



Problem of Regulations of Restorative Justice by Law Enforcement Agencies in Indonesia

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Abstract. Restorative justice in criminal law is known in Indonesia in the Juvenile Criminal Justice System as diversion. As for adult criminals, it has just been enforced these days. Instead of going to court or engaging in litigation, restorative justice is used to settle criminal matters. The state remains present through its law enforcement agencies as a facilitator and mediator. This restorative justice approach cannot be used to solve all crimes, only crimes with certain requirements in laws and regulations. On the other hand, each law enforcement agency has its own set of regulations regarding the criteria for criminal crimes that can be handled through a restorative justice approach. Through this background the researcher wants to analyze the regulations regarding the requirements for crimes that can be handled using a restorative justice approach which is regulated by the regulations of each law enforcement agency and the legal consequences of different regulations regarding the requirements for Crimes that can be handled through restorative justice approach in each law enforcement agencies. This research is normative legal research as the method, using statutory and conceptual approaches. Both primary and secondary legal sources were utilised in this study's legal research., which are collected through document studies. The collected legal materials were then analyzed qualitatively. The results of this study later revealed that different regulations in each law enforcement agency resulted in a lack of legal certainty and disharmony of laws and regulations.

Keywords: Criminal Law, restorative justice approach; law enforcement agencies.

1 Introduction

Criminal law in its development has experienced a paradigm shift from previously retributive, punishing criminals for making mistakes and giving a deterrent effect, to nowadays restorative-rehabilitative, namely the balance of interest's model which became known as Restorative Justice[1]. The goal of restorative justice is to establish justice and fairness for both criminals and their victims. To achieve reconciliation between parties, repair damages brought on by criminal acts, and reach a more equitable

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A. Mustofa et al. (eds.), *Proceedings of the International Joint Conference on Arts and Humanities 2023 (IJCAH 2023)*, Advances in Social Science, Education and Humanities Research 785,

https://doi.org/10.2991/978-2-38476-152-4_146

and just resolution for both victims and perpetrators, formal criminal law systems that prioritize punishment are shifted to discussion and mediation methods[2].

Regulations regarding restorative justice as an effort to resolve criminal cases have been recognized internationally. Regulations based on the idea of restorative justice were already known in Indonesia's juvenile criminal justice system with its diversion. Currently, adult criminals are also subject to restorative justice. Restorative justice cannot be used for all crimes, only crimes that abide by the laws and regulations can be treated through restorative justice. As previously mentioned, restorative justice is a process of dialogue and mediation, where this process still requires the presence of the state through its law enforcement agencies as a facilitator or mediator based on Johnstone and Nes that in order to advance justice, the government is accountable for upholding a just order while community members must create a fair peace[3].

Law enforcement agencies in Indonesia consist of various institutions, following the criminal justice process with several stages, from the police, prosecutors, and the supreme court. In reality, the requirements for a crime to be resolved through restorative justice are regulated separately in the regulations of each law enforcement agency where the regulations may differ from one law enforcement agency to another.

The regulation defining the conditions for crimes that can be solved through restorative justice, as regulated by the regulations of each individual law enforcement agency, is the issue that will be examined in this research.

2 Result and Discussion

As law enforcement agencies, the police and prosecutors are two law enforcement agencies that represent the state while using restorative justice approach to resolve criminal cases, whereas, in formal criminal law, these two institutions are subordinate to the criminal justice system. This subordination means that in the same line in formal criminal law, the police play a role at the investigative level and the investigation is then continued by the prosecutor's office at the prosecution level. Lawrence F. Travis III refers to the criminal justice system as an integrated system that starts with the detection of unlawful conduct and ends with discharge. It includes investigation, arrest, first court appearance, charging (arraignment), trial, punishment, and potential revocation[4]. Unfortunately, in terms of the restorative justice approach, the two institutions have different regulations. The police use the Republic of Indonesia National Police Regulation Number 8 of 2021 as the basis and the prosecutor's office implements a restorative justice approach by the Republic of Indonesia Attorney's Regulation Number 15 of 2020. These two regulations regulate differently regarding the requirements for crimes that a restorative justice approach can help settle.

The required conditions for crimes that can be carried out using a restorative justice approach are classified into two categories under Regulation of the State Police of the Republic of Indonesia Number 8 of 2021: general requirements and special requirements. General requirements are divided into two, namely material and formal requirements. Article 5 of the Republic of Indonesia National Police Regulation Number 8 of 2021 states that material requirements include: Not inciting social unrest

or public rejection; not having the potential to stoke social conflict; non-radicalism or non-separatism; not being considered a repeat offender by a court; and not engaging in crimes related to terrorism, criminal acts committed to state security, criminal acts of corruption, or criminal acts against human life. Formal conditions, according to Article 6 Paragraph 1 of Republic of Indonesia State Police Regulation Number 8 of 2021, include: conciliation from both sides, excluding criminal acts involving drugs; and upholding the victims' rights and the obligations of the offenders, excluding criminal acts involving drugs. Crimes that are not crimes against people's lives, acts of terrorism, offenses against national security, and corruption are among the crimes that might be handled using a restorative justice approach. This explanation falls short of being comprehensive, so we must turn to other regulations governing this matter. In particular, Circular Letter of the Chief of the Indonesian National Police Number 8 of 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases mentions the limiting principle, which is divided into two parts: the limiting principle regarding the perpetrator and criminal acts in the process of investigation. From the limiting principle regarding the perpetrator, namely that the perpetrator's guilt is relatively not serious, specifically an intentional mistake (*schuld*) or *mensrea*, specifically intentionality as an intention or purpose (*opzet als oogmerk*); and the first act of crime of the the perpetrator, we can interpret the requirements regarding Criminal offenses that a restorative justice approach can address. The above explanation of the conditions for criminal acts that can be resolved through a restorative justice approach highlights two key points: First, they are not engaging in crimes related to terrorism, criminal acts committed to state security, criminal acts of corruption, or criminal acts against human life; and second, the perpetrator's guilt is relatively light. There are at least two interpretations that can be concluded, the first interpretation is that the crime in question is a misdemeanor, and the second interpretation is that the crime in question is a *dolus* crime. The existing rules alone have multiple interpretations, and this is contrary to the legality principle where one of the meanings is *nulla poena sine lege stricta*, namely that criminal rules must have clear boundaries so that they are not interpreted in multiple ways[5].

Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 specifies additional means for dealing with criminal offenses that can be solved through restorative justice. The Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020, Article 5 paragraph (1), specifies that if the following criteria are fulfilled, a criminal acts may be adjudicated by law and the prosecution may be dropped in favor of restorative justice: The suspect is committing a crime for the first time; The crime is committed with the value of the evidence or the value of the losses incurred as a result of the crime not exceeding Rp 2,500,000.00 (two million five hundred thousand rupiahs), Criminal offenses are only subject to penalties or the prospect of up to five (5) years in prison. The Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 requires a crime that carries a prison sentence of not more than 5 years and neither the value of the evidence nor the cost of the damage caused by the crime exceeds IDR 2,500,000.00 (two million five hundredth). This is in contrast to the provisions in the Regulation of the State Police of the Republic of Indonesia Number 8 of 2021 and the Circular of the Chief of Police Number 8 of 2018. Crimes that carry a

prison term of no more than 5 years also include criminal acts of culpa related to the killing of another person and are different from regulations at the police stage which only regulate not criminal acts of dolus. Criminal acts for which neither the value of the evidence nor the cost of the damage caused by the crime exceeds IDR 2,500,000.00 (two million five hundredth) is a minor crime based on Supreme Court Regulation Number 2 of 2012, but the light punishment also includes a criminal threat in the form of a maximum imprisonment of 3 months. So it is not clear what crime is meant in the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020, Article 5, Paragraph 1. Another thing that has multiple interpretations of a rule regarding criminal law that violates the legality principle is especially related to *nulla poena sine lege stricta*.

3 Conclusion

The regulations regarding restorative justice in each law enforcement agency are different and have multiple interpretations where this violates the principle of legality in criminal law. This problem can be resolved through uniform regulations in a statutory regulation or through equalization of perceptions between law enforcement agencies which are then outlined in a rule, it may take the shape of an agreement between law enforcement agencies in a joint memorandum or take various forms.

Authors' Contributions

The author comprises three members where all are contributed to writing the article. Article writing is separated into numerous stages of research and writing that are completed in 2 (one) months. The author investigates related themes based on observations made in the field over many months. The writer offers the ideas in this scientific article based on observable data.

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