

Effectiveness of Implementing Restorative Justice at The Semarang State Attorney

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Abstract. *The basic principle of restorative justice is the provision of restoration to victims who suffer as a result of crime by providing compensation to the victim, peace, the perpetrator carrying out social work or other agreements. This writing aims to find out and analyze the implementation of restorative justice at the Semarang District Prosecutor's Office, obstacles to implementing restorative justice at the Semarang District Prosecutor's Office, and the effectiveness of implementing restorative justice at the Semarang District Prosecutor's Office. Research methods are a very important thing in research, both in sociological or empirical and normative research. Data analysis is carried out qualitatively, meaning that it describes the data in a quality manner in the form of sentences that are orderly, coherent, logical, non-overlapping and effective, making it easier to interpret the data and understand the results of the analysis. The analytical knife in this writing uses the theory of legal certainty, progressive legal theory, and the theory of legal effectiveness. The results of the research show that the implementation of terminating prosecution in criminal acts of theft based on restorative justice is seen in Article 140 Paragraph (2) letter a of the Criminal Procedure Code, the public prosecutor can stop prosecution, for the reasons: terminating prosecution for technical reasons and terminating prosecution for policy reasons. Obstacles in implementing the termination of prosecution for criminal acts of theft based on restorative justice are in the form of internal obstacles and external obstacles. The effectiveness of terminating prosecution in criminal acts of theft based on restorative justice is quite good, however, the effectiveness of resolving restorative justice in repeating criminal acts by perpetrators depends on each individual perpetrator. In several criminal cases, this restorative resolution makes the perpetrator realize his mistake and many regret it.*

Keywords: Effectiveness; Justice; Restorative.

1. Introduction

Indonesia is a unitary country consisting of various tribes, religions, races and cultures. Not only are the people different, Indonesia also has a large territory with diverse geographical areas. Indonesian social life is also regulated by law because Indonesia is a legal state, this is stated in article 1 paragraph (3) of the 1945 Constitution.¹

A criminal act can simply be said to be an act for which the perpetrator should be punished. Moeljatno used the term criminal act. According to Moeljatno, criminal acts only include actions, as it is said that "Criminal acts only refer to the nature of the act, namely the nature of being prohibited by a crime if it is violated." There are two kinds of basic concepts regarding the structure of criminal acts, namely: the concept of unification between acts and criminal responsibility (mistakes) which form criminal acts, and the concept of separation between criminal acts and criminal liability (mistakes) both of which are conditions for the perpetrator to be punished.²

Settlement of criminal cases by prioritizing restorative justice which emphasizes restoration to the original state and a balance of protection and interests of victims and perpetrators of criminal acts that is not oriented towards retribution is a societal need and a mechanism that must be built in the implementation of prosecutorial authority and system reform of criminal justice.³

The concept of restorative justice is implemented in the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Restorative justice is an approach to resolving criminal acts that is currently being widely voiced in various countries. Through a restorative justice approach, it is hoped that victims and perpetrators of criminal acts can achieve peace by prioritizing win-win solutions, and emphasizing that victims' losses are replaced and victims forgive the perpetrators of criminal acts.⁴

The Semarang District Prosecutor's Office has succeeded in facilitating a peace process based on restorative justice in the crime of theft committed by the

¹Sefriani, "The Urgency of Reconceptualization and Legislation of Restorative Justice in Indonesia", Vol. II (2), Rechts Vinding Journal, 2013, p. 279.

²Adami Chazawi, "Criminal Law Lesson 3: Trial and Participation" (Jakarta: PT Raja Grafindo Persada, 2002), p. 71.

³Reynaldi Sinyo Wakkary, "Implementation of Restorative Justice Principles in the Prosecution System Based on Prosecutor's Regulation Number 15 of 2020", Vol X (9), Lex Crimen Journal, 2021, p.116.

⁴Prima Anggara, "Application of Restorative Justice in the Crime of Petty Theft", Vol. III (3), Student Scientific Journal, 2019, p. 472.

suspect BAGUS PUTRA ARDANI BIN ARI SETYO AGUNG in the case of the crime of theft which occurred in Semarang, Central Java on January 30 2022. The perpetrator committed the crime of theft by the stolen item is 1 (one) KYT NFR brand full face helmet, combination green. As a result of this incident, the victim JOHAN TUMPAL PANGIHUTAN LUMBAN TOBING suffered a loss of approximately IDR 2,550,000 (two million five hundred and fifty thousand rupiah). The suspect's actions are punishable by Article 362 of the Criminal Code. In this case, peace was achieved between the perpetrator and the victim by the Semarang City District Prosecutor's Office and stopped the prosecution based on restorative justice. As a follow-up to the implementation of restorative justice, the Semarang City District Prosecutor's Office has begun to establish Restorative Justice (RJ) Houses in four sub-districts of Semarang City which are places to control criminal matters according to peace criteria.

2. Research Methods

The approach method used in this research is a sociological juridical approach. Sociological juridical means finding legal realities experienced in the field or an approach that stems from problems regarding juridical matters and existing realities.⁵ Using descriptive qualitative research is one type of research that is included in the qualitative research type. The aim of this research is to reveal events or facts, circumstances, phenomena, variables and circumstances that often occur during research by presenting what actually happens.

3. Result and Discussion

3.1. Implementation of Restorative Justice at the Semarang District Prosecutor's Office

Termination of prosecution for policy reasons, where the prosecutor is allowed to set aside the case even if the evidence is sufficient to be submitted to court in the public interest or individual interests and is based on unwritten law (the principle of opportunity). Based on article 77 of the Criminal Procedure Code, the Attorney General has the authority to set aside cases, where the actions to set aside cases consist of:⁶

1. Dismissal of the case based on the principle of opportunity, on the grounds:

⁵Hilman Hadi Kusuma, 2012, *Methods for Making Working Papers or Theses Legal Science*, CV. Mandar Maju, Bandung, p. 34

⁶Hendi Suhendi, "Application of the Principle of Opportunity in Law Enforcement (A Juridical and Sociological Review)", in *Anthology of Criminal Law and Criminal Procedure*, Editor Andi Hamzah, (Jakarta: Ghalia Indonesia, 1984), p. 154-156

- a. In the interests of the state (staatsbelang);
 - b. In the interests of society (maatschappelijk belang);
 - c. For personal interests (particular interests).
2. Dismissal of cases on the basis of criminal law assessments, in connection with:
- a. Loss of the right to sue due to *nebis in idem*; death of the defendant; overdue (expired); amnesty/abolition;
 - b. Withdrawal of complaint;
 - c. There is not enough reason to sue.
3. The dismissal of cases on the basis of legal interests, as stated in the Circular Letter of the Attorney General of the Republic of Indonesia Number SE-001/JA/4/1995 dated 27 April 1995 concerning Guidelines for Criminal Prosecutions, includes, among other things, instructions for discontinuing criminal charges conditionally, if:
- a. The defendant has paid the compensation suffered by the victim;
 - b. The defendant is not old enough; or
 - c. The defendant has student status.

The implementation of termination of prosecution in criminal acts of theft based on restorative justice is seen in Article 140 Paragraph (2) letter a of the Criminal Procedure Code, the public prosecutor can stop prosecution, for the reasons: termination of prosecution for technical reasons and termination of prosecution for policy reasons. Termination of prosecution for technical reasons, due to circumstances that cause the public prosecutor to make a decision not to prosecute. By going through several stages such as summoning the victim and the suspect to make peace efforts, the Head of the Semarang City District Prosecutor's Office issued a letter of notification of out-of-court case settlement based on restorative justice to the Semarang City Police Investigator.

Based on a criminal case of theft committed by SDR. BAGUS PUTRA ARDANI, Head of the Semarang City District Prosecutor's Office issued an Order to facilitate a peace process based on restorative justice based on:

1. Law of the Republic of Indonesia Number 8 of 1991 concerning the Criminal Procedure Code (KUHAP) Article 8 paragraph (3) a, Article 14 a,b,i, Article 109, Article 110 and Article 138 of the Criminal Code;
2. Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia;
3. Attorney General Regulation Number 6 of 2019 concerning Amendments to Attorney General Regulation No. PER-006/A/JA/07/2017 concerning the Organization and Work Procedures of the Republic of Indonesia Prosecutor's Office;
4. Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice;
5. Cover Letter for Receiving and Researching Suspects and Evidence; And
6. Report on peace efforts by victim JOHANES TUMPAL PANGIHUTAN LUMBAN TOBING on March 15 2022

By going through several stages such as summoning the victim and the suspect to make peace efforts, the Head of the Semarang City District Prosecutor's Office issued a letter of notification of out-of-court case settlement based on restorative justice to the Semarang City Police Investigator.

After peace efforts based on restorative justice, there is a report on the results of peace efforts as follows:

1. Admit all his mistakes;
2. Return 1 (one) KYT NFR brand full face helmet in green color for approximately Rp. 2,550,000.00 (two million five hundred and fifty thousand rupiah) to the victim;
3. Will not repeat similar actions;
4. The suspect and victim forgive each other;
5. The suspect and victim agreed not to pursue the case further.

3.2. Obstacles to the Implementation of Criminal Fines as an Effort to Recover State Losses in Corruption Crimes

There are obstacles that exist in 2 (two) conditions, namely internal obstacles and external obstacles.

1. Internal Barriers

The application of restorative justice by investigators in the investigation process is a breakthrough as a form of regulatory reform for handling criminal cases for the sake of resolving cases in a society that wants to obtain justice of the highest quality, but not through formalistic, long, rigid, inflexible and expensive criminal justice processes. .

Barriers to the prosecutor's office in implementing a system for resolving criminal cases outside of court using a restorative justice approach, along with the efforts that must be made to overcome them, namely:⁷

a. Legal substance

Currently, there is a provision in Article 8 paragraph (4) of the Judicial Power Law which encourages prosecutors to always act based on the law by paying attention to religious norms, politeness and decency and is obliged to explore and uphold the human values that live in society and always maintain honor. and the dignity of their profession, in carrying out their duties and authority. However, because there are no regulations regarding the prosecutor's authority to resolve cases outside of court, these provisions cannot be applied as a basis for implementing restorative justice by prosecutors.

b. Legal structure

The legal structure is the law enforcement apparatus and its institutions that drive the legal system as regulated in the substance of the law. The legal structure in this case is the prosecutor's office and its apparatus, especially prosecutors. If this legal structure is associated with obstacles to prosecutors in resolving cases outside of court using a restorative justice approach, then the main obstacle is because prosecutors and prosecutors have not been given the authority to do so. Article 8 paragraph (4) of the Judicial Power Law, in carrying out the duties and functions of prosecutors, is obliged to explore and uphold the human values that exist in society.

c. Legal culture

⁷Husein Pohan, "Resolving Crimes Using a Restorative Justice Approach Taken by the Prosecutor's Office", Vol. II (1), Journal of Legal Science Concepts, (Medan: Locus Media, 2022), p. 277-278

In summary, legal culture can be interpreted as people's behavior related to the law. In this case, what is meant by society in relation to law is the law that deals with the resolution of criminal cases outside of court by prosecutors through a restorative justice approach. If this legal culture is linked to resolving cases outside of court, it seems that this will not be too much of an obstacle for the prosecutor's office. Because in general the parties are peaceful compared to dealing with law enforcement agencies, whether the police, prosecutor's office or court.

Obstacles for the Public Prosecutor (JPU) in resolving criminal acts using a restorative justice approach at the Semarang City District Prosecutor's Office, the Republic of Indonesia's PERJA does not explicitly and in detail regulate the time period given to resolve criminal acts using a restorative justice approach, as long as This still refers to the internal Standard Operating Procedures (SOP) of the Semarang City District Prosecutor's Office, which is to be given no later than 7 (seven) days. With such a short time, of course summoning victims, perpetrators of criminal acts, related community figures, as well as waiting for recommendations from superiors, takes quite a lot of time, so fast work is needed from the prosecutor so that restorative justice efforts can be successful.

*Restorative justice*The culture of Indonesian society is very strong, which is very familial. Then from the aspect of influencing society, the community itself fully supports this restorative justice system which can be seen by the participation of community representatives during the restorative justice process. So the implementation of restorative justice itself has gone quite well.

The absence of legal rules that regulate and serve as a basis for legitimacy in making decisions in the investigation process, whether based on the concept of restorative justice or other approaches that are in line with sociological jurisprudence, is therefore considered an abuse of discretionary authority. The absence of formal procedural procedures or mechanisms to implement it is also an obstacle in implementing restorative justice.

2. External Barriers

Obstacles in bringing together the interests of the parties are very likely to occur, considering that the benchmarks used are very subjective in nature, that is, they depend on the needs of each party, so that in practice in the field there are several possibilities for conflicts of interest to arise, such as:

- a. If the perpetrator is unable to provide compensation or support the victim, or the victim asks for compensation/compensation beyond the perpetrator's ability to fulfill it.

- b. If the victim (or his family) does not need compensation or compensation, and prefers punishment for the perpetrator.
- c. If there is coercion from the perpetrator on the victim in seeking peace.
- d. If there is more than one victim, one party receives compensation/compensation, but the other party does not.

3.3. Effectiveness of the Implementation of Restorative Justice at the Semarang District Prosecutor's Office

An approach that focuses on conditions for creating justice and balance for both victims and perpetrators of criminal acts is the concept of a restorative justice approach. Criminal procedural and justice mechanisms that focus on punishment are transformed into a dialogue and mediation process to create an agreement on the resolution of criminal cases that is fairer and more balanced for the victim and perpetrator. Recovery must be based on mutual agreement between the victim and the perpetrator. The victim can convey the losses they have suffered and the perpetrator is given the opportunity to make amends, for example through compensation mechanisms, peace, social work, or other agreements.⁸

The Semarang District Prosecutor's Office is one of the law enforcement agencies that is expected to be able to implement restorative justice mechanisms to uphold justice in society. The implementation of restorative justice at the Semarang District Prosecutor's Office has been running effectively.

The effectiveness of resolving restorative justice at the Semarang District Prosecutor's Office is quite good, however, the effectiveness of resolving restorative justice in repeat criminal acts by perpetrators depends on each individual perpetrator. In several criminal cases, this restorative resolution makes the perpetrator realize his mistake and many regret it. However, in several other cases there were also perpetrators who committed the same crime repeatedly. The restorative justice solution that is often used is an agreement to compensate the perpetrator for a nominal amount of losses by the perpetrator to the victim of a crime or what is usually called compensation. So that perpetrators who feel capable and sufficient can compensate for losses easily. Therefore, it does not rule out the possibility that in some cases the resolution carried out using restorative justice will not deter the perpetrator. This depends on each criminal's self-awareness.

⁸Grees Ayu Alamdari, 2023, "The Effectiveness of Restorative Justice in Resolving Crimes in the Lengkong Police Sector, Bandung", Journal of ADVANCES in Social Humanities Research, Vol. 1 No. 5, p. 813

The successful implementation of restorative justice is in line with the theory of Progressive Law. According to Satjipto Rahardjo, progressive law enforcement is carrying out the law not just in the black and white words of the regulations (according to the letter), but according to the spirit and deeper meaning (to the very meaning) of the statute or law in a broad sense. Law enforcement is not only intellectual intelligence, but also spiritual intelligence. In other words, law enforcement is carried out with full determination, empathy, dedication, commitment to the nation's suffering and with the courage to look for other ways than what is usually done.

4. Conclusion

1) The implementation of termination of prosecution in criminal acts of theft based on restorative justice is seen in Article 140 Paragraph (2) letter a of the Criminal Procedure Code, the public prosecutor can stop prosecution, for the reasons: termination of prosecution for technical reasons and termination of prosecution for policy reasons. By going through several stages such as summoning the victim and the suspect to make peace efforts, the Head of the Semarang City District Prosecutor's Office issued a letter of notification of out-of-court case settlement based on restorative justice to the Semarang City Police Investigator. 2) Obstacles in implementing the termination of prosecution for criminal acts of theft based on restorative justice are in the form of internal obstacles and external obstacles. Internal obstacles for the Public Prosecutor (JPU) in resolving criminal acts using a restorative justice approach at the Semarang City District Prosecutor's Office, the Republic of Indonesia's PERJA does not explicitly and in detail regulate the time period given to resolve criminal acts using a restorative justice approach. External obstacles in the form of the perpetrator being unable to provide compensation or support the victim, the victim (or his family) not needing compensation or compensation, the existence of coercion from the perpetrator to the victim in seeking peace, and more than one victim, on one side receiving compensation/compensation, but the other party does not accept. 3) The effectiveness of terminating prosecution in criminal acts of theft based on restorative justice is quite good, however, the effectiveness of resolving restorative justice in repeating criminal acts by perpetrators depends on each individual perpetrator. In several criminal cases, this restorative resolution makes the perpetrator realize his mistake and many regret it.

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