

Effectiveness of Implementing Termination of Prosecution in Handling Minor Crimes Based on Restorative Justice (Case Study at the Central Java High Prosecutor's Office)

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Abstract. *Minor Crimes are a type of crime that can be classified into the examination procedure for minor crimes. The objectives of this study are: 1) to determine and analyze the implementation of the termination of prosecution in handling minor crimes today; 2) to determine and analyze the weaknesses in the implementation of the termination of prosecution in handling minor crimes today; 3) to determine and analyze the effectiveness of the implementation of the termination of prosecution in handling minor crimes based on restorative justice. This study uses a sociological juridical approach, with a descriptive analytical research method. The data used are primary and secondary data which will be analyzed qualitatively. The research problems are analyzed using the theory of justice, Lawrence Friedman's legal system theory and progressive legal theory. The results of the study conclude that: 1) The implementation of restorative justice in handling minor crimes that In the settlement with restorative is carried out with the provision that peace has begun between the perpetrator, victim, perpetrator's family and community leaders who are in dispute with or without compensation after reaching a peace agreement the parties make a peace agreement signed by the related parties; 2). Obstacles to the implementation of restorative justice in handling minor crimes include legal factors, community factors, facility factors, law enforcement factors, and cultural factors. From a legal perspective, restorative justice in minor criminal cases has not been clearly regulated and this has become an obstacle for law enforcement officers in implementing restorative justice. From a law enforcement perspective, the low level of understanding of Polri members about restorative justice is something that affects the implementation of the restorative justice concept. From a facility perspective, the low level of socialization from the police to the community is due to the insufficient budget provided, while other priority programs must be implemented. From a community perspective, the community does not obey the law due to many factors that exist in the*

community/social conditions such as low trust from the community towards law enforcement officers. From a cultural perspective, there is a mindset that crimes must be repaid and punished to deter perpetrators. Community habits such as vigilante behavior against perpetrators of minor crimes are obstacles in implementing restorative justice.

Keywords: Criminal; Justice; Offenses.

1. Introduction

Minor Crimes are types of crimes that can be classified into minor criminal proceedings. However, Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) does not explain the crimes that are included in minor criminal proceedings. However, the Criminal Procedure Code determines the benchmark in terms of "criminal threats". Article 205 paragraph (1) of the Criminal Procedure Code explains that minor crimes are cases that are threatened with imprisonment or confinement for a maximum of 3 (three) months and/or a maximum fine of Rp. 7,500 (seven thousand five hundred rupiah); Minor insults, except those specified in paragraph 2 of this section (Traffic Violation Case Examination Procedure) (Article 205 paragraph (1) of the Criminal Procedure Code); Cases that are threatened with imprisonment for a maximum of 3 (three) months or a fine of more than Rp. 7,500 are also included in the authority of the Tipiring examination (Supreme Court Circular (SEMA) Number 18 of 1983).

The settlement of criminal cases within the framework of the Republic of Indonesia cannot be separated from Dutch criminal law which was adopted as Indonesian national criminal law. The implementation of Dutch criminal law in Indonesia is based on Law Number 1 of 1946 which is an affirmation of the Indonesian government to implement the Dutch Criminal Code (Criminal Code) which came into effect on March 18, 1942 as the criminal law applicable in Indonesia.¹ The settlement of minor crimes in Indonesia is currently attracting public attention, because its handling is considered no longer proportional to the level of seriousness of the regulated crime. The main problem, according to several analyses, is that the limits of the crime have never been updated since 1960. The current regulation of minor crimes is assumed to be a kind of protection from disproportionate law enforcement against crimes that (the losses) are considered not serious. The logic that the determination of minor crimes is related to the handling process in court, although perhaps for different reasons, can be found again in the Criminal Procedure Code which then applies in Indonesia.²

Minor crimes, especially minor theft, have recently attracted public attention because their handling is considered no longer proportional to the level of

¹ Eman Sulaeman, 2008, Licensing Offenses, Walisongo Press, Surabaya, p. 132.

²Leonardo OA Pandensolang, 2015, Study of Minor Crimes in the Criminal Justice Process. Lex Crimen Vol. IV/No. 1/Jan-Mar/2015 24, Sam Ratulangi University. Pg. 75

seriousness of the regulated crime. The current regulation of minor crimes is assumed to be a kind of protection from disproportionate law enforcement against crimes whose losses are considered not serious. Minor crimes do not only include violations, but also include minor crimes contained in Book II of the Criminal Code consisting of minor animal abuse, minor insults, minor abuse, minor theft, minor embezzlement, minor fraud, minor vandalism, and minor receiving of goods. Understanding of Supreme Court Regulation Number 2 of 2012 needs to be accompanied by efforts to educate the public about minor crimes. This is because not all people understand the things included in minor crimes (Tipiring). Technically, the law called Tipiring is a criminal act that is threatened with imprisonment or confinement for a maximum of three months and/or a maximum fine of seven thousand five hundred rupiah.

Not long ago, in 2020, the Attorney General of the Republic of Indonesia issued Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 dated July 21, 2020 concerning Termination of Prosecution Based on Restorative Justice (hereinafter referred to as Perja 15). In the provisions of Article 1 number 1 of Perja 15, it is stated that Restorative Justice is the resolution of criminal acts by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state, and not retaliation. In one of its considerations in Perja 15, it is stated that the resolution of criminal cases by prioritizing restorative justice that emphasizes restoration to the original state and a balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards retaliation is a legal need of society and a mechanism that must be built in the implementation of prosecutorial authority and the renewal of the criminal justice system.

This Perja 15 received a positive response from the public, especially legal practitioners and justice seekers. How could it not be, the Prosecutor who usually prosecutes the accused in court has actually stopped it this time. Of course, to stop the prosecution based on restorative justice, strict requirements must be met. These requirements are stated in the letter of the Deputy Attorney General for General Crimes Number: B-4301/E/EJP/9/2020 dated September 16, 2020, concerning the Implementation Instructions for the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.

The Central Java High Prosecutor's Office has recently stopped prosecution based on Restorative Justice with the following details:³

1. Purwokerto District Attorney's Office (suspect Siyo Sujono Bin Mariti et al., Article 82 paragraph (1) of Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction in conjunction with Article 55 paragraph (1) point

³Source from the General Crime Division of the Central Java High Prosecutor's Office.

- 1 of the Criminal Code).
2. Purbalingga District Attorney's Office (suspects Eko Bayu Setiawan, SPd Bin Pujo Utomo, Article 359 of the Criminal Code).
3. Banyumas District Attorney's Office (suspect Ahmad Thohirin, Article 363 paragraph (1) 5 of the Criminal Code in conjunction with Article 53 paragraph (1) of the Criminal Code)
4. Boyolali District Attorney's Office (suspect Soeharsono Bin Sukandar, Article 310 paragraph (4) of Law No. 22 of 2009 concerning Traffic and Road Transportation).
5. Tegal District Prosecutor's Office (suspect Suminto alias Ato Bin Suwandi, Article 362 of the Criminal Code).
6. Semarang City District Attorney's Office (suspect Galang Josy Pradika Bin Djoko Suyetno, Article 76 c in conjunction with Article 80 of Law No. 35 of 2014 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection).
7. Karanganyar District Attorney's Office (1. suspect Hanes Susilo Bin Slamet, Article 310 paragraph (4) of Law No. 22 of 2009 concerning Traffic and Road Transportation) and 2. suspect Suwanto alias Pak Tri alias Gondrong, Article 82 paragraph (1) letters a and b in conjunction with Article 12 letters a and b or Article 82 paragraph (2) of Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction).
8. Salatiga District Attorney's Office (suspect Gunawan Bin Jamari, Article 362 of the Criminal Code).
9. Demak District Attorney's Office (suspect Sumiyatun Binti Sudarmo, Article 44 paragraph (1) of Law No. 23 of 2004 concerning the Termination of Domestic Violence or Article 351 of the Criminal Code).
10. Pemalang District Attorney's Office (suspect Edy Muryanto alias Buyung Bin Radas, Article 351 paragraph (1) point 1 of the Criminal Code).

Based on the description above, it can be seen that current developments have shown that the restorative justice approach as one of the mechanisms for resolving criminal cases has become the focus of criminal justice system reviewers in various parts of the world. In line with this, in an integrated criminal justice system, institutions or agencies working in law enforcement cooperate with each other and are bound by the same goal in order to achieve the ultimate goal, namely social welfare, which not only protects the interests of victims, but also undermines the values of justice and benefits for the parties.

Based on the background description above, the author is interested in writing a thesis entitled "Effectiveness of the Implementation of Termination of Prosecution in Handling Minor Crimes Based on Restorative Justice".

This study aims to determine and analyze the implementation of the termination

of prosecution in handling minor crimes today, the weaknesses in the implementation of the termination of prosecution in handling minor crimes today.

2. Research Methods

This study uses a sociological legal approach, with a descriptive analytical research method. The data used are primary and secondary data which will be analyzed qualitatively. The research problems are analyzed using the theory of justice, Lawrence Friedman's legal system and Progressive Legal Theory.

3. Results and Discussion

3.1. Current Implementation of Termination of Prosecution in Handling Minor Crimes

According to Tony F. Mashall Restorative Justice is:

restorative justice is a process in which all parties involved in a particular crime work together to determine how to deal with the consequences in the future.⁴

Meanwhile, John Braithwaite provides an understanding of restorative justice, namely victim recovery, the victim recovery in question includes Restore Property Lose (repairing damaged property rights), Restore Injury (repairing physical injuries), Restore Sense Of Security (repairing a sense of security), Restore Dignity (repairing dignity), Restore Sense Of Empowerment (repairing a sense of empowerment), Restore Deliberative Democracy (repairing a sense of togetherness/democracy), Restore Harmony Based On A Feeling That Justice Has Been Done (repairing harmony in accordance with existing laws), Restore Social Support (repairing social support).

Restorative Justice is also a form of justice that focuses on the needs of victims, perpetrators and society. Restorative justice is in contrast to retributive justice which emphasizes punishment for the perpetrator but the needs of the victim are not prioritized, so that restorative justice is present to provide the rights of the victim, where the victim is the first to suffer from the crime committed by the perpetrator.⁵

In addition to prioritizing victim recovery, John Braithwaite also introduced the idea of Reintegrative Shaming. He proposed that crime be addressed holistically rather than stigmatized. He stated that social control that brings shame can have positive consequences for perpetrators of crime.⁶

According to Howard Zehr, restorative justice is divided into two, namely Restitutive Justice (criminal justice) and Restorative Justice. The two types of

⁴Restorative Justice in New Zealand : A model for US Criminal Justice, (Wellington : Ian Axford fellowship, 2001), p. 5

⁵Yoachim Agus Tridiatno, Restorative Justice. (Yogyakarta: Cahaya Atma Pustaka, 2015), p. 27

⁶Yoachim Agus Tridiatno, Restorative Justice, p. 33.

restorative justice have several differences that can be explained as follows:⁷

Restorative Justice which is the opposite of Retributive Justice as explained by the author above, then there are several striking differences between Restorative Justice and Retributive Justice. Among them are as follows:

First, there is a meeting between the victim and family, the perpetrator of the crime, and the facilitator representing the community. In this meeting, it is expected that the victim and the community can talk about the circumstances and suffering that the victim feels so that the perpetrator can know what the recovery factors are for the victim and the community. The perpetrator who already knows this is expected to be able to apologize by not repeating his actions again, and can restore the situation and eliminate the suffering of the victim and the community.

Second, in restorative justice the perpetrator is not required to pay (retribution) for the crime in the form of punishment and suffering from illness, but is required to change himself by taking positive actions for the sake of the victim, himself and the community. For the sake of restoring relations between the parties, it would be better if the perpetrator of the crime is willing to apologize and the victim and the community forgive the perpetrator.

Third, decisions related to how the perpetrators of the crime provide accountability or compensation and restitution are determined together in a meeting between the perpetrator and the victim together with the family and the mediator. This proves that there is a dialogue between many parties to reach an agreement on the form of the perpetrator's accountability. In this case, there is an improvement in relations or relationships with many parties.

The law works by showing its functions, namely:

1. creation of norms, both those that provide provisions and those that determine the relationship between one person and another;
2. dispute resolution; and
3. guarantee the continuity of community life, if changes occur.

This means that the law positions itself as a means of social control and social engineering.⁸ Social control includes all the forces that create and maintain social bonds. EA Ross with the imperative theory relates it to criminal law.⁹ In line with the changes and development of civilization, the pattern of life and human demands translated into the form of needs and desires to reflect themselves are increasingly becoming real and open. Dahlan Alwi stated that civilization in humans cannot be separated from the development and progress of science and technology, and that science will provide scientific, social and cultural insights that

⁷Achmad Ali, *Uncovering Legal Theory and Judicial Prudence*, (Jakarta, Kencana, 2009), p.249-250

⁸Satjipto Rahardjo, *Law and Social Change* (Bandung: PT. Alumni, 1983), 126–128

⁹Soerjono Soekanto, *Legal Awareness and Legal Compliance* (Jakarta: Rajawali Press, 1983), 58

can shape human civilization.¹⁰

One of the functions of criminal law is to limit and announce prohibited acts. These are referred to as rules of conduct, which have previously been established and addressed to members of the community as actions that must be avoided under threat of criminal sanctions. In addition, law maintains a constant state (*status quo*) while flexibly guarding change. Law, especially criminal law, is designed to maintain order, as well as protect public and private interests. The community determines that several very important interests need to be safeguarded with a formal control system. Therefore, the law must legally give the state the power to enforce it.

Barda Nawawi Arief discusses this criminal policy in the book *Bunga Rampai Kebijakan Hukum Pidana*. In his discussion, he begins with the definition of criminal policy, its relationship to social politics, integral policies in overcoming crime, and a description of the results of the Congress. He begins his explanation by stating the definition of criminal policy from Sudarto, namely: 1. In a narrow sense, it is the entirety of the principles and methods that form the basis of reactions to violations of the law in the form of criminal acts. 2. In a broad sense, it is the entirety of the functions of law enforcement officers, including the working methods of the courts and police. 3. In the broadest sense, it is the entirety of policies, carried out through legislation and official bodies, which aim to uphold the central norms of society.¹¹

As for the brief definition, criminal policy is a rational effort by society in overcoming crime. This is as defined by Marc Ancel, namely: "the rational organization of the control of crime by society". Starting from the definition put forward by Marc Ancel, G. Peter Hoefnagels stated that "Criminal policy is the rational organization of the social reaction to crime". Various other definitions put forward by G. Peter Hoefnagels: criminal policy as a science of response, the science of crime prevention, the science of policy to design human behavior as a crime, and the science of reactions to crime that are generally rational.

The investigation process and mechanism by applying the principle of restorative justice in the Indonesian National Police is also regulated and described in the Chief of Police Regulation Number 6 of 2019 and the Chief of Police Circular Number 8 of 2018. Regarding the investigation process with the principle of restorative justice, it is stated in Article 12 of the Chief of Police Regulation Number 6 of 2019 that a criminal act whose resolution is through the principle of restorative justice must meet several material requirements, including:

1. Criminal acts that occur in society do not cause prolonged conflict.

¹⁰Edward James Sinaga, "Legislative Legal Services in an Effort to Provide Legal Certainty," *De Jure Legal Research Journal* 19, no. 1 (2019): 85–96.

¹¹Barda Nawawi Arief, "Criminal Law Policy," in *Anthology of Criminal Law Policy* (Jakarta: Citra Aditya Bakti, 1996), 326–327

2. There is a statement from the parties involved to waive the right to sue before the law.
3. The crime committed by the perpetrator is not a serious crime or is a minor crime.
4. Criminal acts that can be resolved through the principle of restorative justice are criminal acts that are still under investigation (a series of actions to search for and discover events that are suspected to be criminal acts to determine whether or not an investigation can be carried out at the next stage).
5. Criminal acts that will be resolved through the principle of restorative justice are criminal acts for which a Notice of Commencement of Investigation (SPDP) has not been sent to the Public Prosecutor during the process.

The formal requirements for resolving criminal acts through the application of the principle of restorative justice are also explained in Article 12 of the Chief of Police Regulation Number 6 of 2019 that:

1. There is a Letter of Request for Peace from both parties, namely the reporter and the reported party.
2. The existence of a Peace and Dispute Settlement Letter between the disputing parties.
3. There is a report of additional examination of the parties involved in the case after the criminal case has been resolved through the principle of restorative justice.
4. There is a recommendation from a special case title that approves the resolution of criminal cases through restorative justice.
5. The perpetrator of the crime truly and willingly carries out all forms of responsibility for the crime that has been committed.
6. Criminal acts that can be resolved through restorative justice are criminal acts that do not result in human casualties.

Regarding the complete mechanism for implementing restorative justice in resolving criminal cases, it is contained in the SE Kapolri Number 8 of 2018. The mechanisms for implementing restorative justice include:

1. After receiving the peace request from both parties (the complainant and the accused) signed on stamped paper, the police will ensure that the formal requirements for resolving the criminal case through restorative justice have been met.
2. If the formal requirements have been met, the peace request will be submitted to the investigator's superior (Kabareskrim or Kapolres or Kapolda) to obtain approval.
3. After the peace request has been approved by the investigator's superior (Kabareskrim or Kapolres or Kapolda) a time will be set for the signing of the peace statement, and all parties involved will be involved.

4. A special case title is carried out with the reporter, the reported party, and representatives of community leaders appointed by the investigator.

5. Issuance of a Letter of Order to Terminate Investigation or Prosecution and a Letter of Decision to Terminate Investigation or Prosecution on the grounds of resolving criminal cases through restorative justice.

6. Then, there is a recording in the new register book B-19 as a settlement of criminal cases through restorative justice.

There are three basic principles for establishing restorative justice, namely: The three principles that are involved in restorative justice include: there be a restoration to those who have been injured, the offender has an opportunity to be involved in the restoration if they desire and the court system's role is to preserve the public order and the community's role is to preserve a just peace.¹²Based on the understanding above, the three basic principles of Restorative Justice are:

- a. There is reparation for those who have suffered losses due to crime;
- b. The perpetrator has the opportunity to be involved in restoring the situation (restoration);
- c. The court plays a role in maintaining public order and society plays a role in preserving just peace.

In Restorative Justice practices and programs, this is reflected in its objectives, which address criminal acts by:

- a. Identifying and taking steps to repair harm (identifying and taking steps to repair loss or damage);
- b. Involving all stakeholders, (involving all interested parties) and;
- c. Transforming the traditional relationship between communities and their government in responding to crime (changing something that has been traditional so far regarding the relationship between communities and the government in responding to crime).

3.2. Weaknesses in the Implementation of Termination of Prosecution in Handling Minor Crimes Currently

Basically, 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 feel marginalized by the mechanisms that work in the current criminal justice system. On the other hand, restorative justice is also a new framework of thought that can be used in responding to a crime for law enforcers and legal workers.¹³In restorative justice, crime is seen as a violation by one person against another person and society. Crime has two dimensions, individual and social. Violation creates responsibility and focuses on

¹²Mc Cold and Wachtel, Restorative Practices, (The International Institute for Restorative Practices (IIRP), 2003), p. 7.

¹³Achjani Zulfa, Eva. Shifting Paradigms of Criminalization. UI Press, Depok, 2011, pp. 64-65.

problem solving. Responsibility is defined as accepting responsibility and being willing to repair/replace the harm, prioritizing dialogue and negotiation.¹⁴

Restorative justice is a settlement process carried out outside the criminal justice system (Criminal Justice System) by involving victims, perpetrators, families of victims and perpetrators, the community and parties interested in a crime that occurred to reach an agreement and settlement. Restorative justice is a fair settlement involving perpetrators, victims, their families and other parties involved in a crime, together seeking a resolution to the crime and its implications, with an emphasis on recovery and not retaliation.

The basic idea of having alternative resolutions in criminal cases is related to the nature of criminal law itself. Van Bemmelen put forward the opinion that criminal law is an *ultimum remedium*, there should be limitations, meaning that if other parts of the law do not sufficiently affirm the norms recognized by law, then criminal law is applied. The threat of punishment must remain an *ultimum remedium* (last resort). This does not mean that the threat of punishment will be eliminated, but must always consider the advantages and disadvantages of the threat of punishment, and must ensure that the medicine given is not worse than the disease.¹⁵

Moeljatno said that "criminal law is classified as public law, which deals with the relationship between the state and individuals or the public interest."¹⁶ Another opinion was expressed by Andi Zainal Abidin who said that "Most of the rules in criminal law are of a Public Law nature, some are mixed with public law and private law, have special sanctions because their nature exceeds sanctions in other legal fields, stand alone and sometimes create new rules whose nature and purpose are different from existing legal rules."¹⁷

The functioning of the judicial institution in the criminal justice process is based on Law Number 8 of 1981 concerning the Criminal Procedure Code. The criminal justice process based on the Criminal Procedure Code is very focused on the perpetrator of the crime, both regarding their position from being a suspect to being a convict and their rights as a suspect or defendant are very protected by the Criminal Procedure Code, so it can be said that the criminal justice process according to the Criminal Procedure Code is Offender minded/Offender Oriented Criminal Justice Process. Because it is very focused on the interests of the perpetrator of the crime, the interests of the victim (victim's interests) do not have a place in the Criminal Procedure Code.

¹⁴Muladi, *Selected Chapters on Criminal Law*, BP Diponegoro University, Semarang, 2016, p. 114.

¹⁵Andi Hamzah, *Principles of Criminal Law: Revised Edition 2008*, PT. Rineka Cipta, Jakarta, 2008, p. 10

¹⁶Moeljatno, *Principles of Criminal Law*, Eighth Edition, Jakarta: Renika Cipta, 2008. p. 2

¹⁷Andi Zainal Abidin Farid, *Criminal Law I*, Second Edition, Jakarta: Sinar Grafika, 2007, p. 13

Restorative justice is similar to penal mediation and its relevance can also be found in the "Explanatory Memorandum" of the Council of Europe Recommendation No. R (99) 19 on "Mediation in Penal Matters" which explains that there are several models of penal mediation, namely;¹⁸

- a. Informal Mediation.
- b. Traditional village or tribal moots.
- c. Victim-Offender Mediation.
- d. Repair negotiation programs.
- e. Community panels or courts.
- f. Family and community group conference

The author argues that informal mediation is a fairly compatible model of penal mediation carried out by criminal justice personnel in their normal duties, namely it can be carried out by the Public Prosecutor (JPU) by inviting the parties to carry out an informal settlement with the aim of not continuing the prosecution if an agreement is reached; it can be carried out by a social worker or a probation officer, by a police officer, or by a judge. This type of informal intervention is common in all legal systems in Western Europe.

Mardjono Reksodiputro, regarding "settlement outside of court" which in English is "settlement outside of court".¹⁹ Meanwhile, Tristam Pascal Moeliono, the translator of the book *Inleiding tot de Studie van het Nederlandse Strafrecht*, 14th edition (1995) written by Jan Remmelink, defines "Complete Settlement Outside the Judicial Process" as one way of losing the authority to prosecute a crime if the prosecutor/public prosecutor before starting the trial sets one or more conditions (especially stated in the form of restitution or certain compensation) to prevent or end the continuation of criminal prosecution for a crime.

Criminal cases in principle cannot be resolved through the restorative justice process, but in practice criminal cases are often resolved through the mediation process which is an initiative of law enforcement as part of the case resolution. Thus, in reality mediation can actually be carried out in the Criminal Justice System. Countries that have implemented restorative justice are Austria, Germany, Belgium, France, Poland, the United States, Sweden, England and Wales, Italy, Finland, and the Netherlands. This mediation is called Penal Mediation.²⁰

The restorative justice approach in resolving criminal cases is already known for criminal acts where the perpetrators are children. The special criminal justice system for children certainly has a special purpose for the future interests of

¹⁸Barda Nawawi Arief, *Penal Mediation: Settlement of Criminal Cases Outside the Court*, Semarang: Pustaka Magister, 2008, pp. 7-8.

¹⁹Mardjono Reksodiputro, *Reconstruction of the Indonesian Criminal Justice System*. Paper presented at the National Law Commission Seminar, December 9, 2009.

²⁰Mansyur Ridwan, 2010, *Penal Mediation for Domestic Violence Cases*, Gema Yustisia Indonesia Foundation, Jakarta, p.166.

children and society which contains the principles of restorative justice, the definition of restorative justice itself is not uniform, because there are many variations of models and forms that develop in its application. There are many terminologies used to describe the concept of restorative justice, such as communitarian justice, positive justice, relational justice, reparative justice, and community justice.²¹

The criminal procedure law and the criminal justice system in Indonesia formally regulate the procedures for the process of resolving criminal cases. However, it is known that in practice it is often used as a repressive tool by law enforcement officers. Meanwhile, the fundamental problem faced by society is full social control through efforts to protect the lives and property of every member of society and to realize the desired social order and is described through order, propriety and harmony. This can only be realized if the government can enforce the law in order to realize a sense of justice in society.²²

Restorative Justice is a concept of punishment, but as a concept of punishment it is not only limited to the provisions of criminal law (formal and material). However, even though Bagir Manan defines restorative justice as a concept of punishment, he remains in line with the idea that the concept of punishment must prioritize justice, which is emphasized by the term integrated justice, namely justice for the perpetrator, justice for the victim and justice for the community. The characteristics of restorative justice are Just Peace Principles or justice based on peace between the perpetrator, victim, and community. This principle is based on the idea that peace and justice are basically inseparable. Peace without justice is oppression, justice without peace is a new form of persecution or pressure. It is called Just Peace Principles or Just Peace Ethics because the approach in restorative justice applies the basic principle of restoring damage to those who suffer losses due to crime, giving the opportunity for perpetrators and victims to be involved in restoring the situation, giving the role of the courts and the community to maintain public order and preserve just peace. The goal to be achieved through a cooperative process involving all parties (stakeholders).²³

The following is an explanation of the things that are obstacles in implementing restorative justice:

1. The legal factor itself.

The concept of restorative justice is new in Indonesian law. Restorative justice in minor criminal cases has not been clearly regulated and this has become an obstacle for law enforcement officers in implementing restorative justice.

²¹United Nations (UN), Handbook on Restorative Justice Programmes, United Nations Publication, New York, 2006, p. 6.

²²Scheb, John M. et al, Criminal Law and Procedure, 6th Edition, Thomson Learning, Belmont, 2008, p.3

²³Sefriani, The Urgency of Reconceptualization and Legislation of Restorative Justice in Indonesia, Jurnal Rechts Vinding Volume 2 number 2, August 2013, page 279

However, seeing the many minor criminal cases that have been resolved by applying the principles of peace and restoration, to fill the legal vacuum, the letter of the Chief of Police and jurisprudence regulating restorative justice have become a legal basis outside the law for law enforcement officers in implementing it.

2. Law enforcement factors

The rule of law and law enforcement officers are likened to flesh and bones. Without professional law enforcement, the principle of benefit which is the goal of the law will not be achieved.

The low level of understanding of Polri members about restorative justice is something that affects the implementation of the concept of restorative justice. Added to this is the doubt of Polri members in using their discretionary authority to achieve recovery between the perpetrator and the victim. In several judges' decisions on minor criminal cases, the concept of restorative justice is not applied. The perpetrator is given a decision containing a prison sentence with a probationary period, while the victim as the injured party does not receive his rights. The judge does not impose a fine because of the perpetrator's economic factors. Several regulations such as the Supreme Court Regulations or Circulars that have been made do not reach other law enforcement institutions. The lack of attention to integration that includes coordination due to fragmentation and agency-centricity makes coordination between law enforcement agencies considered less than optimal, and the lack of understanding of the integrated criminal justice system, synchronization of law enforcement agencies, makes the apparatus rigid in enforcing the law.

3. Facilities factor

Socialization is a means to empower and educate the community, especially regarding legal regulations and their stages. Socialization of the concept of restorative justice for minor crimes to the community is not carried out routinely and comprehensively. The low level of socialization from the police to the community is due to the insufficient budget provided, while other priority programs must be implemented.

4. Community factors

A good society is a society that obeys the law. In the case of society not obeying the law due to many factors that exist in the community/social conditions such as low trust from the community towards law enforcement officers. Low economic levels and low education are the main triggers for crime in the community. Even the best legal regulations will not provide answers/solutions as long as the social conditions of the community are bad, because bad intentions and the intention to seek prosperity quickly/briefly still exist in the community. Some members of the community consider Rp. 2,500,000, - (two million five hundred thousand rupiah) which is the limit for minor crimes is a fairly large loss, so that there is a reluctance from the victim to make peace with the perpetrator.

5. Cultural factors

In society, there is a mindset that crimes must be repaid and punished to deter perpetrators. Community habits such as vigilante behavior against perpetrators of minor crimes are obstacles in implementing restorative justice. Perpetrators of minor crimes who are caught red-handed by the community are judged by themselves first, then taken to the police station in the hope that the perpetrators will be processed for imprisonment. Peace for perpetrators of minor crimes is sometimes considered as something that does not provide a deterrent effect.

In the Criminal Code, minor crimes are mentioned in Article 205 paragraph (1) which states that minor crimes are criminal cases that are threatened with imprisonment or detention of a maximum of three months and/or a fine of up to Rp 7,500 (seven thousand five hundred rupiah). Then the Supreme Court (MA) issued Perma Number 2 of 2012 concerning Adjustment of the Limits of Minor Crimes and the mount of Fines in the Criminal Code. In the Perma it is explained that if the value of Rp 7,500 is multiplied by 1,000 times so that it becomes Rp 7,500,000 (seven million five hundred thousand rupiah). Then in this Perma it also states that the words "two hundred and fifty rupiah" in Articles 364, 373, 379, 384, 407 and 482 of the Criminal Code are read as Rp 2,500,000 (two million five hundred thousand rupiah).²⁴The Criminal Justice System in Indonesia currently, when handling criminal acts, most of them end up in prison, which is carried out in correctional institutions.

A person can only be accused of committing a crime if the person has fulfilled each element of the crime in question, as formulated in the law. Therefore, in order for a perpetrator to be said to have committed a minor theft crime, the perpetrator must fulfill each element contained in the provisions of Article 364 of the Criminal Code as amended by Government Regulation in Lieu of Law Number 16 of 1960. Government Regulation in Lieu of Law Number 16 of 1960 concerning several changes in the Criminal Code, explains that as is known, in the Criminal Code there are acts that are minor crimes (*lichte misdrijven*) namely those referred to in Article 364 (minor theft).

Violations of minor crimes were previously tried by the Police Judge (*Landgerecht onde stijl*) who could give a prison sentence of up to 3 months or a fine of up to Rp 500 (five hundred rupiah). After the Police Court was abolished (Emergency Law No. 1 of 1951, State Gazette of 1951 No. 9, which came into effect on January 14, 1951), all minor crimes and violations (*overtredingen*) were tried by the District Court, which in the examination used a simple procedure (not attended by the Prosecutor). The method of determining or assessing the price of goods is not specified in the Criminal Code or the Criminal Procedure Code, because in this case it causes many problems in providing evidence in court. The method of assessing

²⁴Iklimah Dinda and Indiyani Adiesta, "Implementation of Restorative Justice as an Innovation in Resolving Minor Criminal Cases," | INTERDISCIPLINARY JOURNAL ON LAW, SOCIAL SCIENCES AND HUMANITIES 2, no. 2 (2021): 143–70, <https://doi.org/10.19184/ij.v12i2.25842>.

the price of goods in judicial practice, both at the investigation level and up to the examination. The method of determining or assessing the price of goods is not specified. In the Criminal Code or the Criminal Procedure Code, because in this case it causes many problems in providing evidence in court.

4. Conclusion

The implementation of restorative justice in handling minor criminal acts is that in the settlement with restorative justice it is carried out with the provision that peace has begun between the perpetrator, victim, perpetrator's family and community leaders who are in dispute with or without compensation after reaching a peace agreement the parties make a peace agreement signed by the related parties. The weaknesses of the Implementation of Termination of Prosecution in Handling Minor Criminal Acts Currently include legal factors, community factors, facility factors, law enforcement factors, cultural factors. From a legal perspective, restorative justice in minor criminal cases has not been clearly regulated and this is an obstacle for law enforcement officers in implementing restorative justice. From a law enforcement perspective, the low understanding of Polri members who are minimal about restorative justice is something that affects the implementation of the concept of restorative justice. Coupled with the doubts of Polri members in using discretionary authority in order to achieve recovery between the perpetrator and the victim. The judge did not give a fine because of the perpetrator's economic factors. In terms of facilities, the low level of socialization from the police to the community is because the budget provided is insufficient, while other priority programs must be implemented. From the perspective of society, society does not obey the law due to many factors in society/social conditions such as low trust from society towards law enforcement officers. Low economic level and low education are the main triggers for crime in society. From the cultural factor, there is a mindset that crime must be repaid and punished to deter perpetrators. Community habits such as vigilante behavior towards perpetrators of minor crimes are obstacles in implementing restorative justice.

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