

The Importance of Restorative Justice in the Settlement of Criminal Actions which Harm an Individual Interest

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Abstract—*Restorative justice is an approach that aims to build a criminal justice system that is sensitive to victims' problems. Restorative justice is important in relation to crime victims, because this approach is a form of criticism of the current criminal justice system in Indonesia which tends towards retributive objectives (emphasizing justice in retaliation) and ignoring the role of victims in participating in determining the process of the case. This article aims to examine how the restorative justice approach is used to resolve criminal cases that violate individual interests. The research was conducted using the juridical-normative method using a statutory approach and a conceptual approach. Data were collected and analyzed qualitatively. The results showed that in criminal cases that resulted in individual losses, the restorative justice approach is better to apply and provides more justice to the victim. Settlement of criminal cases against violations of individual interests with a restorative justice approach can be done through penal diversion or mediation.*

Keywords- *Restorative Justice; Criminal Action Settlement; Individual Interests*

I. INTRODUCTION

Anti-corruption education constitutes a manifestation of One of the laws that are applicable and must be enforced in the Unitary State of the Republic of Indonesia is the criminal law, which contains acts which are prohibited and which are punishable by punishment. According to Wirjono Prodjodikoro, that "Criminal law is a legal regulation regarding" criminal "means things that are" convicted ", namely by the competent agency delegated to a person as something that was previously not felt by him and also things that are not delegated everyday" [1]. Justice and human rights issues in relation to criminal law enforcement

are not easy jobs to realize. One example of the lack of attention to issues of justice and human rights in criminal law enforcement is related to legal protection for victims. Victims are those who suffer both physically and spiritually as a result of the actions of others who seek fulfillment for themselves or others that are contrary to the interests and rights of those who suffer. Victims of crime, who are basically the party who suffer the most in a crime, do not receive the protection as mandated by law. As a result, when the perpetrator of a crime has been sentenced to a criminal sanction by the court, the condition of the crime victim seems to be completely ignored [2].

Therefore an event and procedure is needed in the system that can accommodate case settlement, one of which is by using a restorative justice approach, through a legal reform that does not only change the law but also modifies the criminal justice system which exists, so that all the objectives required by law are achieved. One form of restorative justice mechanism is dialogue among the Indonesian people, better known as "deliberation for consensus" [3].

Settlement of criminal cases with a criminal justice system that tends to be offender oriented, so victimology as a victim-oriented study provides a rationale for the need for the concept of case settlement outside the criminal justice system. The solution offered is the settlement of criminal cases in the context of restorative justice (Restorative Justice). The concept of the Restorative Justice approach is an approach that focuses more on conditions of creating justice and balance for victims and perpetrators. The concept of restorative justice is a criticism of the concept of the criminal justice system which sees crime as a violation of state

regulations. The state has the right to punish violators in order to create social stability. The victim's suffering is considered complete / even if the state has made the perpetrator suffer. However, it is an inheritance concept colonialism which is considered not having a positive impact to reduce the crime rate and the recidivism rate [4].

In responding to crimes that are considered to be restorative, there is a punishing paradigm known as restorative justice, in which the perpetrator is encouraged to repair the losses that have been caused to the victim, his family and also the community. For this reason, the main program is "a meeting place for people" to find solutions to improve relations and damage caused by crime (peace). Justice based on peace (peace) between perpetrators, victims and society is the ethical moral of restorative justice, therefore justice is said to be "Just Peace Principle". This principle reminds us that justice and peace are inherently inseparable, peace without justice is oppression, justice without peace is a new form of persecution / pressure [5].

In the settlement of a criminal act, within a philosophical framework, the presence of a restorative justice approach in criminal law is not aimed at abolishing criminal law or fusing criminal law and civil law, because the restorative justice approach prioritizes the mediation[6] path between the victim and the perpetrator. The restorative justice approach actually returns the function of criminal law to its original path, namely the ultimate function of remedium, a final weapon when other legal measures can no longer be used in facing a criminal act in society. In a practical order, the handling and settlement of criminal cases using the restorative justice approach offers alternative answers to a number of problems faced in the criminal justice system, for example difficult, long and expensive court administration processes, case accumulation or court decisions that do not accommodate the interests of victims.

Not all criminal acts can be resolved through a restorative process. Qualifications in terms of settlement of criminal acts that can be used in a restorative process, namely disputes are still within reasonable limits, criminal acts where there is commitment of the parties to resolve them, criminal acts that place the perpetrator in a balance bargaining position, the process is personal and the results are strictly confidential. If restorative justice

is stated as an answer to dissatisfaction or failure of the criminal justice system, then restorative justice is a concept of thought that responds to the development of the criminal justice system by emphasizing the need for community involvement and victims who are felt to be excluded by the mechanisms that work in the criminal justice system in this time. A violation of criminal law is understood as a conflict between individuals that causes harm to the victim, society and the offender himself. Among the three groups, the interests of the crime victims are the main part, because the main crime is violating the rights of the victims [7].

II. PROBLEMS

Based on the background of the problem above, the problem formulation is compiled: How are efforts to resolve criminal cases that violate individual interests with a restorative justice approach?

III. RESEARCH METHOD

The research was designed with the juridical-normative method. The approach is carried out through a conceptual approach and statutory approach. Sources of data in this study include secondary data in the form of primary legal materials, secondary materials and tertiary legal materials as well as literature related to restorative justice. The data collection method is collected by using the library research method, namely studying, understanding, identifying and recording data related to the research problem. The data obtained were compiled and analyzed systematically with qualitative methods.

IV. DISCUSSION

Efforts To Resolve Criminal Cases That Violate Individual Interests With A Restorative Justice Approach

In connection with the problem of punishment, what is demanded by the principle of balance is that punishment must accommodate the interests of the community, the perpetrator and also the victim. Criminalization should not only emphasize one

interest. Or as Roeslan Saleh said, punishment cannot only pay attention to the interests of the community or the interests of the maker, or also only pay attention to the feelings of the victim and his family [8].

Imposing criminal sanctions against the perpetrators of a criminal act has a purpose, and this goal is strongly influenced by the philosophy on which threats and penalties are imposed. The philosophy of punishment is a philosophical basis for formulating a measure / basis of justice in the event of a violation of the criminal law. There are two strong philosophies of justice in criminal law, namely justice based on the philosophy retributive justice and justice based on the philosophy of restorative justice [9].

Restorative Justice is translated into Indonesian as restorative justice. Restorative justice has a close relationship with Victimology as the study of victims in all aspects. This is because Restorative justice is a model of settlement and value for the occurrence of victimization which highly respects the victim as a party who experiences loss and / or suffering due to victimization. This is different from its predecessor model known as the Criminal Justice System, which tends to ignore victims in resolving victimization [10].

Restorative justice practice is an alternative solution to the problem of victimization / criminal acts by not using the judicial system which is often referred to as the Criminal Justice System. As already mentioned above, the fundamental difference possessed by Restorative justice is that it is oriented towards fulfilling the interests of victims due to victimization. In addition, there is an encouragement so that the perpetrator understands the mistakes committed which have implications for the responsibility that must be carried out in the form of restoring the victim, and creating peace in the community

The settlement made through the court has been deemed by the disputants to be unable to fulfill a sense of justice, especially by the victim, therefore the settlement outside the court is expected to fulfill the feeling of disappointment of the victim who still lacks legal protection guarantees, because all existing laws and regulations. (KUHP and KUHP) only provide guarantees of protection for perpetrators, starting from examination at the level of investigation to review, which includes

provisions regarding the rights of suspects to be accompanied by legal counsel, suspension of detention, pre-trial and so on, all of which are rights granted to the perpetrator (suspect). However, in order to achieve the objectives of criminal procedural law, namely: achieving an orderly, serene, peaceful, just and prosperous society (the rule of law *kerta raharja*), the settlement made through the court has been deemed by the parties in the case to be unable to fulfill a sense of justice, especially by the victim, therefore it is hoped that the Out-of Court Settlement will fulfill the feeling of disappointment of the victim who still lacks legal protection guarantees [11].

The definition of victim according to Iswanto is the result of a deliberate act or negligence, voluntary willingness or being forced or cheated, natural or deliberate disasters have the nature of mental, physical, property and moral suffering and the nature of injustice [12]. Arif Gosita defines victims, namely those who suffer both physically and spiritually as a result of other actions seeking fulfillment of the interests of themselves or others, which are contrary to the interests and rights of those who suffer [13].

In a nation that has a high sense of humanity (in accordance with just and civilized Humanitarian Precepts), the protection of victims should receive great attention because it is based on the fact that someone should not suffer because of a criminal act, without receiving attention and protection in the judicial process. criminal, even the victim should get attention from society and the state. A humanitarian approach must be put forward for offenders and victims. Criminal law is also not correct if it only pays attention to the perpetrator (*daderstrafrech*), because thus the application of criminal law will appear to spoil criminals and does not pay attention to broader interests, namely the interests of the community, the interests of the state, and the interests of victims of crime ” [14].

There are three principles in Restorative justice. First, crime or victimization causes harm and in achieving justice, you must focus on repairs to the losses caused. Second, they are the people most affected by the crime must be able to actively participate in solving the case. Third, there is the government's responsibility by maintaining order in society to build peace. The characteristics of restorative justice are as follows:

1. Contains a meaning as a way of thinking that is different from the usual ones, namely about victimization and the public's response to victimization;
2. There is a focus that is more oriented to the losses caused by victimization;
3. Repair the harm done to the victim and reduce future harm by preventing crime;
4. Hold perpetrators accountable for their actions and for the losses they cause
5. Seeking compensation for the victims;
6. Victims and perpetrators in the life in which their community resides;
7. Achieved through collaborative efforts and synergies by the community and government;
8. Victimization is seen as a violation against individuals by other individuals, not as a violation against the state by individuals;
9. Seek the perpetrator to understand the mistakes that have been done and regret his actions.

In the context of law enforcement, there are many things that need to be addressed at this time. These improvements can be started from the formulation of existing legal rules. One of the reforms that are currently being carried out in Indonesia is the existing rules in the criminal law. The hope is that after the existing criminal law rules are getting better, it will lead to better criminal law enforcement in the future. Criminal law enforcement is a part (sub-system) of the entire national law enforcement system / policy, which is basically also part of the national development system / policy. In this scope, the enforcement of criminal law is as important as law enforcement and other law enforcement. Even though in its doctrine it is always stated that the enforcement of criminal law is the last resort (*ultimum remedium*) in order to fulfill the people's need for legal justice [15].

In Indonesia so far, criminal dispute resolution practices outside the formal rules have often occurred. This was done because people considered it more efficient, more acceptable for the results, and a "win-win solution" (*win-win solution*). Although often the efforts that have been made by the community to resolve the disputes themselves are not considered by the authorities as legitimate efforts, the community still recognizes that efforts to resolve disputes outside of formal efforts with

family deliberations or customary deliberations are something that must be obeyed. In fact, sometimes people are more "willing" to decisions from family or customary deliberations [16].

As stated by Ahmad Irzal Fardiansyah, in law enforcement, discretion or diversion has long been known. Discretion in a broader and comprehensive sense is independence and / or authority (a person / group of people / an institution) to wisely and with full consideration make the most appropriate choices in terms of making decisions and / or taking (certain) actions. Meanwhile, diversion can be understood as a diversion in the handling of criminal cases from the formal process. This shows that even among law enforcers there has been a shift (in responsibility) towards the patterns of handling criminal disputes [17].

There are several advantages to using Restorative justice as a post-victimization settlement compared to settlement with the Criminal Justice System. The benefits referred to are as follows:

1. Restorative justice views the occurrence of crime or victimization as more comprehensive. It means that a person who commits victimization is not just a violation of the law, but Restorative justice admits that the perpetrator of victimization has harmed the victim, society and even themselves;
2. Restorative justice involves more parties in its settlement. Parties who are given responsibility as the key to resolution are not only to the government and the perpetrators, but also the victims and the community;
3. Restorative justice measures success differently. This implies that measuring success in resolving victimization cases is not by measuring how many sentences have been imposed on the perpetrator. It is more concerned with measuring how much damage the victim has felt has been repaired or prevented by the perpetrator.
4. Restorative justice recognizes the importance of community involvement and initiative in responding and reducing crime, rather than leaving the crime problem to the government alone.
5. Restorative justice substantially reduces the perpetrator from repeating his actions of victimization, although not entirely;

6. Restorative justice reduces the perpetrator to become recidivists and returns to prison;
7. Restorative justice reduces the burden of duties and costs of criminal justice;
8. Restorative justice is more perceived as having a satisfaction value for victims and perpetrators compared to using the criminal justice system which is considered as traditional criminal justice;
9. Restorative justice reduces the emergence of post-traumatic stress symptoms for victims of victimization and the costs that must be borne by the victim;
10. Restorative justice reduces the desire for victimization victims to take revenge with violence against the perpetrators.

Restorative justice offers a more comprehensive solution for victims and perpetrators, starting from raising awareness of the act, expressing forgiveness, restoring the victim, and providing compensation if necessary. This is not found in the values of retributive and restitutive justice paradigms.

Umbreit then emphasized the values that distinguish restorative justice from the other two justice as follows: 1) Restorative justice is more concerned with the recovery of victims and communities than punishment for the perpetrators; 2) Restorative justice enhances the role of victims in the criminal justice process through increased involvement, input and services; 3) Restorative justice requires the perpetrator to be directly accountable for his actions to the victim or the community; 4) Restorative justice encourages the entire community to be involved in the recovery of victims and perpetrators; 5) Restorative justice realizes the responsibility of the community towards the social conditions that affect the perpetrator's actions

Restorative justice values give equal attention to victims and perpetrators. The authority to determine the sense of justice rests with the parties, not with the state. This process is deemed suitable by some circles to be applied in a variety of criminal acts including crimes that fall under the category of non-conventional crime, illegal abuse of power and even crimes that fall into the category of extra ordinary crime. Even though in reality this concept also turns out to work well even for serious crimes or crimes committed by the state. Therefore, criminal acts that

harm individual interests will be far more if resolved by using a restorative justice approach.

Imprisonment is not the only punishment that can be given to the perpetrator, but rather restoration of losses, the suffering experienced by the victim is the main one. The obligation to restore crime in the form of restitution and compensation as well as reconciliation and social integration is a form of crime in the concept of restorative justice. Restorative justice is expected to provide a sense of social responsibility to the perpetrator and prevent stigmatization of the perpetrator in the future. Thus, the concept of restorative justice is expected to at least limit the cases that have accumulated in court (even though it cannot be resolved through out of court settlements) and can be used as a solution in crime prevention.

V. CONCLUSION

Restorative justice involves three stakeholders, namely, victims, perpetrators, and the community in determining the settlement of criminal cases. Through a restorative justice approach, there are efforts to bring together victims and perpetrators with the aim of seeking recovery for victims. Settlement of criminal cases through the restorative justice approach will be carried out optimally, if the completeness of restorative justice is properly available in a judicial institution. Thus the settlement of criminal cases against violations of individual interests with a restorative justice approach is possible by means of diversion, namely the transfer of settlement of criminal cases that violate individual interests from the criminal justice process to processes outside the criminal court or it can also be referred to as penal mediation.

REFERENCES

- [1] W. Prodjodikoro. *Asas-asas Hukum Pidana Indonesia*. Bandung: PT. Reneka Aditama, 2003.
- [2] B. Waluyo. *Viktimologi perlindungan korban dan saksi*. Jakarta: Sinar Grafika. 2012.
- [3] R. Mansyur. *Kadilan Restoratif Sebagai Tujuan Pelaksanaan Diversi Pada Sistem Peradilan Pidana Anak*, [Online] Available:

- <http://www.mahkamahagung.go.id> [Accessed August, 15, 2020]
- [4] A. Afif. *Pemanfaatan Rekonsiliasi dan Restorative Justice*. Yogyakarta: Pustaka Pelajar. 2015
- [5] K.P Prayitno. *Restorative Justice*, Purwokerto: Diktat Pascasarjana Ilmu Hukum Universitas Jenderal Soedirman, 2013
- [6] N, Amriani, N. *Alternatif Penyelesaian Sengketa Perdata di Pengadilan*, Jakarta: Raja Grafindo Persada, 2011.
- [7] A, Andrew. "Victim Impact Statements and Sentencing", *The Criminal Law Review*, Agust., pp. 498-509, 1993
- [8] R. Saleh. *Stelsel Pidana Indonesia*, Jakarta: Aksara Baru, 1987.
- [9] D. Priyatna. *Sistem Pelaksanaan Pidana Penjara di Indonesia*, Bandung: Refika Aditama, 2006.
- [10] Angkasa. *Viktimologi*. Jakarta: RajaGrafindo Persada, 2000.
- [11] Muladi and B. N. Arief. *Bunga Rampai Hukum Pidana*. Bandung: Alumni. 2007.
- [12] Iswanto. *Restritusi Sebagai Syarat Penjatuhan Pidana Bersyarat Dalam Tindak Pidana Lalu Lintas Jalan*. Yogyakarta: Disertasi UGM, 1995.
- [13] A. Gosita. *Masalah Korban Kejahatan*, Jakarta: Universitas Trisakti, 2009.
- [14] Muladi, 1990. *Proyeksi Hukum Pidana Materiel Indonesia di Masa Datang*. (Inauguration Speech for Professor of the Faculty of Law, UNDIP Semarang). Semarang: UNDIP Publishing Agency, 1990.
- [15] A. Fardiansyah, "Mediasi Pidana (Penal); Sebuah Bentuk Perkembangan Hukum Pidana Sekaligus Pengakuan terhadap Nilai yang Hidup di Masyarakat," *Jurnal Hukum Progresif*, vol. 3, no. 2, pp. 77, Jul. 2011.
- [16] Umbreit, M. *Introduction, Restorative Justice, Thorough Victim Offender Mediation*, in *The Handbook of Victim Offendr Mediation, An Essential Guide to Practice and Research*, San Fransisco: Jossey-Bass, 2001.