



Application of the Principle of Restorative Justice in Case Settlement at the Prosecution Level

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Abstract. Restorative justice is a process of resolving criminal cases that can be completed at the prosecution stage. Issues, problems or disputes that arise as a result of a crime or violation by bringing together victims, perpetrators and other stakeholders in an informal, democratic forum to find positive solutions that prioritize restoration of victims' losses rather than merely providing suffering/criminalization. To the perpetrator. By doing it through a Restorative Justice Approach, it essentially focuses its attention on crimes that challenge individuals and society rather than the state. Victims play an important role and can receive restitution from perpetrators of crimes or violations. Perpetrators of crimes or violations are required to provide compensation to victims proportionally. For example, a crime that causes physical and non-physical victims or road traffic violations that also cause losses, so that someone feels that the application of the concept of Restorative Justice will be more important if it is carried out, success can be obtained by finding a sense of justice between the two parties, both perpetrators and victims, so that can solve / resolve a problem. Therefore, the Prosecutor's Office as a prosecution agency is given the right and authority to be able to approach Restorative Justice in the settlement of certain cases, as regulated in Article 5 paragraph (1) of the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020, concerning Termination of Prosecution Based on Restorative Justice.

Keywords: Application · Restorative Justice · Prosecution

1 Introduction

Society is a group of people who have the goal of fulfilling their needs. In addition, humans are social creatures who basically always want to hang out, gather and interact socially with other humans. With this, it is necessary to have an order of life in the form of rules of social life that are regulating and coercive in order to guarantee the order of society. Therefore, an answer to this question emerges, namely the existence of the rule of law. The law is the entire regulation in force that can be enforced by the authorized body [1]. There is also an opinion that laws are coercive regulations that determine human behavior in society made by authorized official bodies. Violation of these regulations results in action being taken, namely with certain penalties [2].

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The law has a goal to be achieved. The main purpose of law is to create an orderly social order, to create order and balance. With the achievement of order in society, it is hoped that human interests will be protected. In achieving its goals, the law is tasked with dividing rights and obligations between individuals in society, dividing authority and regulating ways to solve legal problems and maintaining legal certainty [3].

Based on its contents, law is classified into two types, namely public law and private law. Public law or also known as state law is a type of law that regulates the relationship between the state and its individuals or citizens. Public law generally concerns the public interest or the public within the scope of society. Public law itself is divided into several types, including criminal law, constitutional law, state administrative law and international law. In order to regulate behavioral relations in social life in order to achieve a safe, orderly and balanced life, a legal rule is needed, namely criminal law.

The term criminal law itself is actually a term that has many meanings. The number of limitations or understandings of criminal law given by experts/scholars illustrates how broad the scope of criminal law actually is. The definition of criminal law can be seen from various aspects [4].

Of the many understandings of criminal law, basically criminal law is the law that regulates crimes and violations of the public interest. Such violations and crimes are punishable by punishment that inflicts suffering or torture on the person concerned. Criminal law in general has the same function as the function of law in general, namely to regulate social life and organize rules in society. While the function of criminal law in particular is to protect legal interests against acts that want to interfere with sanctions in the form of coercive and binding penalties. This is also very clearly stated in Article 1 paragraph (3) of the 3rd amendment of the 1945 Constitution of the Republic of Indonesia where it is stated that "the State of Indonesia is a state of law". The rule of law means a state that stands above the law that can guarantee justice for its citizens.

However, there is an assumption that criminal law is felt repressively does not explain the problems in the law of the criminal justice system. In addition, there is something more important to be achieved from the existence of law, namely justice. In order for the law to be a tool to achieve justice, the reference is not only to the formal legal aspect, but also to the conscience and morals of humanity. Efforts to settle cases outside the court carried out between the parties, namely the perpetrators of the crime and the victims, are expected to be the basis for consideration in the judicial process.

One of the efforts to settle cases outside the court is Restorative Justice or often called Restorative Justice.

Restorative Justice is a court that emphasizes reparation for losses caused or related to criminal acts. [5] In addition to emphasizing the improvement of material losses, Restorative Justice is also expected to be able to restore good relations between the perpetrators and the victims and their families. Restorative justice is carried out through a cooperative process between all parties involved, including the perpetrator, the victim, the families of both parties and the agency or institution that is the mediator in the settlement of the case. It can also be interpreted that Restorative Justice is an alternative or other way of criminal justice by prioritizing an integrated approach to perpetrators on the one hand and victims or the community on the other hand as a unit to find solutions and return to the pattern of good relations in society [7].

Not without a reason for what and why the settlement of cases through the approach of Restorative Justice or Restorative Justice was taken?. In addition to obtaining benefits from both the perpetrator and the victim, the assumption that the criminal system does not necessarily create a deterrent effect for the perpetrators of crimes is also a driving factor for the Restorative Justice approach. In addition, over capacity in prisons and detention centers is feared that it will lead to many criminal acts that occur within the prison or detention center. So that prisons or detention centers seem to no longer be the right place for prisoners as a coaching goal to become a better direction.

Although case resolution through the Restorative Justice approach has recently been adopted, not all cases can be resolved through the Restorative Justice approach. Based on the provisions stipulated in Article 5 Paragraph (1) of the Regulation of the Prosecutor's Office of the Republic of Indonesia Number: 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, it is stated that:

"Criminal cases can be closed for the sake of law and the prosecution is terminated based on restorative justice in the event that the conditions are met, the suspect has committed a crime for the first time, the crime is only threatened with imprisonment of not more than 5 (five) years." [8].

2 Findings and Discussion

A. Position of Restorative Justice in the Criminal Justice System at the Attorney General's Office

Law is not only about formal procedures and explicit matters, but what is far more important is how to achieve the goal of the legal process, namely the creation of justice. In order for the law to be a tool to achieve justice, the reference is not only to the formal legal aspects but also to the conscience and morals of humanity. Efforts to settle cases outside the court carried out between the perpetrators of the crime and the victims are expected to be the basis for consideration in the judicial process. And one of the government agencies that has the authority to settle cases out of court with a Restorative Justice approach is the Attorney General's Office of the Republic of Indonesia.

Considering that one of the missions that had been launched by the Prosecutor's Office of the Republic of Indonesia was to realize law enforcement efforts by fulfilling the public's sense of justice, it was deemed appropriate if the Republic of Indonesia Prosecutor's Regulation No. 15 of 2020, concerning Termination of Prosecution Based on Restorative Justice.

Not without a reason for what and why the settlement of cases through Restorative Justice or Restorative Justice was taken. In addition to obtaining benefits from both the perpetrators and the victims, the assumption that the criminal system does not necessarily create a deterrent effect for the perpetrators of crimes is also a driving factor for the Restorative Justice approach. In addition, the overcapacity of prisons or detention centers is feared that it will lead to many criminal acts, so that prisons or detention centers seem to no longer be the right place for prisoners to develop towards becoming better.

The existence of the Republic of Indonesia Prosecutor's Regulation No. 15 of 2020, authorizes the Prosecutor to stop prosecuting a criminal act. Based on the provisions of

Article 4 Paragraph (1), the termination of prosecution based on Restorative Justice is carried out by taking into account: [8].

- a. the interests of the Victims and other protected legal interests;
- b. avoidance of negative stigma;
- c. avoidance of retaliation;
- d. community response and harmony; and
- e. decency, decency, and public order.

In addition to the above, the termination of prosecution based on Restorative Justice as referred to in paragraph (1) is carried out taking into account: [9].

- a. subject, object, category, and threat of criminal act;
- b. the background of the occurrence/commitment of the crime;
- c. the degree of disgrace;
- d. losses or consequences arising from criminal acts;
- e. costs and benefits of handling cases;
- f. restoration back to its original state; and
- g. there is peace between the Victim and the Perpetrator/Suspect.

Another thing that must be considered in the implementation of restorative justice is that there are conditions that must be fulfilled which are in accordance with the Regulation of the Prosecutor's Office of the Republic of Indonesia Number. 15 of 2020 Article 5 Paragraph (1), that a criminal case can be closed for the sake of law and the prosecution terminated based on Restorative Justice if the following conditions are met: [9].

- a. the suspect has committed a crime for the first time;
- b. a criminal offense is only punishable by a fine or imprisonment of not more than 5 (five) years; and
- c. a criminal act is committed with the value of the evidence or the value of the loss caused as a result of the crime of not more than Rp. 2,500,000,000.00 (two million five hundred thousand rupiah).

The expansion of the requirements for the implementation of restorative justice is stated in Article 5 Paragraph (2–7) of the Regulation of the Prosecutor's Office of the Republic of Indonesia Number. 15 of 2020..

In addition to the principles and conditions that underlie the implementation of the settlement of criminal cases through restorative justice, exceptions to the implementation of restorative justice are also regulated in accordance with Article 5 paragraph (8) of the Regulation of the Prosecutor's Office of the Republic of Indonesia Number. 15 of 2020, namely the termination of prosecution based on Restorative Justice, except for cases: [9].

- a. Criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly countries and their representatives, public order and morality;

- b. A criminal act that is punishable by a minimum criminal threat;
- c. Narcotic crime;
- d. Environmental crime; and
- e. Criminal acts committed by corporations.

Although many cases have been resolved through Restorative Justice recently, not all cases can be resolved through Restorative Justice. As based on the provisions stipulated in Article 5 Paragraph (1) of the Regulation of the Prosecutor's Office of the Republic of Indonesia Number. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice as described above, it is stated that: "Criminal cases can be closed for the sake of law and the prosecution is terminated based on restorative justice in terms of fulfilling the conditions, the suspect is committing a crime for the first time, the crime is only threatened with imprisonment not more than 5 (five) years". [10].

B. The purpose of the application of Restorative Justice in a crime.

Restorative Justice is an approach that focuses more on the conditions for creating justice and balance for the perpetrators of criminal acts and the victims themselves. The criminal justice mechanism that focuses on punishment is transformed into a process of dialogue and mediation to create an agreement on a more just and balanced settlement of criminal cases for the victims and perpetrators. Restoration here is not only concerned with providing compensation to victims, but has a broad meaning, including restoring the relationship between victims and perpetrators. Restoration of this relationship can be based on a mutual agreement between the victim and the perpetrator. The victim can convey about the loss suffered and the perpetrator is also given the opportunity to make up for it through compensation mechanisms, peace, social work, or other agreements. This is important because the conventional sentencing process does not provide space for the parties involved, in this case victims and perpetrators, to actively participate in solving their problems [10].

Restorative Justice seeks to return conflict resolution to the most affected parties, namely victims, perpetrators and their "community interests", and to give priority to their interests. A prominent feature of restorative justice is that crime is placed as a symptom that is part of social action and not just a violation of criminal law. Crime is seen as an act that harms people and damages social relations. This is different from conventional criminal law which has drawn crime as a state problem, so only the state has the right to punish, even though indigenous communities can actually impose sanctions. This approach focuses on the conditions for creating justice and balance for the perpetrators of criminal acts and the victims themselves [11].

In relation to the implementation of the rule of law regarding the settlement of criminal cases outside the court (non-penal) by the Prosecutor's Office through a restorative justice approach, of course this also has implications for the community, be it the community in a narrow sense, namely people who often interact directly with perpetrators or victims (community of perpetrators/victims), as well as society in a broad sense. The perpetrator community and the victim community can participate in finding a form of settlement that benefits the parties. Each community can voice its interests, so that if the form of settlement has been mutually agreed upon, it is hoped that it can break the

grudge between the perpetrator community and the victim community in the future. This can be interpreted that a settlement like this can avoid conflicts between communities that may arise in the future.[11] Meanwhile, the legal implications for the implementation of restorative justice by the Prosecutor's Office for the community (in the broadest sense) are that with the completion of criminal cases outside the court (non-penal), the community, especially those who are related to handling cases in court, will get better service from the institution court. Because with the completion of some criminal cases out of court, this can reduce the burden on court institutions, starting at the first level, appeal level, cassation level and review (PK) which should be resolved more quickly [12].

The existence of the settlement of criminal cases by the Prosecutor's Office outside the court using a Restorative Justice approach will have implications for reducing the number of residents in prisons and detention centers. This means that the application of Restorative Justice by the Attorney General's Office can make a very large contribution to the reduction in the number of inmates in prisons or detention centers. By reducing the number of residents in prisons and detention centers, it means that the settlement of criminal cases outside the court also plays a role in overcoming the problem of overcapacity and social problems that arise from overcapacity in prisons and detention centers. In addition, with the settlement of cases out of court, this can not only solve problems related to prison overcapacity, but also save the state budget. Besides that, it can also improve the quality of inmates' development, so that in the end it can improve and improve public perception of prisons.

It can be concluded that the settlement of criminal cases with a restorative justice approach takes a shorter time, the mechanism is simple and costs less, and has the ultimate goal of restoring social relations between stakeholders. Efforts to settle criminal cases outside the court by prosecutors through a restorative justice approach are essentially a mechanism or legal system that has many advantages so that it is feasible to be applied in the criminal justice system in Indonesia. As a system, the effectiveness of the settlement of criminal cases outside the court through a restorative justice approach is strongly influenced by the elements that make up the system in question. Therefore, the implementation of a criminal case settlement system outside the court through a restorative justice approach will be influenced by several factors as well as factors that affect other law enforcement efforts [13].

According to Friedman, the legal system consists of 3 (three) elements that influence each other, namely: [19].

1. Legal substance, which concerns aspects of legal arrangements or statutory regulations;
2. The legal structure, namely law enforcement agencies and law enforcement officers within the institution;
3. Legal culture, namely the atmosphere of social thought and social forces that determine how the law is used, avoided or misused or in other words is the behavior of the community.

Referring to Friedman's description, the discussion regarding the obstacles in the prosecutor's office in implementing a criminal case settlement system outside the court

through a restorative justice approach, along with the efforts that must be made to overcome them, will initially be reviewed from the three elements, which include elements of legal substance, legal structure and legal culture. However, after the Republic of Indonesia Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the obstacles that may still be faced are only elements of legal culture, because when viewed from the structure and substance of the law, the obstacle or obstacle is the absence of absolute authority given to the prosecutor with the prosecutor as his apparatus. Both in the form of regulations and laws at that time. Therefore, after the Republic of Indonesia Prosecutor's Regulation No. 15 of 2020, the obstacles or obstacles in terms of the substance and legal structure have been resolved.

In short, legal culture can be interpreted as community behavior related to law. In this case, what is meant by law is the law that regulates the settlement of criminal cases outside the court by the prosecutor through a restorative justice approach. Settlement of cases through restorative justice is to make efforts through a personal approach with the aim that legal actors, especially victims, can forgive and the suspect is also willing to meet the requirements put forward by the victim so that a peace agreement is reached. In a personal approach, a prosecutor or public prosecutor is required to be able to carefully understand what the parties involved want, which in this case of course the victim who gets priority so that the victim can really forgive the suspect so that peace efforts can be achieved.

3 Conclusion

Restorative justice is a process of resolving cases, problems, problems or disputes arising from the existence of a crime or violation by bringing together victims, perpetrators and other stakeholders in an informal democratic forum to find positive solutions that prioritize restoration of victims' losses rather than just to inflict pain on the perpetrator. In addition, law enforcement that is only oriented to retributive justice, which places more emphasis on imposing penalties on perpetrators, is often unable to resolve social problems that arise as a result of the perpetrator's crimes, even though the perpetrators have been sentenced, but the victims often still cannot. Forgive so that the seeds of conflict between the perpetrator's family and the victim's family can reappear at any time and bring the victim. In addition, the settlement of cases outside the court can overcome problems related to the overcapacity of prisons and detention centers. This can also reduce problems in prisons and detention centers due to over capacity so that the quality of coaching in prisons and detention centers cannot run optimally. In addition, of course, it can save the state budget more.

Prosecutor's Office Regulation of the Republic of Indonesia Number. 15 of 2020 seems to give an answer to law enforcement officers, namely prosecutors to be able to realize a sense of community justice. Whereas Restorative Justice in terms of the mechanism for resolving cases, has differences with the criminal justice system, both in terms of the objectives, processes, and nature of the settlement, the form of settlement and the final goal. From the aspect of the purpose of restorative justice, which is to seek a solution to the crime that occurred, the criminal justice system is more about tackling and controlling crime. From the aspect of the process, restorative justice uses mutual

agreement between the parties, while criminal justice uses proof of guilt to impose penalties on the perpetrators. Then from the aspect of the nature and form of settlement, Restorative Justice has the nature and form of settlement of forgiveness, voluntary and repair and victory for all parties, while criminal justice has the nature and form of settlement of retaliation, coercion, suffering for the perpetrators and there are winners and losers. And the most important is the aspect of the final goal. Restorative justice has the ultimate goal of restoring social relations between stakeholders, while criminal justice integrates perpetrators back into society to become good citizens.

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