO

Article history:

Received : Feb 5, 2023

Accepted : Mar 22, 2023

Published : Aug 31, 2023

Keywords:

Restorative,
Justice

ABSTRACT

The development of law enforcement in various countries has led to a settlement approach through non-judicial or *deliberative* mechanisms known as *Restorative Justice*. This is intended so that the handling of criminal crimes obtains a legal balance between the perpetrators and victims of the crime in question, especially in cases that are minor in nature.

This research aims to find out the development of the application of law in society after the development of *Restorative Justice*. Qualitative research methods are used in this research, by looking at data such as research results, laws and regulations, books and documents. The results of the research findings, it can be concluded that the handling of criminal cases through *Restorative Justice* settlement will be most effective if accompanied by the role of law enforcement officials.

INTRODUCTION

In its development, the law has always been regarded as a rigid decision and places a lot of emphasis on the parts of the whole set of laws without seeing the relationship between regulatory studies and the problems to be taken care of. There is a requirement for a legitimate origin that suits the local environment and corresponds to the quality and example of people's lives because rigid or strict regulations will cause different attachments and disputes in people's lives. In order for Indonesia's public regulation to be a satisfactory and versatile regulation, it is necessary to strive to cover the values that still exist and are considered noble by the people.

Victims of crime are usually the most disadvantaged parties as a result of crime, and have not received the legal protection to which they are entitled. As a result, when the perpetrators of crime are sentenced, the plight of the victims of crime always seems to be overlooked. The interests of "crime victims", as Andrew Ashworth argues, are the most important part of crime, according to criminal law and criminology. The conflict between the person who harms the victim, society, and the offender himself is called crime.

Andi Hamzah said, as a result the criminal justice system has a tendency to be offender-oriented, which suggests that it is overly concerned with the rights of the individual who is the subject of suspicion. When discussing human rights issues, the rights of victims are often overlooked in favor of the victims. Victims are denied authority and are not actively involved in investigations and trials, preventing them from fighting for their rights and regaining their lives after committing a crime.

The Criminal Justice System is now a guide that uses a basic systems approach to show how crime prevention is tackled. Romli Atmasasmita quoted Mardjono as saying that the police, prosecutors, courts, and correctional facilities form the criminal justice system, which works to prevent crime. In one side, the concept of case settlement is needed in the criminal justice system with a method or concept that is fair, namely in the context of *Restorative Justice*.

An approach known as restorative justice emphasizes the conditions necessary to achieve balance and justice for both victims and offenders. The goal of restorative justice is to facilitate dialogue between the aggrieved and harmed, those who support them, and the public as a whole.

Currently, almost all offenses within the Indonesian Criminal Justice System are generally sentenced to prison. While imprisonment is not the best way to solve the problem of crime, especially crimes where the harm done to the individual harmed and the public can still be

remedied to restore the harm and remove the ill effects of imprisonment, imprisonment is not the best option. A sentencing model known as *restorative justice* is used to address the problem or offense so that it can be resolved. Criminals or individuals causing harm are sought to repair the damage they caused to the harmed individuals, their families, and the public in this model.

Problem Formulation

- How is *Restorative Justice* applied in legal products in Indonesia?
- What is the idea of *Restorative Justice* in the Indonesian criminal justice system?

Purpose

The purpose of this study, namely:

- Analyze the application of *Restorative Justice* in Legal Products in Indonesia.
- Analyze the idea of *Restorative Justice* in the Indonesian criminal justice system.

RESEARCH METHODS

The method in this research is normative juridical by conducting legal searches, reviewing literature and examining secondary data and studying the provisions of laws and regulations relating to research material.

DISCUSSION

The Application Of *Restorative Justice* In Legal Products In Indonesia Law No. 11/2012 on SPPA (Juvenile Justice System)

The main purpose of this legal product is to ensure that the positive law has quality in its enforcement, both for the party who committed the harm, the harmed individual and for the public, so that in its enforcement it is fair to restore it to its original state, not revenge, which is another definition of *Restorative Justice* in Article 1 point 6 of Law Number 11 of 2012. In this regulation, the methods used should focus on strategies to support equity through diversion or diversion, specifically the resolution of juvenile cases from the beginning through the law enforcement cycle to processes outside of law enforcement.

In its implementation, *Restorative Justice* and the diversion process are supported by facilities and infrastructure, because otherwise it results in slow law enforcement and services so that case settlement becomes longer and longer.

Here are the purposes of diversion:

- Establish peace between the perpetrator and the victim;
- Handling cases of juvenile offenders outside the convention court;
- Preventing the imprisonment of children;
- Encourage community participation in resolving cases of children in conflict with the law;
- Encourage children to take responsibility.

Guidelines for the Implementation of Restorative Justice in Public Courts: Decree of the Director General of Public Courts

Under this regulation, applicable offenses that can be resolved with beneficial justice, particularly minor offenses, are subject to confinement with a time limit of 90 days or a fine of two million five hundred thousand rupiah, which can be applied to cases involving children, women, drugs, and the law.

This regulation is the result of a combination of two factors. To begin with, Restorative Justice guidelines must be developed to ensure that regulations, circulars and other decisions, which govern Restorative Justice in the courts, are implemented to the fullest extent. Secondly, the development of the criminal justice system aligns the risk of victim recovery with offender responsibility.

Attorney General Regulation Number 15 of 2020 concerning Discontinuation of Prosecution Based on Restorative Justice

The implementation of the idea of settlement is regulated in Article 2 of Regulation of the Attorney General Number 15 of 2020, which uses a beneficial justice approach by considering standards of reasonableness, public interest, proportionality, condemnation if all else fails, and swift, simple and simple justice.

Legal factors related to the fulfillment of the prosecutor's office to create positive law and if the positive law is of good quality, it will be better in law enforcement, all of which are influenced by the implementation of restorative justice.

In essence, public prosecutors make *Restorative Justice-based* demands for termination of prosecution, which is usually the authority of government agencies that exercise state authority in the field of prosecution (in this case the Public Prosecutor's Office). The peace process is carried out voluntarily, through deliberate efforts to reach an agreement, and free from coercion, intimidation, or pressure as referred to in Article 9 of this regulation.

Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice

With the issuance of this Regulation, the Police have taken early detection to create the end of crime through the pressure of *Restorative Justice*, with its implementation in the midst of community conditions that already have sufficient understanding and knowledge in the field of law will certainly have a positive impact, because it will be more obedient and understand the applicable regulations, besides that the community will be more sensitive to the conditions that exist and apply in everyday life.

In accordance with the provisions of Article 14 of Police Regulation Number 8 of 2021, officers who have the function of Community Development and the function of Samapta Polri are required, based on a letter of request:

- Invite the disputing parties;
- Mediation or facilitation of relationships between parties;
- Prepare mediation result reports; and
- Document problem solving and tip concealment in the Restorative Justice register book.

Based on this, that individuals in conflict are invited to the police in mediation so that a *Restorative Justice-based* path is pursued.

The Police Manual makes another notion on criminal policing which to date has experienced criminal justice when it transforms into a supportive equalization method that requires several interests such as the offender, the victim's interest, the victim's group, the offender's group and the local area to seek the only arrangement through harmony with mutual tension. restoration to its initial state. About crime or criminal acts are taken through a more beneficial approach, namely in traffic offenses, narcotics, and data and electronic exchanges or what is often known as electronic transactions.

The Idea Of *Restorative Justice* In The Indonesian Criminal Justice System

In the enforcement of criminal law in society, at least three things must be achieved, namely:

- Achieving or shaping the ideals of a desirable or ideal society;
- Preserving and upholding the noble values of the community; and
- Utilize negative norm formulation strategies to maintain something that is considered good and embraced by society.

The positive law is used to create an effect that is used to threaten and impose punishment, retaliation, gain, and a combination of retaliation and intent to motivate the resolution of the case in this case.

The main purpose of this legal product is to ensure that the positive law is of quality in its enforcement for both the party who did the harm, the harmed individual and the public, so that in its enforcement it is fair to restore it to its original state, not revenge. This explains the straightforward nature of the concept of Restorative Justice. Since it is essentially based on a number of traditional values, *restorative* justice is values-based and the mechanisms it provides

serve as two indicators. The justification for rethinking the existence of restorative justice is based on this. It has probably been around as long as criminal law itself.

It is believed that these arrangements do not alleviate or heal victims, in addition to the prison sentences that bring consequences for the families of those convicted. Plus, legal procedures are time-consuming. The restorative model, on the other hand, emphasizes conflict resolution. The Draft Criminal Code also incorporates *Restorative Justice* which calls for the establishment of a new alternative penal system based on social work supervision and punishment, based on that the main benefit by considering the rights of the aggrieved individual, the wrongdoing individual as well as the public simultaneously. Since justice is actually the goal of the sentencing process, it is important that those who make decisions later on can act in accordance with justice rather than the law.

CONCLUSIONS

- *Restorative justice* has been implemented in a number of relevant laws, regulations and technical rules in a number of countries. The diversionary approach is out-of-case problem solving.
- The use of *Restorative Justice* is a new milestone in the reform of criminal law reform, which still leads to correctional legislation. The advancement of the criminal framework, which has only relied on the perpetrator, has also encouraged the regulation of victim recovery and responsibility for criminal demonstrations.

ADVICE

- A strong commitment from all elements including government and law enforcement is needed so that existing laws and regulations can be obeyed and implemented properly.
- It is expected to achieve the goals of the law and justice for victims and perpetrators. High integrity must be possessed by law enforcement officials, the better the enforcement will be.

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