



Implementation of the Principle of Restorative Justice as an Alternative Resolving to Types of Crimes in the Related Criminal System Corruption Crimes in Indonesia

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ABSTRACT

Restorative justice is a process in which all parties with an interest in a particular violation meet together to resolve jointly to resolve together how to resolve the consequences of the violation for the benefit of the future. From this definition, it can be concluded that the settlement of a criminal act by using Restorative Justice prioritizes the occurrence of an agreement between the litigants, with the interests of the future. Restorative Justice was also introduced because the current criminal justice and criminal justice system created problems. In the current prison system, the purpose of punishment is deterrence, revenge, and suffering as a consequence of his actions. Sentence indicators are measured by the extent to which inmates (prisoners) are subject to prison regulations. more approach to security (security approach). The existence of this approach is perhaps as old as criminal law itself. In addition to imprisonment that has consequences for the families of prisoners, the current system is considered not to relieve or cure victims. Types of crimes that have been resolved through restorative justice are cases of persecution, domestic violence, arson, theft, and murder. The purpose of this research is to find out how Implementation of the Application of Restorative Justice Principles as an Alternative Solution to Types of Corruption Crimes in Indonesia and whether corruption cases can be resolved through the principle of restorative justice. This paper uses a normative legal writing method because it examines laws and regulations, literature, and papers related to the material being studied, which consists of the type of data obtained in this study is secondary data, namely data obtained from library research and documentation, which is the result of research and processing of others, which is already available in the form of literature or documentation.

ABSTRAK

Keadilan restoratif adalah suatu proses di mana semua pihak yang berkepentingan dalam suatu pelanggaran tertentu bertemu bersama untuk menyelesaikan bersamasama untuk menyelesaikan bersama bagaimana menyelesaikan akibat pelanggaran untuk kepentingan masa depan. Dari definisi tersebut dapat disimpulkan bahwa penyelesaian suatu tindak pidana dengan menggunakan Restorative Justice mengutamakan terjadinya kesepakatan antara pihak yang berperkara, dengan kepentingan masa depan. Restorative Justice juga diperkenalkan karena sistem peradilan pidana dan peradilan pidana saat ini menimbulkan masalah. Dalam sistem penjara saat ini, tujuan hukuman adalah pencegahan, balas dendam, dan penderitaan sebagai konsekuensi dari tindakannya. Indikator hukuman diukur dari sejauh mana narapidana (napi) tunduk pada peraturan penjara. lebih kepada pendekatan keamanan (security approach). Keberadaan pendekatan ini mungkin setara hukum pidana itu sendiri. Selain pidana penjara yang membawa akibat bagi keluarga narapidana, sistem yang berlaku saat ini dinilai tidak meringankan atau menyembuhkan korban. Jenis kejahatan yang telah diselesaikan melalui keadilan restoratif adalah kasus penganiayaan, kekerasan dalam rumah tangga, pembakaran, pencurian, dan pembunuhan. Tujuan dari penelitian ini adalah untuk mengetahui bagaimana Implementasi Penerapan Prinsip Restorative Justice sebagai Alternatif Solusi Jenis Tindak Pidana Korupsi di Indonesia dan apakah kasus korupsi dapat diselesaikan melalui prinsip restorative justice. Tulisan ini menggunakan metode penulisan hukum normatif. karena mengkaji peraturan perundang-undangan, kepustakaan, dan makalah yang berkaitan dengan materi yang diteliti, yang terdiri dari jenis data yang diperoleh dalam penelitian ini adalah data sekunder, yaitu data

yang diperoleh dari studi pustaka dan dokumentasi, yang merupakan hasil penelitian dan pengolahan. lain, yang sudah tersedia dalam bentuk literatur atau dokumentasi.

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I. INTRODUCTION

In civil cases, there is an alternative dispute resolution, which is defined as a way to settle a civil dispute out of court. Although not the same, in the scope of criminal law there are also solutions that emphasize the restoration of the original situation rather than demanding a punishment from the court. The principle of resolving criminal cases is known as the principle of Restorative Justice.

Currently, law enforcement agencies in Indonesia, including the Supreme Court, the Attorney General's Office, the Indonesian National Police, and the Indonesian Ministry of Human Rights Law have adopted the principle of restorative justice as a way to settle a criminal case. In 2012 these four institutions made a mutual agreement, namely the memorandum of agreement Number 131/KMS/SKB/X/2012, Number M-HH-07.HM.03.02 of 2012, Number KEP-06/E/EJP/10/2012, Number B/39/X/2012 dated October 17, 2012 regarding the implementation of adjustments to the limits of minor crimes and the amount of fines, quick examination procedures and the application of restorative justice. In this memorandum of understanding, the principle of restorative justice first received a definition in article 1 paragraph (2), namely: Restorative justice is the settlement of minor criminal cases carried out by investigators at the investigation stage or judges from the beginning of the trial by involving the perpetrators, victims, families of the perpetrators/victims, and related community members to jointly seek a fair solution by emphasizing restoration of the situation. beginning". This memorandum of understanding does limit the application of restorative justice, namely only minor crimes. However, in its development, it is not only minor crimes that can be resolved with this principle of restorative justice. and the community concerned to jointly seek a just solution by emphasizing the restoration to its original state". This memorandum of understanding does limit the application of restorative justice, namely only minor crimes. However, in its development, it is not only minor crimes that can be resolved with this principle of restorative justice. and the community concerned to jointly seek a just solution by emphasizing the restoration to its original state". This memorandum of understanding does limit the application of restorative justice, namely only minor crimes. However, in its development, it is not only minor crimes that can be resolved with this principle of restorative justice.

tribunSumsel.com, Edi Irawan, a resident of Kampung III, Lawang Agung Village, Muara Rupit District, North Musi Rawas (Muratara) Regency breathed a sigh of relief, this 44-year-old man was finally free after three months in a detention cell at the Lubuklinggau Correctional Institution (Lapas) in a criminal case family fights. Edi was released after the Attorney General for General Crimes at the Attorney General's Office of the Republic of Indonesia approved the request for termination of prosecution based on restorative justice (RJ). "Alhamdulillah, I am happy to be free, I thank the prosecutor's office," said Edi after receiving the acquittal from Kajari Lubuklinggau, Willy Ade Chaidir, who was represented through the Kasipidum, Firdaus Afandi SH (Hepronis, 2022).

DetikJatim.com, Trenggalek - The Trenggalek Police Criminal Investigation Unit has again resolved cases of Domestic Violence (KDRT) through restorative justice. The complainant agreed to make peace and withdraw his report to the police. Trenggalek Police Head of Criminal Investigation Unit, AKP Arief Rizky Wicaksana, said that the investigation was terminated in the case of violence committed by SYO (48) against his own wife, BOH (49), a resident of Munjungan District, Trenggalek. "The termination of this case is in accordance with applicable regulations, including the Regulation of the Indonesian National Police Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, as well as the Circular Letter of the Chief of Police Number SE/7/VII/2018 concerning Termination of Investigations," (Rizky, 2022).

KOMPAS.com - Munir Alamsyah (53), a former honorary teacher in Garut, West Java, can only be grateful that he was released from his act of burning the class d of SMPN 1 Cikelet. "The feeling is like being lifted from a period of humiliation and bitterness, I am very grateful, thank you, Mr. Police and all of the schools," he said, quoted from Tribunjabar.id at the Garut Police Headquarters, Friday (28/1/2022). A similar case was also experienced by a father with the initials RC in Pangkalpinang, Bangka Belitung Islands, on Friday (1/14/2022). RC burst into tears after being declared acquitted of all charges for stealing a cell phone for the sake of his child. Meanwhile, despite serving a prison sentence, a prisoner of the Class II A Penitentiary in Pematang Siantar, North Sumatra, Fajar Irawan (30), was finally free. Simalungun Kejari has carried out restorative justice efforts to Fajar.

Meanwhile, Agus Mustofa (28), a resident of Cibiru Village, RT 3/7, Ciptaharja Village, Cipatat District, West Bandung Regency (KBB), also received restorative justice after stealing his employer's motorbike. "Agus has been acquitted of all charges because he has received restorative justice. The provision of restorative justice has been approved by the leadership and witnessed by the Attorney General at the West Java Prosecutor's Office," said Head of the West Java Attorney General's Office (Gazali, 2022).

Jakarta - The police applied restorative justice (RJ) in the tragic accident that killed Masringah (47), where she was hit by her son, Agus Wahyudi (28)'s motorbike, while going home. The police said Agus could actually be charged with Article 310 of the RI Law No. 22 of 2009 concerning Road Traffic and Transportation. "Because one family is involved in this traffic accident, namely the mother herself on behalf of Masringah and her son, Agus, we are doing restorative justice to resolve this accident case," said Head of Laka Satlantas Polres Mojokerto. (Wihandoko, 2022).

Based on the cases above, there are various types of crimes that are resolved through restorative justice, namely cases of persecution, domestic violence, arson, theft, and murder, therefore I as a writer are interested to know First; how Implementation of the Application of Restorative Justice Principles as an Alternative Resolution of Types of Crimes in the Related Criminal System Perpetrators of Corruption Crimes in Indonesia, Second; whether the crime of corruption can be resolved through the principle of restorative justice. Considering the principle of restorative justice, it can be applied to major cases (corruption) in addition to the cases above. In essence, the principle of restorative justice can only be applied to perpetrators who commit minor crimes based on the memorandum of agreement Number B/39/X/2012 dated October 17, 2012 regarding the implementation of the adjustment of the limits of minor crimes and the amount of fines, quick examination procedures and the application of restorative justice. (restorative justice).

II. RESEARCH METHOD

This paper uses a normative legal writing method because it examines laws and regulations, literature, and papers related to the material being studied, which consists of the type of data obtained in this study is secondary data, namely data obtained from library research and

documentation, which is the result of research and processing of others, which is already available in the form of literature or documentation.

III. RESULTS AND DISCUSSION

Implementation of the Application of Restorative Justice Principles as an Alternative Resolution of Types of Crimes in the Related Criminal System Perpetrators of Corruption Crimes in Indonesia.

It has been described previously that the concept of restorative justice in convicting perpetrators of criminal acts of corruption does not completely eliminate criminal sanctions, but rather prioritizes the provision of sanctions that emphasize efforts to recover from crimes. The author proposes 2 (two) models of implementing restorative justice in criminalizing Indonesia's corruption eradication law in the future which will be described below.

According to Law no. 31 of 1999 which was amended by Law no. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, corruption is a criminal act that is very detrimental to state finances or the state economy and hinders national development as well as hinders the growth and continuity of national development which demands high efficiency. Furthermore, it is stated in the consideration section of the law that the criminal act of corruption is said to be a violation of the social and economic rights of the community at large, so that the criminal act of corruption is classified as a crime whose eradication must be carried out in an extraordinary manner. Therefore, the regulation of criminal compensation for money and fines is one of the efforts to restore state financial losses (Constitution, 2001).

In Law no. 3 of 1971, for example, the criminal issue of replacement money has been regulated in which the maximum amount of replacement money is the same as the money that was corrupted. However, this law has a weakness, namely it does not explicitly specify when the replacement money must be paid, and what the sanctions are if the payment is not made. This law actually weakens the obligation to pay the replacement money. In the explanation section of the law, it is stated that if the payment of replacement money cannot be fulfilled, the provisions regarding the payment of fines shall be enforced. Likewise with Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 also regulates the issue of criminal compensation for money. Article 18 paragraph (1) letter b states that the perpetrators of criminal acts of corruption may be imposed additional penalties in the form of payment of replacement money in the maximum amount equal to the property obtained from the crime of corruption. There has been little progress in this law, where the provisions regarding replacement money are more stringent, namely if it is not paid within 1 (one) month, the convict is immediately executed by putting him in prison. The prison sentence has been determined in the judge's decision, the duration of which does not exceed the maximum threat of the principal sentence (Constitution, 2001).

However, the concept of restorative justice has not been fully implemented in these regulations. Because Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning the Eradication of Corruption Crimes stipulates that in cases that are decided, there is a time limit for payment of one month. a court verdict that has permanent legal force, and if the convict does not have sufficient assets to pay the replacement money, he shall be sentenced to imprisonment for the term of the convict whose duration does not exceed the principal sentence. This norm again shows that the return of state losses is only as an additional crime, not as a principal crime.

In the concept of a restorative justice approach, it is necessary to consider so that the return of state losses becomes the main crime. Because if the compensation for state losses remains an additional crime, there is still an opportunity for the judge to decide on a subsidiary sentence or a substitute

imprisonment if the convict is unable to repay the loss. In the lens of restorative justice, that if the convict is unable to recover the loss even though all his assets have been auctioned off, then instead of imprisoning the convict, it is better for the state to empower the perpetrators of corruption in the form of forced labor according to their expertise. Because basically the perpetrators of corruption are people who have good skills. The results of the forced labor are confiscated by the state to cover state losses that the convict cannot afford.

The development of this concept in the law on eradicating corruption would be able to restore or recover state losses due to corruption. On the other hand, with such a concept of punishment, there are many benefits in terms of the purpose of punishing a criminal. With the obligation to return non-negotiable replacement money, a convict will work under the tutelage of the state to make money to cover the losses caused by his actions.

Settlement of Corruption Crimes Through Restorative Justice Principles

Qualitatively, the negative impact of corruption is to reduce revenues from the public sector and increase government spending on the public sector. At another level, corruption also contributes to a large fiscal deficit, increasing income inequality, because corruption distinguishes opportunities for individuals in certain positions to benefit from government activities at the costs actually borne by the community. Viewed from the aspect of public welfare, corruption also increases the poverty rate because government programs do not reach their targets, corruption also reduces the potential income that the poor may receive. Judging from this aspect, the punishment of the perpetrator of corruption is clearly no longer possible by relying on a retributive approach. A systematic and comprehensive effort is needed to recover the consequences of corruption.

The failure of the retributive theory that is oriented to revenge and the neo classical theory that is oriented to the equality of criminal sanctions and action sanctions to fulfill a sense of justice in society triggers a reaction to the emergence of thoughts to apply restorative justice in the concept of punishment in general, especially the punishment of perpetrators of criminal acts of corruption. This thinking views that a restorative justice approach that emphasizes repairing losses caused or related to criminal acts as a concept that is in accordance with the goal of eradicating corruption in Indonesia as has also been done in several countries.

In some countries this approach has begun to be adopted and is showing encouraging results. The Netherlands, for example, is considered the most successful country in the world in implementing restorative justice. The proof is that from 2013 to January 2017, the Netherlands has succeeded in closing 24 (twenty four) prisons because of the minimal number of crimes that occur in the country (Kompas, 2017). Likewise in corruption cases, the Netherlands also applies restorative justice as a form of settlement in corruption cases. So that in 2016, based on the Corruption Perception Index (CIP) or the corruption perception index, the Netherlands was in the 8th (eighth) position out of 176 countries. Indeed, the criminal law applicable in the Netherlands, since 1921, has recognized an institution for the settlement of criminal cases outside a court trial, which is called a transaction institution (*transactie stelsel*), which is not recognized in the criminal law currently in force in the Dutch East Indies or Indonesia (Chazawi, 2002). This shows that the restorative justice approach is actually more capable of reducing crime rates, especially in corruption, moreover being able to recover the consequences of criminal acts where both the state, the perpetrators and the community together think about ways to recover losses due to the crimes committed.

Failure Paradigm of indeterminism and retributive justice

Efforts to overcome crime by using criminal law institutions and physical punishment of criminals are the most classic ways, even though they are said to be as old as human civilization. In the context of philosophy, crime and punishment are even referred to as the "older philosophy of crime control" (Kassebaum, 1974). Lately, the sentencing policy has been much questioned considering that in the

historical context, sentencing or criminal sanctions is full of descriptions of treatment which by current standards is seen as cruel and transgressing (Bassiouni, 1978) . Even Smith and Hogan called it "a relic of barbarism"(Hogan, 1978).

Criminal retaliation arises because criminal law itself is built on the basis of indeterminism thinking which basically views humans as having free will to act. Free will is what underlies the birth of criminal acts. Therefore, the view of indeterminism assesses that human free will must be repaid with criminal sanctions (Sudarto, 2009).

Along with the development of human life and civilization, it turns out that the implementation of criminal sanctions for revocation of independence contains more negative aspects than positive aspects. The negative aspects that arise from the imposition of the punishment for revocation of independence are for example the occurrence of dehumanization, prisonization and stigmatization (Nawawi, 1984) . In addition, another negative aspect is the exhaustion of energy from law enforcement and the state budget to focus on efforts to physically punish criminals rather than focus on recovering the consequences of the crimes committed. Whereas in many criminal cases, the loss or negative consequences caused by a crime are more important to be repaired than depriving the freedom of a criminal.

In the context of corruption, it seems that the philosophy and theory of punishment which is heavily influenced by the flow of retributive justice is no longer relevant to the main objective of the law to eradicate corruption in Indonesia, namely to focus on protecting state assets or assets. Legal interests to be protected are state finances (Rusanto, 2015). It was later revealed that a number of corruption convicts who had cost the state a lot of money, actually enjoyed the process of being sentenced. In fact, their presence in the criminal system actually damages the mentality of law enforcers which in turn triggers the occurrence of new criminal acts. The convicts of corruption cases even use the proceeds of corruption to bribe correctional officers to get luxurious facilities while they are serving their sentence (Media, 2022) .

In addition, in corruption crimes, the perpetrators are often not individuals but corporations. In this context, the paradigm of indeterminism and retributive justice in the punishment of corruption perpetrators by corporations is clearly irrelevant. In fact, a number of obstacles arise in the effort to protect state finances that are corrupted by corporations. The criminalization of corporations. Perpetrators of corruption, both in terms of substance, structure and legal culture, are no longer relevant by using the retributive justice concept approach (Suharianto, 2016).

IV. CONCLUSION

The retributive justice paradigm which is the legal basis for eradicating corruption is not relevant to the main objective of the law to eradicate corruption in Indonesia. The spirit to save state assets must be based on restorative justice thinking that is oriented towards recovering the consequences of criminal acts of corruption rather than focusing on imprisoning the perpetrators of corruption. The concept of restorative justice in convicting perpetrators of criminal acts of corruption can be implemented in the form of strengthening norms for returning state losses from being an additional crime to being a principal crime. As for anticipating the perpetrators being unable to pay the losses, the concept of forced labor can be applied instead of imprisoning the perpetrators of corruption.

It is important to immediately reform the law on criminal acts of corruption so that the paradigm of restorative justice can be immediately introduced into new legal norms. Besides that, a comprehensive reform of criminal law also needs to be carried out, because basically Indonesian criminal law still adheres to the retributive justice paradigm which is full of descriptions of treatment which by current standards is seen as cruel and transgressing.

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References

- Adam Chazawi. 2002, Criminal Law Study 2, Jakarta: PT. Rajagrafindo Persada, p. 182-183.
- Agus Rusanto. 2015, Crime & Criminal Liability: A Critical Review Through Consistency between Principles, Theories, and Their Applications. Jakarta: Kencana, p. 252.
- Barda Nawawi Arief. 2019. Penal Mediation for Settlement of Out-of-Judicial Cases, Masters Library, Semarang.
- Budi Suhariantio. 2016, Restorative Justice in the Criminalization of Corrupt Corporations for Optimizing the Return of State Financial Losses, Jakarta, Kemenkumham, Volume 5, Number 3, December p. 423
- Gene Kassebaum. 1974, Delinquency and Social Policy, London: Prentice Hall, Inc., p. 93
- M. Cherif Bassiouni. 1978, Substantive Criminal Law, Illinois USA: C. Thomas Publisher, p. 86.
- Muladi and Barda Nawawi Arief, Criminal Theories and Policies, Bandung: Alumni, 1984, p. 77-78.
- Muladin and Barda Nawawi Arief. 2007, anthology of criminal law law, alumni, bandung.
- Smith and Hogan. 1978, Criminal Law, London: Butterworths, p. 6
- Sudarto, 2009, Criminal Law I, Semarang: Sudarto Foundation, FH UNDIP, p. 146-147

Legislation :

Law Number 31 of 1999 which was amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.

Law Number 3 of 1971 Regarding the Eradication of Criminal Acts of Corruption.

Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 also regulates the issue of Compensation Money.

Online media :

Detikjatim, "Police Again Perform Restorative Justice Cases of Domestic Violence in Trenggalek" read more <https://www.detik.com/jatim/Hukum-dan-kriminal/d-5990513/polisi-re-do-restorative-justice-case-kdrt-di-trenggalek>.

https://www.bphn.go.id/data/documents/laporan_akhir_pengkajian_restorative_justice_anak.pdf accessed on 22 April 2022 at 09.40 WIB

Kompas.com with the title "Stories of 4 Criminals Freed by Restorative Justice, from School Burners to Palm Oil Thieves", Click to read: <https://regional.kompas.com/read/2022/01/31/071212278/cepat-4-pelak-criminal-yang-bebas-karena-restorative-justice-dari?page=all>. Editor : Michael Hanga Wismabrata

TribunSumsel.com entitled Edi Hugs Wife, Beats Brother-in-law Gegara Free Fishing Through Restorative Justice, <https://sumsel.tribunnews.com/2022/04/05/edi-luk-istri-pukul-adik-ipar-gegara-pancing-bebas-via-restorative-justice?page=1>. Author: Eko Hepronis | Editor: Yohanes Tri Nugroho, 2022.

See the shortage of criminals, 24 prisons in the Netherlands closed since 2013, <http://internasional.kompas.com/read/2017/06/01/09330651/kekuraengan.criminal.24.prison.in.the.netherlands.closed.since.2013>, last accessed on June 2, 2022

See Dismantling the Sale and Purchase of Sukamiskin Prison Facilities. Article. <https://www.msn.com/id-id/news/national/dismantling-selling-buying-facilities-prison-sukamiskin/ar-BBKXLa5>. last accessed on 7 June 2022 .