

The Restorative Justice Efforts in Settlement of Misdemeanor Crime Cases

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Abstract: *The purpose of this study is to examine and analyze restorative justice efforts in settling minor criminal cases. The approach method used in this paper is normative juridical. The specification of this writing is descriptive analytical. Crimes that are classified as minor with relatively small losses are more appropriate to be resolved through penal mediation. However, the legality of penal mediation has not been accommodated in the criminal law system in Indonesia. Public law, in this case criminal is very different from civil law. In criminal law, all problems that arise will be left to the State to solve them. Although in theory of criminal procedural law, the submission of settlements to the State varies. One of the phenomena that needs to be observed is the peaceful efforts that are made when a suspected criminal act arises. The restorative justice path specifically does not yet have a legal umbrella in the Indonesian criminal justice system. But, penal mediation has regulations that are implied by the possibility of carrying out mediation. If penal mediation does not have laws governing it, then we can look at the regulations under the laws. The impetus for the need for criminal law reform can be seen from the socio-political, socio-philosophical, socio-cultural aspects or from various policy aspects (especially social policy, criminal policy, and law enforcement policy). In essence, the renewal of criminal law must be an embodiment of changes and updates to various aspects and policies that underlie it. The impetus for the need for criminal law reform can be seen from the socio-political, socio-philosophical, socio-cultural aspects or from various policy aspects (especially social policy, criminal policy, and law enforcement policy). In essence, the renewal of criminal law must be an embodiment of changes and updates to various aspects and policies that underlie it. The impetus for the need for criminal law reform can be seen from the socio-political, socio-philosophical, socio-cultural aspects or from various policy aspects (especially social policy, criminal policy, and law enforcement policy). In essence, the renewal of criminal law must be an embodiment of changes and updates to various aspects and policies that underlie it.*

Keywords: Justice; Misdemeanors; Restorative.

1. Introduction

The Unitary State of the Republic of Indonesia is one of the large countries that prioritizes the provisions of applicable law. The rules of positive law that apply in Indonesia are clearly an important component in building a safe, peaceful and peaceful life.¹As in the Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, it has been emphasized that Indonesia is a state based on law, this phrase is contained in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia. This emphasizes that the implementation of Indonesian state government must always be based on and in accordance with by law. The 4th paragraph of the Preamble to the 1945 Constitution, which is the constitutional foundation of this country, states that one of the goals of the state is to create general welfare and educate the nation's life.²

In people's lives, criminal acts often occur in the form of violations and crimes, both serious and minor. In essence, all of these crimes are violations of norms in other fields of law such as civil, constitutional and government administrative law. Of the many criminal acts, all of them have the same nature, namely the nature of violating the law (*wederrechtelijkheid*). This is what makes many people seek justice from law enforcers.³

The criminal justice system (SPP) in the settlement of criminal cases currently tends to only pay attention to the rights of the perpetrators, but the rights of the victims receive less attention, so that the criminal law seems to provide more protection for the rights of the perpetrators. Then restorative justice can be a solution in solving criminal problems. This aims to seek reform of criminal law.

The absence of guidelines or standards on how to calculate a fair sentencing burden in imposing criminal sanctions, especially imprisonment in deciding criminal cases in Indonesia, makes the sense of justice and legal certainty immeasurable or uncertain. There are only minimum or maximum guidelines in imposing prison sentences and fines. However, this is still far from the expectation of justice and certainty because apart from the minimum and maximum distances, it is still very broad, so judges may differ from one another and are also not yet detailed.

¹Sumaryono and Sri Kusriyah, *The Criminal Enforcement of the Fraud Mode of Multiple Money* (Case study Decision No. 61 / Pid.B / 2019 / PN. Blora). *Journal of Sovereign Law: Volume 3 Number 1* (2020), p.237

²Sulistiyawan Doni Ardiyanto, Eko Soponyono, and Achmad Sulchan, *Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination*, *Jurnal Daulat Hukum: Volume 3 Number 1* (2020), p.179

³Wirjono Prodjodikoro, 2003, *Certain Criminal Acts in Indonesia*, Bandung: PT. Refika Aditama, p. 1.

In examining criminal law, confusion over legal objectives, between certainty, justice and legal benefits also occurs. When Mbok Minah, an old grandmother who was convicted of stealing 3 cocoa beans from her employer's garden and at the same time a Mayor was sentenced to 6 months for corruption of billions of rupiah, for a moment we ask, is this the essence of justice carried out by law? Several years ago there was a case in the city of Palu, Central Sulawesi when AAL, a boy at a vocational school was arrested, accused and tried to steal flip-flops belonging to a police officer. Single judge Rommel F Tampubolon's decision in a hearing at the District Court (PN) Palu, Central Sulawesi, which found AAL guilty and handed over his guidance to his parents. AAL was accused of stealing flip-flops brand Eiger number 43 belonging to Brigadier Ahmad Rusdi Harahap, a member of the Central Sulawesi Mobile Brigade Police. However, at trial, the sandals branded Ando number 9.5 were used as evidence. The judge's decision also did not mention that the sandals belonged to Ahmad. Judge Rommel's ruling may not be legally problematic. However, considering that so far the treatment and sentences given to perpetrators of corruption have been low, this decision does not fulfill the people's sense of justice.⁴

2. Research Methods

To conduct an assessment in this writing the author uses a normative juridical method, with an emphasis on literature studies.⁵The specifications in this study are descriptive analysis. Secondary research materials originating from laws and regulations relating to the writing carried out. The data collection used in this writing is document study which is a data collection tool that is carried out through written data using "content analysis".

3. Results and Discussion

3.1. restorative justice

The *restorative justice* is a reaction to retributive theory which is oriented towards retaliation and neo-classical theory which is oriented towards equality of criminal sanctions and action sanctions. In retributive theory, criminal sanctions stem from the idea "why is punishment held?" In this case the criminal sanction places more emphasis on the element of retaliation (compensation) which is actually reactive to an act. It is suffering that is intentionally imposed on an offender, or as JE Jonkers says that criminal sanctions are focused on the punishment that is applied to the crime committed. Meanwhile, the action sanction originates from the idea

⁴ Muhaimin. Restorative Justice in the Settlement of Minor Crimes. Journal of DeJure Legal Research, Vol. 19 No. 2, (2019). p. 187

⁵Rony Hanitijo Soemitro. 1990, Legal and Jurimetric Research Methodology, Ghalia Indonesia, Jakarta, p. 34

"what is the punishment for?" If in retributive theory criminal sanctions are aimed at the wrongdoing of a person through the imposition of suffering (so that the person concerned becomes deterrent), then the sanction of action is directed at efforts to provide assistance so that he changes. Action sanctions aim to be more educational in nature and oriented towards community protection.⁶

Howard Zehr: Viewed through a restorative justice lens, "crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance. (Viewed through the lens of restorative justice, crime is a violation of social relations. Crime creates an obligation to repair it. Justice involves the victim, the perpetrator, and society in finding solutions that offer repair, reconciliation, and reassurance.)⁷

3.2. Restorative Justice Efforts in Settlement of Misdemeanor Crime Cases

In the practice of criminal justice in Indonesia, the interests of victims, which include losses and suffering from the crimes they have experienced, are often neglected. Victims of crime are positioned only as evidence, namely only as witnesses, so that the possibility for victims to gain freedom in fighting for their rights is small. The interests of the victims that have been represented by the Public Prosecutor, in an effort to prosecute the perpetrators of criminal acts, have been considered as an effort to protect the law for victims and the wider community. Yet in reality the losses suffered by victims are neglected.⁸

In the process of conventional criminal procedures, for example, if there has been peace between the perpetrator and the victim, and the victim has forgiven the perpetrator, then this will not affect the authority of law enforcement to continue the case in the realm of crime which will eventually lead to the conviction of the perpetrator. The formal criminal process which is long and does not provide certainty for both perpetrators and victims certainly does not necessarily fulfill or restore the relationship between victims and perpetrators, so the concept of restorative justice offers a recovery process that involves perpetrators and victims directly in solving the problem.

Criminal acts that occur every day are a separate burden for each court. For cases of ordinary to serious criminal offenses, the examination procedure must be

⁶Andi Hamzah, 1986, Indonesian Criminal and Punishment System, from Retribution to Reform, Jakarta: Pradnya Paramita, p.53.

⁷Howard Zehr, 1990. Changing lenses : A New Focus for Crime and Justice, Waterloo: Herald Press, p.181

⁸Josephin Mareta and Jalan HR Rasuna Said Kav, Implementation of Restorative Justice Through Fulfillment of Restitution in Victims of Child Crime, Journal of Lex et Societatis, Vol.3, No. 1 (2018), p.104

terminated accordingly so that the public continues to trust legal institutions in Indonesia.⁹ Apart from criminal acts, usually there are also minor crimes which contribute to the burden on the court even though they are crimes which have few consequences, as stated in Article 205 of the Criminal Procedure Code:

(1) According to the procedure for examining minor crimes, those that are subject to a maximum penalty of three months imprisonment or imprisonment and or a maximum fine of seven thousand five hundred rupiahs and light contempt except for those specified in paragraph 2 of this section.

At the beginning, many cases of misdemeanors being tried in court were highlighted that legal efficiency could not be achieved, for example, a misdemeanor crime of light theft with stolen goods as evidence having little value was threatened with a penalty of 5 (five) years as stipulated in the in Article 362 of the Criminal Code is not worth the value of the goods stolen.

Responding to this phenomenon, according to Suteki, often some people understand law only as a device of positive legal regulations that are uprooted from aspects of their philosophical and sociological understanding. Such an understanding depicts that the law is not complete, but only a fragment or skeleton, namely statutory regulations. This encourages the emergence of the notion that if the law has been implemented as written in black letter law, it is as if the work of seeking justice has been completed. As a result, there have been many cases which reflect the condition that substantial justice has been alienated from law. The law is not grounded, it even hurts the sense of justice in society. The legal handling of criminal acts in Indonesia is like the power of a spider's web. He is only able to catch small crimes, but is unable to touch large crimes. He gave examples of several phenomena of justice for the poor, such as:

- 1) In the case of theft of a watermelon (in Kediri), Cholil and Basyar Suyanto were sentenced to 15 days probation and 1 month.
- 2) In the case of theft of kapok randu worth Rp. 12,000.00 (4 family members were detained at Rowobelang Prison) and the defendants were sentenced to 24 days in prison.
- 3) The case of Mr. Klijo Sumarto (76), a suspect in the theft of a bunch of unripe Kluthuk bananas worth Rp. 2,000.00 in Sleman, December 7, 2009 (incarcerated at Cebongan Penitentiary, Sleman).
- 4) Mbok Minah case (accused of stealing 3 cocoa beans worth IDR 2,100, 2 August 2009, sentenced to 1 month and 15 days probation).

⁹Septa Chandra, Legal Politics of Adopting Restorative Justice in Criminal Law Renewal, FIAT JUSTISIA: Journal of Legal Studies Vol.8 No. 2, (2015), p.255

- 5) The case of theft of a pair of flip-flops by a police officer was committed by AAL (15 years) who was still found guilty even though the sandals in question were proven not to belong to the police officer concerned.¹⁰

This phenomenon shows that the cost of justice for small communities and the complexity of justice for minor crimes with not large losses. However, the settlement of criminal cases must go through a procedure starting from the investigation until it is decided by the court. This settlement clearly requires a lot of effort, time and thought so that it is considered unbalanced with the effects of the actions taken. This situation raises the question why small cases are not resolved through mediation? Even though penal mediation is an alternative settlement of criminal acts besides the court, it is faster, cheaper, and provides access to the disputing parties to obtain justice or a satisfactory settlement.¹¹

In the criminal justice system to seek restorative justice, the background is thought associated with the ideas of penal reform, and associated with pragmatism issues. The background of the "penal reform" ideas includes the idea of victim protection, the idea of harmonization, the idea of restorative justice, the idea of overcoming rigidity/formality in the prevailing system, the idea of avoiding the negative effects of the current criminal justice system and criminal justice system, especially in seeking other alternatives to imprisonment (alternative to imprisonment/alternative to custody).¹²The background of pragmatism, among other things, is to reduce stagnation or accumulation of cases ("the problems of court case overload"), to simplify the judicial process.¹³

Regarding the background of pragmatism, among others, to reduce stagnation or accumulation of cases ("the problems of court case overload"), to simplify the judicial process also has implications for the current condition of correctional institutions in Indonesia which have reached over capacity status. As one of the sub-systems of criminal justice, penitentiary institutions (Lapas) have a role in the implementation of fostering prisoners and correctional students through a correctional system based on education, rehabilitation and reintegration. In Law Number 12 of 1995 concerning Corrections it is stated that the correctional system is organized in the framework of forming correctional inmates so that they become fully human, realize mistakes, improve themselves, and not repeating criminal acts so that they can be accepted again by the community. However, in its development, the coaching that was carried out was not optimal because of

¹⁰Muhammad Taufiq, 2014. Substantial Justice Cuts the Chain of Legal Bureaucracy, Yogyakarta: Student Library, p. 4-5

¹¹Supriyadi, Penal Mediation as an Alternative Settlement for Cases of Embezzlement of Fiduciary Guarantees, MMH Journal, Volume 43, Number 3, (2014), p. 424

¹²Apong Herlina, Restorative Justice, Journal of Indonesian Criminology, Volume 3, Number III, (2004), p. 19

¹³Umi Rozah, Building a Political Construction of Penal Mediation Law as an Alternative to Settlement of Criminal Cases, MHH Journal, Volume 39, Number 3, (2010), p. 284.

the complexity of the problems that occur in prisons. One of the root causes of problems in correctional institutions/detention centers is over capacity.

As a result of this over-capacity, among other things, it has an impact on the poor health condition and psychological atmosphere of inmates and detainees, it is easy for conflicts to occur between prison/detention inmates, coaching is not optimal and does not work according to regulations and budget swelling occurs due to increased consumption of water, electricity, and foodstuffs. The peak occurred in riots and cases of escape of convicts and detainees because supervision was not optimal as a result of an imbalance in the number of prison guards/correctional officers and inmates of correctional institutions/detentions.

Solving the problem of overcapacity should focus on the process prior to the entry of these "problem people" into correctional institutions, namely at the stage of investigation at the police, prosecution at the prosecutor's office, up to the court decision stage. This is very important so that not all criminals have to go to correctional institutions, even though some crimes can actually be resolved at the police and prosecutorial levels without having to be subject to corporal punishment in the form of punishment, especially for minor crimes.

In terms of settlement of minor criminal cases such as minor animal abuse (Article 302 Paragraph (1) of the Criminal Code), minor humiliation (Article 315 of the Criminal Code), minor maltreatment (Article 352 Paragraph (1) of the Criminal Code), minor theft (Article 364 of the Criminal Code), embezzlement minor fraud (Article 373 of the Criminal Code), minor fraud (Article 379 of the Criminal Code), minor destruction (Article 407 Paragraph (1) of the Criminal Code), light collection (Article 482 of the Criminal Code), which is known by most people as a minor crime, is still being processed through the procedure ordinary examination according to the procedures applicable in the criminal justice system in Indonesia based on the Criminal Procedure Code. For this case, it is not yet possible to resolve through penal mediation because normatively,

Settlement of a criminal case starts from the Police level which includes the investigation and investigation stages, which is continued at the Prosecutor's Office level to be prosecuted at court hearings, which then ends in proceedings at the judiciary starting from trials at the District Court and ending at the Cassation Level at the Supreme Court if indeed legal remedies are desired by the perpetrators.¹⁴Such a process takes quite a long time, especially since it has to be passed by perpetrators in cases of minor crimes. Thus, at the level of implementation in the field, law enforcement can adopt policies that are beneficial

¹⁴Febby Mutiara Nelson, Due Process Model and Restorative justice in Indonesia. Journal of Criminal Law & Criminology Vol.1 No. 1, (2020), p.102.

to victims and perpetrators in order to achieve restorative justice.

4. Conclusion

The current legal doctrine is that criminal cases cannot be mediated. The criminal justice process is a laboratory of common sense because it tests the truth of legal facts from the perspective of law and conscience to produce truth and justice for perpetrators and victims. The background of pragmatism, among others, is to reduce stagnation or accumulation of cases ("the problems of court case overload"), to simplify the judicial process and also has implications for the current condition of correctional institutions in Indonesia which have reached over capacity status. The process of criminal proceedings is very long only to process a crime for a minor criminal act in which efficiency, effectiveness, and efficiency are not realized. proportional to what is done by the criminal justice system in order to uphold the law against criminal acts that can still be used by legal logic to take the non-penal route. As for justice and expediency of law is not achieved in the penal settlement of minor crimes. At the level of implementation in the field, law enforcement can adopt policies that benefit victims and perpetrators to achieve restorative justice.

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