



Criminal Law Settlement Through Restorative Justice in Indonesia in Terms of Justice and Legal Certainty

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ABSTRACT

The win lose solution nature of the criminal justice process often leads to disappointment. In addition, the judicial process, which is expected to be a formal way, turns out to be expensive, prolonged, tiring and sometimes does not solve the problem. From this phenomenon, efforts to reform the national criminal law are needed, one of which is the concept of "restorative justice". Therefore, the purpose of this research is to explain and analyse how Restorative Justice is resolved and to examine whether Restorative Justice has fulfilled the principles of justice and legal certainty. The research method used is normative juridical. The results of this study are Restorative Justice is carried out by means of a mediation and dialogue process by including victims, perpetrators, families of perpetrators / victims and other parties involved can work together to create an agreement for a fair and balanced settlement of the case for both parties whose purpose is to restore the situation to its original state and restore patterns of good relations in society. The implementation of case settlement through restorative justice as an alternative settlement of certain cases is in accordance with the purpose of the law itself, namely to fulfil the principles of justice and legal certainty.

INTRODUCTION

Crime or criminal offence is a problem that often occurs in the life of society. This is because there are differences in interests between individuals who dispute with each other. Often disputes lead to an act that is prohibited and can also harm others in various ways that can be done by someone to get protection of their interests, so that to get it various ways are done including by committing a criminal offence (Marchelia, M., 2023). The increasing number of criminal offences that occur among the community today causes many people to feel uncomfortable and will eventually lead to court channels, where people tend to use court channels as an effort to resolve a case which they think conceptually and theoretically will create justice.

But the fact is that it is not easy to achieve because it tends to be a win lose solution so that it often causes a sense of "disappointment", holding grudges, feeling dissatisfied, feeling unfair and even worse, intending to take revenge (Fahrani, 2016). This sense of disappointment leads to dissatisfaction on the part of the losing party in court, and they will try again to seek "justice" at further judicial levels such as the high court, the Supreme Court and even to the Constitutional Court (Kossay, 2024). This results in a buildup of cases flowing through the courts so that it can hamper the judicial system, especially in Indonesia. In line with this opinion, Satjipto Raharjo also gave his opinion, which stated that the settlement of cases through the judicial system which led to a court verdict was a law enforcement towards the slow lane.

This is because law enforcement must go through various stages, starting from the stages of the Police, Prosecutor's Office, District Court, High Court and even to the Supreme Court which ultimately has an impact on the accumulation of cases that are not small in number in court. Thus causing the criminal justice system to be less than optimal in its implementation. In addition, the judiciary, which is expected to be a formal way, turns out to be expensive, prolonged, and tiring.

From this phenomenon, efforts to reform the national criminal law are needed. because The criminal law applicable in Indonesia is a codified criminal law, in which most of the rules have been compiled in a codified Criminal Code (KUHP), through Unification, since 1918 (kartika, 2023). The need to reform the national criminal law in a directed and integrated manner in order to support national development in various fields, in accordance with the demands of development as well as the level of legal awareness and dynamics that develop in society. This

is related to the development of law, especially the development of criminal law (Sudewo, 2021). One of the conceptions of national criminal law reform efforts is "restorative justice", which relates to the application of criminal law and the running of offender responsibility by offering a form of settlement of various legal cases that occur outside the existing criminal justice process. The concept of restorative justice plays a role in reducing the cost of cases. This concept is in accordance with the principles of Criminal Procedure Law which is fast, simple, and light in cost.

Based on this background, the author is interested in discussing how to resolve Restorative Justice and whether the settlement of criminal offences through Restorative Justice has fulfilled the principles of justice and legal certainty?

METHOD

The research method used in this research is normative juridical. Data collecting techniques were done through literature and documents from primary legal materials and secondary legal materials that related with *restorative justice* (Jaya, 2021). The approach used in this research is a juridical approach, which analyses the problem of the application of restorative justice principles in the criminal justice system in Indonesia.

RESULTS AND DISCUSSION

A. Restorative Justice Settlement in Indonesia

In Indonesia, the concept of restorative justice applied is one of the alternatives to case settlement that uses a mechanism to change the formality of punishment by focusing on imposing sanctions and giving pain to the perpetrator to a mediation and dialogue process involving victims, perpetrators, families of victims / perpetrators and other related parties to jointly create an agreement to resolve the case in a fair and balanced manner for the parties, and aims to restore the situation to its original state and restore good relations in the community.

According to Marshall, as cited in Restorative Justice and Criminal Justice: Competing or reconcilable Paradigms states that restorative justice is a process that involves all parties involved in a criminal offence such as the perpetrator, victim, family of the perpetrator/victim and other parties to find ways to recover from the impact of the criminal offence caused and decide how to overcome the criminal offence (Mulyani, 2017). The aim of restorative justice is to restore the social security of the victim as well as the offender and resolve the

conflict between them. Criminal justice in the UK has been shown to provide at least 3 (three) benefits of restorative justice, namely: reduced recidivism, increased efficiency leading to cost effectiveness, and increased community trust and satisfaction. Therefore, restorative justice is not just a new mechanism in criminal justice and its use can vary in its application (Mahendra, 2022).

In the development of law in Indonesia today, various legal products that embrace restorative justice were born by law enforcers, including the Chief of Police of the Republic of Indonesia in 2019 issued Regulation number 6 of 2019 concerning Criminal Investigation, in this regulation restorative justice can be implemented at the investigation stage based on article 12. Furthermore, the Attorney General's Office also issued Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice. In order to terminate prosecution, the conditions for termination of prosecution are expanded so that it can be carried out based on restorative justice. The Directorate General of General Courts of the Supreme Court also issued Decree No. 1691/DJU/SK/PS.00/12/2020 on Guidelines for the Implementation of Restorative Justice in the General Courts. Based on this regulation, restorative justice can be carried out in 4 (four) scopes of cases, namely minor criminal offences, cases committed by children, women in conflict with the law, and narcotics abuse. The concept of restorative justice is based on the establishment of regulations at each of these levels, so that the concept of restorative justice is increasingly recognised at various stages of justice.

Case settlement through restorative justice at the police level is based on the Chief of Police Circular Letter Number: SE/8/VII/2018 concerning the Application of Restorative Justice in Criminal Case Settlement. The Chief of Police's circular letter on Restorative Justice is the basis or legal basis and guidelines for police investigators and investigators who will carry out the investigation and investigation process, the circular letter is also a guarantee of legal protection and supervisory control, in applying the concept of restorative justice. Investigation is a series of efforts to investigate to find an event that is considered an unlawful act while Investigation is carried out to find evidence that can explain the unlawful act and determine the perpetrator (Muhyi Mohas, 2022). The process of investigating and prosecuting criminal offences is expected to fulfil the public interest and sense of justice for the community, thus realising the unity of understanding

and application of restorative justice within the Indonesian National Police (Amin, 2020).

Case settlement with a restorative justice approach at the police level or Polri has several guidelines that must be followed including (Sirande,2021):

- a. Meet the material requirements, namely:
 - There is no unrest in the community nor is there any community rejection
 - Does not cause social conflict.
 - There is a statement from all parties involved that they do not object to being settled amicably and will waive their right to sue before the law.
 - limiting principle:
 - a) On the perpetrator: The offence committed by the perpetrator is not a serious criminal offence, namely fault (schuld) or mensrea in the form of intent (dolus or opzet), especially intent as an intention or purpose (opzet als oogmerk); and the perpetrator is also not a recidivist.
 - b) In criminal offences in the process of: Investigation; and Investigation, the completion of the case is carried out before the SPDP is sent to the Public Prosecutor.
- b. Fulfilment of the formal requirements, namely:
 - The existence of a letter of request for peace submitted by both parties (complainant and reporter).
 - The existence of a statement of peace (akte dading) and settlement of the dispute between the parties (the reporter and/or the reporter's family, the reported party and/or the reported party's family, and representatives of community leaders) The statement of peace must be known to the investigators.
 - The existence of additional Minutes of Examination of the litigants after the restorative justice process.
 - A special case title recommendation letter approving the settlement through restorative justice.
 - That the perpetrator has no objection to taking responsibility, compensating, and doing so voluntarily.

- All criminal offences can be resolved through restorative justice for general crimes that do not cause human victims.

In the application of criminal case settlement through restorative justice at the prosecutor's office level, the Public Prosecutor has the authority to close the case in the interests of the law, one of which is due to the reason that there has been an out-of-court settlement (afdoening buiten proces), as regulated in Article 3 paragraph (2) letter e of Prosecutor Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. According to the Attorney General's Regulation in Article 3 paragraph (3) which states that if the parties to the case want to settle the case out of court in the case of certain criminal offences, they must pay a public fine voluntarily or there has been a restoration of the original situation through restorative justice. In adjudicating a criminal case, the Prosecutor acts as a Case Controller or dominus litis who can determine the urgency of case development and assess whether the case can be resolved out of court or not, with reference to Regulation No. 15 of 2020. Termination of prosecution must be carried out by the Public Prosecutor responsibly and submitted in stages to the Chief Prosecutor as stipulated in Article 3 Paragraph (4) and Paragraph (5). The process of resolving cases out of court using a restorative justice approach as in Regulation No. 15/2020 will legally terminate prosecution (Meliala, 2024).

To resolve criminal offences through restorative justice, it is necessary to understand the provisions that exist in the settlement of cases conducted outside the court, including (Ernis, 2017):

- a. Required Mediator, The mediator must ensure that the parties to the dispute prioritise the communication process. The mediator actively seeks solutions and provides recommendations for dispute resolution.
- b. Prioritisation of the quality of the process should be seen in the context and quality of the process, not in the outcome that determines who wins and who loses;
- c. Mediation is informal and seeks to avoid formal discussions so that the parties involved feel more valued;
- d. All parties involved in the mediation process should take responsibility for the outcome of the mediation process.

In addition, according to restorative justice, the termination of prosecution is carried out by paying attention to and considering the following matters (Arief, 2023):

- a. The interests of victims and other protected legal interests.
- b. Avoiding negative stigma.
- c. Avoiding retaliation.
- d. Community response and harmony.
- e. Decency, morality and public order.
- f. Subjects, objects, categories, and threats of criminal offences.
- g. Background of the criminal offence.
- h. The level of offence.
- i. The harm or consequences of the criminal offence.
- j. Cost and benefit of handling the case.
- k. Restoration to the original state.
- l. Peace between the Victim and the Suspect.

Article 5 Paragraph (1) of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice explains the requirements for criminal offences that can be terminated or resolved through restorative justice including:

- a. The suspect or perpetrator is a first time offender.
- b. The criminal offence is only punishable by a fine or imprisonment for a maximum of 5 (five) years.
- c. The criminal offence is committed with the value of evidence or the value of loss caused by the criminal offence does not exceed Rp.2.500.000,- (two million five hundred thousand rupiah).

There are also exceptions to the termination of prosecution based on restorative justice for certain cases, which are regulated through the provisions of Article 5 paragraph 8 of the Prosecutor's Regulation (Perja) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice:

Termination of prosecution based on Restorative Justice can be excluded for the following cases:

- a. Criminal offences against state security, the dignity of the President and Vice President, friendly countries, heads of friendly countries and their representatives, public order, and morality.

- b. Criminal offences that are punishable by a minimum penalty.
- c. Narcotics offences.
- d. Environmental offences.
- e. Criminal offences committed by corporations.

The Public Prosecutor must be able to ensure that the eventual termination of prosecution based on restorative justice must also be based on an amicable agreement between the parties and be conducted in a voluntary, fair, free, and proportional manner. In implementing restorative justice within the Prosecutor's Office, it must be noted that the agreement made and agreed upon by the perpetrator and victim, the Public Prosecutor is only a facilitator or impartial neutral party, the consequences of a peace agreement in restorative justice are confidential, the parties to the case and the Public Prosecutor as a facilitator must always maintain an atmosphere of equality and mutual respect (Syaputra,2021).

Guidelines and policies on the implementation of restorative justice have also been issued by the Supreme Court of the Republic of Indonesia through the Decree of the Director General of the General Justice Agency of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Enforcement of Guidelines for the Implementation of Restorative Justice (*Restorative Justice*). The purpose of this decision is to assist court institutions in the general judicial environment to understand and implement the application of Supreme Court Regulations, Supreme Court Circular Letters and Decrees of the Chief Justice of the Supreme Court governing the implementation of restorative justice, encourage increased application of restorative justice so that the principles of fast, simple and low cost justice are fulfilled with balanced justice (Listyanto,2013). Some of the criminal cases that can be handled with restorative justice in the general court environment are minor criminal cases where the value of the loss exceeds Rp.2,500,000 (two million five hundred thousand rupiah), children's cases, cases of women in conflict with the law, and narcotics cases.

B. Criminal Case Settlement through Restorative Justice in View of the Principles of Justice and Legal Certainty

Restorative Justice aims to empower perpetrators, victims, families, and communities to change a violation of the law by using awareness and

conscience as the basis for improving community life. Restorative Justice is a theory of justice that focuses on repairing the harm caused by criminal acts. According to Muladi, justice based on peace (peace) of the perpetrator, victim and society is the moral ethic of restorative justice, therefore justice is carried out as the "Just Peace Principle". This principle reminds us that justice and peace are essentially inseparable. Peace without justice is oppression, justice without peace is a new form of persecution/oppression.

Agreeing with Muladi, the author considers Restorative Justice can help solve case problems that should not need to be resolved in court. however, the settlement of cases through restorative justice must also meet the conditions that have been determined. as an example in the case of minor criminal offences such as theft Article 362 concerning ordinary theft, whose loss value does not exceed RP. 2,500,000. If the case is resolved in court, besides it will take a lot of money and time, it is not certain that the principle of justice can be achieved for all parties because the court contains the nature of win or lose, but if the case is resolved through restorative justice, besides being able to fulfil the principle of fast and simple justice, the value of justice for all parties can also be achieved because in essence in restorative justice contains the nature of win win solution. To achieve this, there needs to be a role of law enforcers from both the police and the prosecutor's office to embrace all parties in the case, be it the victim or the perpetrator as well as the community, the police and the prosecutor's office can act as mediators who reconcile the litigants. with the peace between the victim and the perpetrator, there will be goodwill to forgive each other and restore the situation to its original state (Rohman,2023).

An example is the theft of 3 (three) cocoa pods by an old lady in Ajibarang. The grandmother was sentenced to 1 month and 15 days in prison. This proves that sanctions in criminal law are no longer effective for the community (Purba,2024). This case should have been resolved through deliberation and consensus. considering that the grandmother was not a recidivist and also if seen from the total loss suffered by the victim because of the three cocoa pods, it is not comparable to the loss of the grandmother who must attend the trial and be detained during the trial process. moreover, if considering the principle of humanity, a grandmother who is already old and vulnerable should not be sentenced to imprisonment because she only stole three cocoa pods.

According to the author, the settlement of cases through restorative justice as an alternative solution in certain cases is in accordance with the purpose of the law itself, namely the law is for humans, so that its enforcement must be moral, conscientious and therefore largely determined by its ability to serve humans. Law is an institution that aims to lead humans to a fair, prosperous, and happy life. Humanity and justice are the goal of everything in our legal life. Therefore, the phrase "law for humanity" also means "law for justice". This means that humanity and justice are above the law.

CONCLUSION

Case settlement that mechanically changes the form of punishment and focuses on imposing sanctions and pain on the perpetrator is changed to a process of mediation and dialogue involving the perpetrator, victim, family of the perpetrator/victim and other related parties so as to produce a settlement. The parties agree to resolve a case in a fair and balanced manner for both parties which aims to restore the situation to its original state and restore the pattern of good relations in society. alternative case resolution through restorative justice can only be carried out if the criminal case committed is classified as a minor crime, namely criminal cases with criminal threats as stipulated in Articles 364, 373, 379, 384, 407 and Article 482 of the Criminal Code with a loss value of not more than Rp.2,500,000, juvenile offences, cases of women in conflict with the law, cases of narcotics users.

With the existence of the Chief of Police Circular Letter Number: SE/8/VII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases, Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice, Decree of the Director General of Badilum Number 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Application of Restorative Justice in the general court area, restorative justice can be implemented. The implementation of case settlement through restorative justice as an alternative to resolving certain cases is in accordance with the purpose of the law itself, namely to fulfil the principles of justice and legal certainty.

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