

IMPLEMENTATION OF RESTORATIVE JUSTICE PRINCIPLES IN TERMINATING PROSECUTION OF MINOR CRIMES BY THE PROSECUTOR'S OFFICE OF THE REPUBLIC OF INDONESIA

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Abstract

The law has the duty to ensure legal certainty in public life. But in reality, often law enforcement ends in legal injustice. The root of this unfairness stems from the ineffectiveness of the judicial system non society. Restorative justice is a term employed within the domain of criminal law. The Indonesian prosecutor's office has released prosecutor's regulation number 15 of 2020, which deals with the discontinuation of legal proceedings through the use of restorative justice (PKRI 15/2020). Restorative justice is a method of resolving criminal cases that involves actively engaging the offenders, victims, their families, and other relevant individuals in order to achieve a fair conclusion. This strategy emphasises the reinstatement of the aggrieved parties to their initial condition, rather than pursuing revenge. The reasons for ending legal proceedings include restoring a fair state of affairs, safeguarding public interest, following the principle of proportionality, using punishment as a final option, and considering efficient, straightforward, and cost-effective proceedings.

Keyword : *Legal certainty, Law enforcement, Restorative justice*

INTRODUCTION

Indonesia is a constitutional state that upholds the rule of law, as established and outlined in the 1945 constitution of the republic of Indonesia. Law is a comprehensive set of regulations that are enforced to safeguard the welfare of humanity within a society [1]. thus, law is the most important aspect in the implementation of a series of power because with the law, human behavior can be limited in order to create a system that can control human behavior. The law has the duty to ensure legal certainty in society [2].

But in reality, the law enforcement process often leads to legal injustice. This injustice is caused by the failure of laws in the social system. In the process of legal protection, it is the court that decides the case. The laws that apply in society have an impact on society. The sociology of law examines the social relations that arise in the process of criminal acts and legal decision-making to exert influence in the social environment. The impact of the decision affects individuals, families, groups or social organizations directly related to the law, and the media also plays a role in legal reporting in society.

Criminal law enforcement seems to be facing a situation that requires choosing between providing a deterrent effect (the victim's inner satisfaction) or returning the losses suffered by the victim. It is no secret that all losses incurred by perpetrators are represented by perpetrators serving time in prison. The application of such laws seems very cruel and is used as the main and last choice or effort to enforce the law to override other sanctions or what is known as the law as *primum remedium* [3]. The lack of consideration in solving cases in a familial manner is what finally now criminal law has shifted to *primum remedium*. The principle of *ultimum remedium* posits that criminal law should be employed as a final recourse in the realm of law enforcement, as there exist alternative avenues of resolution that are more compassionate. The *ultimum remedium* principle governs the stages of the criminal handling procedure, which include investigation, prosecution, trial, execution of judges' decisions, and supervision and observation of court decisions.

The concept of restorative justice is in accordance with the legal norms that are supported in Indonesian society, especially customary law. This notion has been traditionally observed by several indigenous people, including the Batak, Papuan, Balinese, Toraja, Minangkabau, and other tribes. In the event of a criminal incident, indigenous groups internally address the dispute resolution process by seeking peace without the involvement of state authority. Although it is indeed a violation of positive law to allow the community to handle general criminal conduct, it has been proven that this strategy successfully maintains harmony within the community.

The prosecutor's office fulfils its responsibilities and exerts its authority as the *dominus litis*. The prosecutor's office, serving as the case controller or *dominus litis*, plays a crucial role in law enforcement. The prosecutor's institution possesses exclusive authority to determine whether a case can be brought before the court. This decision is made based on credible evidence in accordance with the criminal procedure law. The prosecutor's office has dual responsibilities. Firstly, it acts as *dominus litis*, making decisions about the direction of legal processes. Secondly, it serves as the single authority in charge of carrying out criminal penalties as an executive official [4].

The prosecution serves as an intermediary between the investigation process and the examination process throughout the trial, acting as a filter [5]. In 2020, the Indonesian prosecutor's office implemented prosecutor's regulation number 15 of 2020, which focuses on the cessation of legal proceedings by utilising restorative justice. This law was established based on the notion of *dominus litis*, which refers to the person who has control over a legal issue. Restorative justice has been implemented in many departments of the district attorney's office in Indonesia, including the Bantul state attorney's office. The Bantul district attorney's office has successfully applied restorative justice in four criminal cases, encompassing:

- 1) *Theodorus gregorius manteiro alias sinyo violated article 44 paragraph (1) of the domestic violence law*
- 2) *Agus nur setiawan als bagong bin ngadiran violated article 351 paragraph (1) of the criminal code*
- 3) *Vicky wildan kurniawan bin didik kurniawan violated first: article 80 paragraph (1) jo. Article 76c of law of the republic of indonesia no. 35 of 2014 concerning amendments to law no. 23 of 2002 concerning child protection. Or second: article 351 paragraph (2) of the criminal code or third: article 351 paragraph (1) of the criminal code*
- 4) *Lukman sejati bin sumardi violated article 351 paragraph (1) of the criminal code*

LITERATURE REVIEW

A. Law enforcement

Law enforcement is the active pursuit of justice, legal certainty, and societal benefit. Advocacy is essentially the act of actualizing concepts or notions. Legal protection refers to the act of applying existing legal standards to the legal relationships that exist in social and state life, or serving as a guide for these norms. Concrete law enforcement refers to the practical implementation of positive legislation, ensuring that it is followed as it is intended to be. Providing justice in a case involves making a concrete decision on the law and ensuring that it is followed by employing procedural techniques provided by formal law [6]. Joseph Goldstein categorizes criminal law enforcement into three distinct parts:

- 1) *Total enforcement refers to the comprehensive implementation of criminal laws, namely the enforcement of substantive criminal laws. The enforcement of criminal law in its entirety is not practicable due to the tight limitations imposed on law enforcers by criminal procedural law. This includes regulations for arrest, detention, search, confiscation, and examination procedures. In addition, criminal law itself imposes certain constraints, such as the requirement of a formal complaint as a prerequisite for prosecuting violations (known as *delicensing*). This is referred to as a jurisdiction with no enforcement capabilities.*
- 2) *The complete implementation of the law, following the enforcement of regulations regarding the boundaries of a specific region, results in the punishment being applied in all areas except those where enforcement is not applicable. These regulations are intended to ensure that law enforcement officers can effectively uphold the law to the fullest extent possible.*
- 3) *Joseph Goldstein argues that achieving full enforcement is not a realistic expectation due to various limitations such as time, personnel, tools, investigations, and funds. These limitations result in the need for discretion and prioritization, which is referred to as actual enforcement.*

B. Climate Change Mitigation in the Forestry Sector Restorative Justice in the Prosecutor's Office

Restorative justice, also known as restorative justice, refers to the process of resolving criminal cases by incorporating the perpetrator, victim, their families, and other relevant parties. The primary objective is to collaboratively seek a fair resolution that focuses on restoring the situation to its original state, rather than seeking

revenge. This strategy prioritizes tackling the underlying cause of the problem and the psychological, social, and emotional consequences resulting from criminal activities, for victims, offenders, and society as a whole.

Based on this definition, it may be inferred that the primary focus of settling a criminal charge through restorative justice is to reach a mutually agreed-upon resolution amongst the people involved, while considering their future interests. According to criminologist Adrianus Meliala, the restorative punishment model was implemented as a response to the issues caused by the existing criminal justice and punishment system. The primary objectives of the present penitentiary system are to discourage criminal behavior, seek retribution, and impose pain as a result of one's acts. Indicators of punishment are assessed based on the degree to which prisoners adhere to prison rules. The focus is mostly on security, emphasizing a security-oriented approach.

Restorative justice is a philosophical approach to resolving conflicts outside of the traditional justice system. It involves using mediation or deliberation to achieve justice that satisfies both the perpetrators and victims of criminal acts. The goal is to find the most optimal solution. Consented and mutually accepted by the involved parties. Restorative justice is a fundamental principle that aims to achieve justice via the involvement of parties other than the legal system. It is a peaceful procedure that brings together the offender and the victim to address the repercussions of the criminal act, such as the harm caused or the losses suffered.

METHOD

The methodology employed in this work is the empirical juridical approach. Empirical jurist research is a form of field research that focuses on the practical application of legal regulations in society. It utilises data and facts to study how positive legal systems are implemented. This type of research is often referred to as "law in action" research. The focus of the research is the practical application of positive legal rules and contracts to address specific legal events in society, with the aim of achieving preset objectives [7]. The empirical juridical technique prioritises legal theories and regulations pertaining to the issue being examined, and subsequently examines the factual evidence regarding the societal variables that influence it [8].

The empirical juridical approach in this work involves the analysis of problems by integrating secondary legal texts with primary data collected in the field. The above approach method is used considering that the problems studied not only revolve around various existing legal instruments and laws and regulations, but also look at the results of research and the facts occur.

RESULT AND DISCUSSION

A. What is the current policy of stopping the prosecution of minor crimes based on Restorative Justice by the Bantul District Attorney's Office

The bantul district attorney's office is a division of the r.i. Prosecutor's office located in jl. Ra. Kartini no.45, nogosari, tirenggo, bantul district, bantul regency, special region of yogyakarta 55714. The bantul state prosecutor's office is tasked with carrying out the responsibilities, powers, and tasks of the prosecutor's office under the jurisdiction of the bantul state attorney, in accordance with the rules and regulations set by the attorney general. The prosecutor's office is empowered by prosecutor's regulation number 15 of 2020 to terminate prosecutions using restorative justice concepts, so effectively terminating cases for legal grounds.

The bantul district attorney's office has successfully employed restorative justice in handling four criminal cases, encompassing: the person's name is theodorus gregorius manteiro. The name employed is sinyo. Article 44, paragraph (1) of the domestic violence law has been violated. Agus nur setiawan, also referred to as bagong bin ngadiran, has committed a transgression. According to article 351, paragraph (1) of the criminal code, third vicky wildan kurniawan, who is the son of didik kurniawan, has committed an offence. Firstly, i would like to cite article 80, paragraph (1), together with article 76c of law no. 35 of 2014 of the republic of indonesia, which concerns the modifications made to law no. 23 of 2002 on child protection. Alternatively, the provision stated in article 351 paragraph (2) of the criminal code is applicable. Alternatively, the provision stated in article 351, paragraph (1) of the criminal code is applicable. Fourth lukman sejati bin sumardi has committed a violation. Section 351, paragraph (1) of the criminal code.

Based on the interview findings, the crime was carried out in accordance with the conditions for the implementation of restorative justice, as outlined in article 5, paragraph (1) of the prosecutor's regulation of the republic of indonesia number 15 of 2020. This regulation specifically deals with the termination of prosecution through the use of restorative justice.

- 1) *The suspect is engaging in their first criminal offense.*
- 2) *The criminal acts are punishable by either a fine or imprisonment for a maximum of 5 years.*

3) *The criminal acts involve evidence or losses that do not exceed rp. 2,500,000.00 (two million five hundred thousand rupiah).*

Furthermore, the parties make a peace agreement after the fulfillment of obligations is implemented or the peace process is successfully implemented unconditionally.

The implementation of restorative justice in peace initiatives aligns with the guidelines outlined in chapter iv on peace procedures, as stated in article 9 of attorney general regulation number 15 of 2020 about the termination of prosecution.

- 1) *The peace process is characterised by voluntary participation, thoughtful consideration for achieving consensus, and the absence of pressure, coercion, and intimidation.*
- 2) *In the peace process, the public prosecutor serves as a mediator.*
- 3) *The public prosecutor mentioned in paragraph (2) has no personal or professional interest or connection with the case, the victim, or the suspect, either directly or indirectly.*
- 4) *The peace process is typically conducted at the prosecutor's office, unless there are exceptional circumstances such as security, health, or geographical constraints. In such cases, the peace process may take place at a government office or another agreed-upon location, as authorised by a warrant from the head of the district attorney's branch or the chief district attorney's office.*
- 5) *The peace process and fulfilment of responsibilities must be completed within a maximum of 14 days after the transfer of responsibility for suspects and evidence in phase two.*

The formal decree provides a detailed account of the outcome of the legal proceedings. The suspect must be informed of the contents of the ruling and, if held in custody, must be freed. The derivative of the decree shall be supplied to the suspect or their legal counsel, state detention centre authorities, investigators, and judges. In the event that additional evidence is discovered at a later time, the public prosecutor have the power to initiate legal proceedings against the individual under suspicion. Restorative justice is a contemporary criminal framework that prioritises resolving cases outside of the court system and lays significant importance on the role of the victim in the purpose of punishment.

B. How should restorative justice in the Bantul District Attorney's Office be carried out

Restorative justice has been introduced in the criminal law enforcement system of indonesia. The police, prosecutor's office, and supreme court of indonesia function within the confines of their distinct legal frameworks. Restorative justice has been incorporated into the RKUHP, indicating its potential for future implementation. Naturally, when it comes to systems, models, classifications of criminal crimes, and procedures, there can be variations. Nevertheless, the intention is to prioritise the transformation of criminals through engaging in discourse or mediation that includes the offender, victim, perpetrator/victim's family, or other relevant individuals.

The substance in the criminal code bill has the concept of restorative justice which is based on the following criteria:

- 1) *Application of living law in society (living law). Regarding the extent to which the law is recognized, the implications for its implementation and whether its application contradicts precisely the concept of human rights that avoids cruel and inhuman treatment. Therefore, it is important that restrictions on the criteria for harm and conditions not to contradict the values of pancasila, the constitution, human rights and general principles in a democratic state.*
- 2) *The paradigmatic change regarding the conception of punishment that began to shift from the concept of the conception of retribution (retributive / absolute) which tried its best to provide a deterrent effect with harsh punishment turned into the concept of verbeterings / rehabilitation with a focus on improving the perpetrator to be able to integrate with society.*
- 3) *Social work crime refers to offences committed by defendants who face a potential prison term of less than five years, and the judge imposes a maximum sentence of six months in prison or a specified fine. Fourth, strengthening the judicial pardon mechanism which is conceptually directed at giving authority to judges to grant forgiveness or pardon to people who commit criminal acts.*

This provision will not only contribute to the progress of restorative justice and the correction of the application of the principle of legality, but it will also expand the range of acceptable reasons for forgiving criminal offenders as stated in article 44 paragraphs (1) and (2) of the criminal code. This concept pertains to behaviours that cannot be ascribed to the person responsible either because of a diminished mental capacity or a sudden change of attitude resulting from emotional turmoil.

The RKUHP provides an explanation of restorative justice, which has developed into a mechanism within the criminal justice system for addressing legal difficulties. This process predominantly involves law enforcement

professionals as the main stakeholders. The efficacy of applying the concept of restorative justice hinges on the meticulous evaluation of individual culpability, the formulation of suitable restitution measures, the process of reintegrating offenders, and the active engagement of all stakeholders.

Restorative justice, as typically implemented at the prosecutor's office, is a justice approach that seeks to resolve the repercussions of a criminal act by prioritising justice for the victims and restoring the situation to its original condition. The prosecutor's office, adhering to the principles of restorative justice, also takes into account the humanitarian aspects of offenders who commit specific crimes. But it should also be emphasized that prosecutors in applying restorative justice bow to societal pressure, but it means that every action carried out by prosecutors must be conscientious and proportionate. This is because just law enforcement is law enforcement that can provide benefits and bring justice that can be felt by the community [9].

As a form of means for the community to make peace efforts against social problems, the bantul district attorney's office established a restorative justice house in collaboration with the bantul regency government the location of the restorative justice house located in balai kalurahan trirenggo, bantul is in places or areas where there is the potential for frequent cases such as persecution, theft, brawls, and fights.

CONCLUSION

The policy of halting prosecution implemented at the bantul district attorney's office can be classified as a manifestation of restorative justice, in accordance with prosecutor's law number 15 of 2020, as long as it meets the criteria for halting prosecution outlined in the law.

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