

Analysis of the Implementation of Restorative Justice in the Settlement of Cases of Mild Assault Based on Prosecutor's Regulation Number 15 of 2020

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Abstract. *The law seeks to maintain and regulate the balance between individual interests or desires, the presence of the law actually enforces the balance of treatment between individual rights and collective rights. Based on its nature, the law must be certain and fair so that it can function properly. In addition, the criminal justice system in Indonesia always ends in prison. In fact, prison is not the best solution in solving the problem of crime, especially criminal acts that cause damage to victims and society, so that the damaged conditions can be restored to their original state. This does not mean that the threat of criminal punishment is eliminated, but must consider the advantages and disadvantages of the threat of criminal punishment as an effort to heal. This study uses the type of empirical legal research. Empirical legal research is a method of legal research that seeks to see the law in a real sense or can be said to see, examine how the law works in society, which then uses a research approach, a qualitative approach type. The qualitative approach is usually used to produce descriptive data in the form of written or spoken words from people or observed behavior, and then strengthened by primary data sources and secondary data sources. The implementation of restorative is considered to offer a more comprehensive and effective solution because it aims to empower victims, perpetrators, families, and communities to improve their actions or consequences of unlawful acts. In order for the law to run properly, power is needed, but the existing power must not violate the rights and interests of individuals, because the law also functions as a protection of the interests of society.*

Keywords: *Criminal; Justice; Restorative.*

1. Introduction

The concept of restorative justice emphasizes justice based on peace, where in resolving a case there is no justice based on revenge or punishment for the

perpetrator. The application of this concept is a form of development of the criminal justice system that emphasizes the involvement of the perpetrator and victim in resolving a case, where this is not one of the mechanisms known in conventional criminal procedure law today.

The legality of the implementation of restorative justice in Indonesia can be found in Law Number 11 of 2012 Article 5 Paragraph 1 concerning the Juvenile Criminal Justice System (SPPA). In addition, it is also contained in the Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 (Perma Number 2 of 2012) concerning Adjustment of the Limits of Minor Offenses and the Amount of Fines, and in the Prosecutor's Office it is contained in the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Case Resolution Based on Restorative Justice.

The Attorney General of the Republic of Indonesia has issued Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Case Resolution Based on Restorative Justice. The regulation explicitly states that the Attorney General has the duty and authority to make the law enforcement process provided by the Law effective by taking into account the principles of fast, simple, and low-cost justice, as well as determining and formulating case handling policies for the success of prosecutions carried out independently for the sake of justice based on law and conscience, including prosecutions using a restorative justice approach implemented in accordance with the provisions of laws and regulations.

The application of restorative justice is being promoted by the Prosecutor's Office for general crimes. This is marked by the issuance of Prosecutor's Regulation (Perja) No. 15 of 2020 concerning Case Resolution Based on Restorative Justice as an internal regulation of the prosecutor's office in handling criminal cases.

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Of the several types of minor assault crimes regulated in the Criminal Code above, the researcher is interested in minor theft because law enforcement against minor assault is different from other assaults, if other assaults follow the flow of the law enforcement process according to the Criminal Procedure Code, then minor theft is more directed towards the principle of restorative justice.

The implementation of Prosecutor's Regulation Number 15 of 2020 in the

Jepara District Attorney's Office, peace efforts have been made based on restorative justice and the Public Prosecutor has succeeded in terminating the prosecution, namely 2 (two) cases and 1 (one) case that did not succeed in obtaining approval to terminate the prosecution by the Jepara District Attorney's Office but peace efforts have been made between the victim and the perpetrator.

Based on the background above, the author will discuss the extent to which the application of restorative justice is applied or used in resolving criminal cases. As explained above, the application of restorative justice is one of the legal settlement methods that is considered effective by several groups. Therefore, based on the description above, the author is interested in conducting a Thesis research entitled "Analysis of the Application of Restorative Justice in Resolving Minor Assault Cases Based on Prosecutor's Regulation Number 15 of 2020".

2. Research methods

The approaches used in this research are the statutory approach and the comparative approach. Data collection methods in empirical legal research there are 3 (three) techniques used, namely interviews, questionnaires and observations. The way to draw conclusions from the research results using the inductive method. The results of library and field research are discussed descriptively analytically.

3. Result and Discussion

3.1. Application Of Restorative Justice In The Settlement Of Mild Assault Cases

1. Understanding Restorative Justice

Restorative Justice in this study is the termination of the case given by law enforcement to perpetrators of criminal acts who commit minor crimes or first time committing crimes. Restorative justice aims to empower victims, perpetrators, families and communities to correct an unlawful act, by using awareness and realization as a basis for improving community life.

2. Understanding the Concept of Restorative Justice

Michael Tonry's view, through his 1999 research on sentencing policy in America, is that restorative justice has a major influence because of the concept's ability to provide benefits to all stages of the justice process and place the perpetrator appropriately in the justice process.

According to him, there are 4 (four) concepts of punishment, namely:

- 1) Structured sentencing (structured sentencing);
- 2) Indeterminate (punishment that is not determinate); and
- 3) Restorative / community justice (societal restoration/justice).

The explanation of the definition of restorative justice put forward by Toni Marshal in his writing "Restorative Justice an Overview", was developed by Susan Sharpe in her book "Restorative Justice a Vision For Hearing and Change" which reveals 5 (five) key principles of restorative justice, namely:

- a. *Restorative Justice* contains full participation and consensus;
- b. *Restorative Justice* trying to repair the damage or loss that occurs as a result of a crime;
- c. *Restorative Justice* provide direct accountability from the perpetrator in full;
- d. *Restorative Justice* seek reunification of citizens who are divided or separated due to criminal acts;
- e. *Restorative Justice* provide resilience to the community to prevent further criminal acts.

3.2. Implementation of the Restorative Justice Principle to Minor Assault Crimes in the Jurisdiction of the Jepara District Attorney's Office

Restorative justice refers to the resolution of criminal acts outside the court by prioritizing communication between the perpetrator, victim, the perpetrator's and/or victim's family, and related parties. The goal is to reach a peaceful agreement where the perpetrator can take fair action to improve the situation, for example by paying compensation and not being subject to sanctions or punishment.

The provisions of Article 5 paragraph (1) of the Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, which states that "Criminal cases can be closed by law and prosecution can be terminated based on Restorative Justice if the following conditions are met:

- a) The suspect committed a crime for the first time;
- b) Criminal acts are only punishable by a fine or are punishable by imprisonment for no more than 5 (five) years; and
- c) The crime is committed with the value of the goods or evidence of the value of the loss caused by the crime not exceeding Rp. 2,500,000,- (two million five hundred thousand rupiah).

This law is one of the bases for the implementation of restorative justice in resolving criminal acts. This means that as long as the crime committed by the perpetrator does not deviate from these requirements, then restorative justice can be applied in resolving criminal acts.

In 2024, the Jepara District Attorney's Office successfully implemented restorative justice in 2 (two) cases of criminal assault based on the Prosecutor's Regulation regarding the termination of prosecution based on

restorative justice.

The conditions that are the initial considerations of the Prosecutor acting as public prosecutor to determine whether or not a case can be resolved through restorative justice are stated in Article 5 of the Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

The ultimate goal of the restorative justice concept is to reduce the number of prisoners in custody; remove the stigma or label and return the perpetrators of crimes to normal human beings; allow the perpetrators to realize their mistakes so that they do not make the same mistakes again; reduce the workload of prosecutors, police, prisons, courts, and correctional institutions; save state money; and not cause resentment because the victim has forgiven the perpetrator.

3.3. Obstacles Faced in Implementing Restorative Justice Mechanisms in Resolving Minor Assault Cases

The obstacles faced in the restorative justice mechanism in resolving cases of minor assault crimes are as follows:

- a. Lack of understanding of the crime of assault which is classified as a minor crime as regulated in Supreme Court Regulation Number 2 of 2012, such as:
 - Not having the intention, attention and dedication and understanding the problem of classifying minor crimes.
 - No experience in handling minor criminal cases carried out through restorative justice (mediation)
- b. There was no admission or statement of guilt from the perpetrator.
- c. There is no consent from the victim/family and no desire to forgive the perpetrator.
- d. There is no support from the local community to implement solutions through deliberation and consensus.
- e. The perpetrator has been punished.
- f. Lack of facilities and infrastructure and inadequate funding.

Factors that hinder the occurrence of mediation regarding minor assault crimes require efforts to be taken to overcome them using the criminal justice system mechanism and community participation, which can be explained as follows:

- a. Improvement and strengthening of law enforcement apparatus, including strengthening of organization, personnel and infrastructure for resolving criminal cases of minor assault;
- b. to form legislation that has the legal force to influence citizens to comply

with it, such as the law on assessing losses from criminal acts legally so that it can function to analyze and prevent crime and has a reach into the future;

- a. An effective criminal justice mechanism with fast, accurate, cheap and simple requirements;
- b. Coordination between law enforcement officers and other related government officers to increase effectiveness in combating crime;
- c. Community participation to help smooth the implementation of crime prevention.
- d. Increasing the optimization of the number of infrastructure and funding facilities.

4. Conclusion

Based on the research results and discussion, the author concludes as follows:

Restorative Justice comes from the word Restore which means returning or restoring to the original state, while justice has the meaning of justice while what is meant by Restorative Justice or restorative justice is a concept of resolving criminal acts that aims to "restore damaged relationships due to criminal acts between victims and perpetrators of crimes" by means outside the courts so in the criminal law system the meaning of Restorative Justice is a criminal justice concept that views criminal acts as crimes against society not crimes against the state and to create obligations for victims and society to improve. In the application of restorative justice in the prosecutor's office, not all applications or cases of restorative justice are successfully handled by the prosecutor's office, but there are applications of restorative justice from the prosecutor's office that fail to apply restorative justice. It turns out that the prosecutor's office found facts in the requirements that the level of reprehensibility is high from the perspective of the leadership. Every time there is a case that meets the requirements, automatically before the prosecutor makes a prosecution, the prosecutor is obliged to try restorative. The prosecutor follows the requirements in the Prosecutor's Regulation to apply restorative justice, so that what is done or applied at the Pekanbaru District Attorney's Office is in accordance with what is in the Standard Operating Procedure (SOP). Factors that influence the implementation of restorative justice in resolving this theft case are legal factors, law enforcement, facilities, and society. Where law enforcement will run well if supported by these factors which are used to achieve these goals. Where there is a mindset that crimes must be repaid and punished to deter perpetrators of crimes. Community habits such as vigilante behavior against perpetrators of minor crimes are obstacles in implementing restorative justice.

5. References

Sutrisno, Legal Protection for Debtors over Separatist Creditors' Rights Related To Bankruptcy, *Jurnal Akta*, Volume 7 Issue 1, March 2020;

Syafrudin Makmur, Kepastian Hukum Kepailitan Bagi Kreditur dan Debitur Pada Pengadilan Niaga Indonesia, *Mizan; Jurnal Ilmu Syariah, FAI Universitas Ibn Khaldun (UIKA) BOGOR* Vol. 4 No. 2 (2016);

Syahriza Alkohir Anggoro, Politik Hukum: Mencari Sejumlah Penjelasan, *Jurnal Cakrawala Hukum*, Vol 10 No 1 2019;

Theresia Anita Christiani, Legal Analysis of Bankruptcy in The Perspective of Legal Purposes, *Jurnal Pembaharuan Hukum*, Volume 8, Number 1, April 2021.