

Restorative Justice Approach as an Alternative Companion of the Criminal Justice System in Indonesia

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ABSTRACT--*The Criminal Justice System has played a large role in shaping thinking about the concept of crime and how to deal with it through the judiciary. The legal system approach with criminal justice to justice has important strengths. However, there are also significant limitations and fail in certain conditions. Victims, perpetrators, and communities often feel that justice does not adequately meet their needs. Many people feel that the judicial process will only deepen social scars and conflict rather than contribute to peace. On the basis of these problems, normative legal research will answer them through a statutory and conceptual approach. This research shows that restorative justice can be an alternative and answer to a number of problems related to the burden carried by the criminal justice system.*

Keywords: *restorative justice approach, alternative, criminal justice system, Indonesia*

I. INTRODUCTION

Criminal law enforcement, in general, cannot be separated from the problem of overcoming crime in the community. In the context of crime prevention problems, known as a criminal policy. The criminal policy is a rational effort of the community in tackling crime through both penal and non-penalty facilities with the ultimate goal being justice and human welfare. [1]

Crime prevention through operational means is carried out through steps, namely the formulation of norms of criminal law, which contains the substantive, structural and cultural elements of the community in which the criminal law system is enforced. The criminal law system that was successfully formulated subsequently operationally works through a system called the Criminal Justice System. [2]

The criminal justice system is a term that shows the mechanism of action in combating crime by using the basic system approach. According to Remington and Ohlin, the notion of the system itself implies an interaction process that is prepared rationally and efficiently to provide certain results with all its limitations. [3] If criminal justice is understood from the aspect of the legal system approach. In simple terms, the criminal justice system can be said to be a means of overcoming crime with the operation of the criminal justice very dependent on synchronization and harmonization of the criminal justice component, namely the investigation sub-system, the prosecution sub-system,

the court sub-system, and the sub-system implementation of court decisions, namely the Penitentiary Institution. [4] The criminal justice system can be described briefly as a system that aims to “tackle crime”, one of the people's efforts to control the occurrence of crime so that it is within the acceptable tolerance limits. [5] One alternative solution in overcoming crime is by placing and transferring the perpetrators of criminal acts out of the criminal justice system as well as providing alternatives for the resolution of criminal acts with a justice approach. [6]. Nevertheless, the concept of restorative justice itself does not seem to be fully understood comprehensively by law enforcers. Moreover, as stated by many authors, the criteria used to define the concept of restorative justice and how restorative justice programs are implemented at the level of actual practice are still shrouded in debate. [7]

Departing from the above thoughts, it is related to the writing in this study will discuss: 1). What is the criminal justice system in Indonesia?; and 2). How is the application of restorative justice as an alternative companion to the criminal justice system process ?.

II. RESEARCH METHOD

This research uses a normative legal research methodology. In this legal research method, the approach used is the statutory approach and conceptual approach related to the restorative justice approach in Indonesia. The data used are secondary data that is data obtained through library research. The data is in the form of primary legal materials, namely materials that have legal force; secondary legal material in the form of books related to restorative justice; tertiary legal material in the form of a legal research journal that reviews restorative justice. To get the right conclusions, the legal materials are analyzed using qualitative analysis techniques.

III. FINDINGS AND DISCUSSION

A. Criminal Justice System in Indonesia

The criminal justice system is a network of justice that uses material criminal law, formal criminal law and criminal implementation law. But these institutions must be seen in a social context. The nature that is too formal if based only for the sake of legal certainty will bring disaster in the form of injustice.

According to Muladi the integrated criminal justice system is a system that can maintain the balance of protection of interests, both the interests of the state, the interests of the community, as well as the interests of individuals including the interests of perpetrators of criminal acts of crime victims. According to him, the meaning of integrated criminal justice system is synchronization or harmony and harmony which can be distinguished in: 1). Structural synchronization is harmony within the framework of the relationship between law enforcement agencies; 2). Substantial synchronization, which is vertical and horizontal synchronization and harmony about positive law; and 3). Cultivation Synchronization is harmony in living the views, attitudes and philosophies that thoroughly underlie the functioning of the criminal justice system.

According to Geoffrey Hazard Jr., he advocated the existence of three judgments in the justice system as referred to as normative, accessing administration and cation of the criminal justice system is a conflict between the victim and the perpetrator; c). The criminal justice system revokes the settlement between the disputing parties, namely victims and perpetrators; d). criminal justice system requires quite a long time; e). the criminal justice system requires considerable time; and f). creating retributive justice.

In implementing the criminal justice system in addition to having weaknesses, there are also several advantages or advantages including: a). provide retaliation and protect the public; b). goals that are rehabilitative fan socialization; c). criminal justice system a tool to provide a deterrent to the perpetrators of crime; d). the criminal justice system is a rational effort of the community to deal with crime in addition to businesses that are non-criminal.

B. Application of Restorative Justice as Alternative Companion from the Criminal Justice System Process

After the promulgation of Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), the "*Het Herziene Regement*" (Stbl.1941 Number 44) as the basis of the Indonesian criminal justice system, the foundation for the process of resolving criminal cases in Indonesia has been revoked. The components of the criminal justice system that are commonly recognized, both in the knowledge of criminal policy and in law enforcement practices, consist of elements of the police, prosecutors, courts, and correctional institutions.[9] The four subsystems are an integrated criminal law enforcement system.

Operationally, crime prevention can be done both in a penal and non-familiar manner. As stated by Hoefnagels, crime prevention can be done through criminal (criminal law) and non-criminal (outside criminal law) channels. The two facilities are a pair that cannot be separated from each other, even it can be said that both of them complement each other in efforts to tackle crime in the community.

Crime prevention efforts are known as criminal politics or criminal policies. According to Mayer and Green Wood, the policy is a decision that describes the

social use. Law enforcement (police, prosecutors, courts, and penitentiary) as the implementing agency of laws and regulations relating to legislation relating to the four apparatuses is an inseparable part of the eye-only law enforcement system.

Related to the administration, the law enforcement apparatus looks like a management organization that has a working relationship, both horizontal interaction relationships and by the prevailing organizational structure within the organization. The system used is an administrative system.

The social approach views the four law enforcement apparatuses as an inseparable part of a social system so that the community as a whole is responsible for the success or failure of the four law enforcement apparatuses in carrying out their duties. The system used is a social system.[8].

Weaknesses of the Criminal Justice System include: a). creating a stigma of a criminal; b). the appli most effective, most efficient way for fans to achieve a goal that is set collectively. More clearly, the policy can be interpreted as a plan from policymakers about what is done in dealing with certain problems and by how to do what is planned. [10].

Thus criminal politics is a plan of policymakers regarding what will be done in dealing with criminal acts and by how to do something that has been planned to achieve the desired goals namely prevention of criminal acts. Criminal politics also involves matters regarding what plans or programs to be designed in dealing with criminal acts and in what way the plans must be carried out so that the desired objectives are achieved, namely the protection of the community from criminal acts to achieve public welfare.

The handling of criminal acts through penalties is to use criminal law as its main means, both material criminal law, formal criminal law and criminal implementation law carried out through the criminal justice system to achieve certain goals. Tackling criminal acts using criminal law is the oldest method, as old as human civilization itself. Seen as a matter of policy, some question whether the crime should be dealt with, prevented, or controlled using criminal sanctions.

Whereas overcoming criminal acts through nonpenal means can mean an atmosphere outside the criminal justice system and without using criminal sanctions. Crime prevention through non-familiar means can be done based on a restorative justice approach. Efforts to deal with criminal acts are essentially part of law enforcement efforts. Therefore, it is often said that criminal politics or criminal policy is also part of law enforcement.

The conception of restorative justice is not something new or foreign to Indonesian people. It is said so because so far the Indonesian people with a heritage of customary or cultural diversity (local wisdom) and values that live in the community already have a mechanism or process of problem resolution (dispute) in essence by the concept or values contained in restorative justice. The concept of overcoming crime through restorative justice is

considered as one of the options to cover up the weaknesses and dissatisfaction with the retributive and rehabilitative approach that has so far been used in the criminal justice system in general. [11].

Restorative justice is a process or mechanism for the resolution of a case or conflict that is included in the field of criminal law which is results-oriented in the form of restorative justice. Mark S. Umbreit defines restorative justice as a process to involve, as much as possible, all parties who have a role in the occurrence of a criminal offense to jointly identify and understand the harm caused, the wishes of the victim, and the obligations of the victim criminal offender, to recover and put everything in its best place. [12].

Restorative justice places more emphasis on recovery rather than punishment. In the implementation of restorative justice will respond to crime with the following characteristics: a). identify and take steps to repair the losses created; b. involving all parties involved; and c). an effort to transform the existing relationship between the community and the government in responding to criminal acts.[13] Therefore, in criminal cases, restorative justice will be more effective as a tool for conflict resolution. In criminal law enforcement, justice must be obtained through the stages of the criminal

justice system so that it does not rule out the possibility of implementing restorative justice in all stages of the criminal justice system.

In general, in the criminal justice system there are four main points where the process of restorative justice can be successfully carried out: a). at the police level; b). at the prosecution level; c). at the court level, both at the pre-trial stage or the sentence stage; and d). correction, as an alternative to detention, as part of or in addition to a non-custodial sentence, during the period of detention or after release from detention. At each of these points, opportunities can be made by official pre-officials to use their discretionary powers and direct the perpetrators to restorative justice programs. [14].

The process of restorative justice in the criminal justice system can be simply seen in the chart 1. [15].

Implementation or implementation of the concept of restorative justice in various countries at least includes the following 3 (three) stages (seen table 1):

Based on the development criteria of the concept of restorative justice above, if it is associated with the implementation of the concept of restorative justice in Indonesia, then the implementation of the new concept is at the “could be restorative” stage or at least at the “partially restorative” stage.[7]

Chart 1: Restorative Justice Programmes and the Criminal Justice System

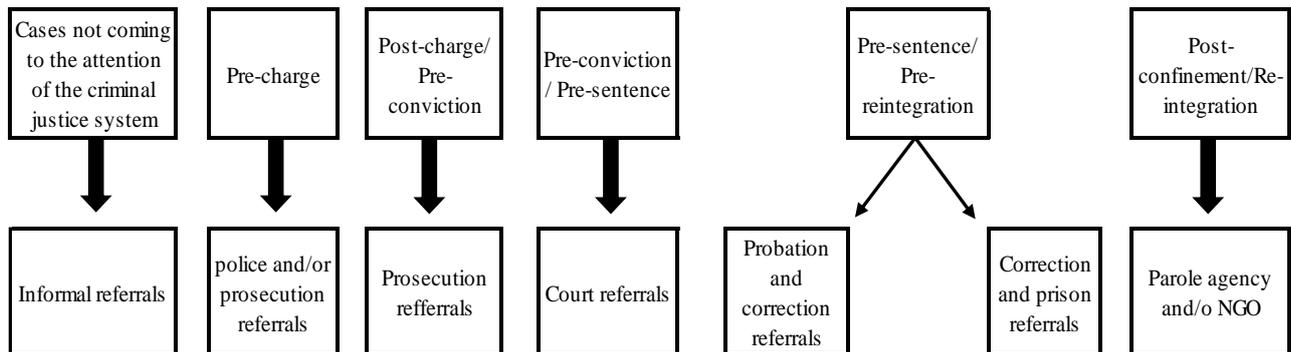


Table 1:

Indicator	Can be a Restorative	Partial Restorative	Completely Restorative
Order	Involvement is not the main concern. Decisions made by parties not directly affected. There is no choice for dialogue between those directly affected.	Stakeholders are the key to providing information to a limited degree. Some stakeholders have some decisions and input, however, the final decision is made or approved by the formal system. In partial restoratives, there are limited opportunities for dialogue between several stakeholders.	All parties (those injured, those injured and the community) are provided with the opportunity to participate, form processes and make decisions. In this case, there is a clear opportunity for dialogue. Decisions are made by consensus by those directly affected. And decisions must be respected and implemented by all parties.
Liability	The focus is on the rules or laws that are violated and the consequences of their actions (passive liability)	The main concern is paying for hazards and needs but the main focus is the rules or laws that are violated and all the consequences that arise.	Focus on identifying, acknowledging and managing hazards, needs and causes that arise. This creates opportunities for active liability.
Repair	Restore damage or loss experienced. Passive liability of the offender usually focuses on not recovering.	Several attempts were made to recover some very real losses. Oftentimes, danger and efforts to recover are given to people other than those directly affected.	Focusing on recovering the physical, emotional and social injuries of all affected parties and the need to deal with all parties involved wherever possible.

IV. CONCLUSION

Based on the discussion that has been described, then the conclusions can be formulated as follows: 1). The criminal justice system component consists of elements of the Police, Attorney General's Office, Court, and Correctional Institution as law enforcement officers. In applying the criminal justice system there are weaknesses and strengths, and 2). In criminal policy to eradicate crime effectively and efficiently by using non-penal measures can be done based on a restorative justice approach. However, until now the implementation of the concept of restorative justice in the criminal justice system has not been implemented in an integrated manner.

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