

THE EFFECTIVENESS OF APPLICATION OF RESTORATIVE JUSTICE IN SOLVING CRIMINAL CASES IN LAPE POLICE JURISDICTION

Muhammad Jarnawansyah¹, Anwar SA² Ahmad Jibrail³,

^{1,2,3} Faculty Of Economic and Business, Sumbawa University Of Technology, Indonesia

ABSTRACT

This study aims to determine the implementation of penal mediation in violent crimes against the investigation process at the Lape Police, the effectiveness of penal mediation in order to realize the principle of restorative justice at the Lape Police in reducing criminal acts. This study uses primary data obtained from field research. The results of this study indicate that: The application of Restorative Justice in the Settlement of Criminal Cases is very effective, which can be seen from the lack of crime rates in the Lape Polsek area, the absence of repetition of evil deeds that have been committed and no revenge efforts carried out by the police. victims and their families. restorative justice can be considered as a viable option to resolve criminal cases in Puncak Jaya. This is because, In some circumstances, a restorative justice approach is a form of settlement that can satisfy the wishes of the parties concerned. So that the issue can be resolved in accordance with the wishes of the parties concerned.

Keyword: - Restorative Justice; Police Jurisdiction; Sentencing; Criminal,

1. INTRODUCTION

Indonesia is a state of law, as stated in the Constitution of the Republic of Indonesia Article 1 paragraph (3) which states that the Unitary State of the Republic of Indonesia is a State of Law. Therefore, the Indonesian state is expected to be able to resolve a legal problem that occurs. The criminal justice system must be recognized as a special sanction law, the criminal justice system can limit human freedom by imposing imprisonment or corporal punishment, even killing human life. The criminal justice system contains sanctions for violations of the rule of law which are much harsher than the consequences of sanctions regulated in other laws.

In the sentencing process, often the criminal system constructed in the Indonesian legal system places more emphasis on corporal punishment. This can be seen in the sentencing system which is regulated in Article 10 of the Criminal Code (KUHP) which divides the types of punishment into 2 forms, namely the main crime and additional punishment (Aprilianda, 2017). In Article a quo, what is meant by the main punishment consists of 4 types, namely the death penalty, imprisonment, imprisonment, and a fine. Theoretically, it can be seen that the system Indonesian criminal law is still in the principle of retributive justice (retributive justice). Principles like this prioritize corporal punishment, which according to Bagir Manan makes the law a tool of oppression.

Indonesia as a state of law needs to make changes, especially those related to criminal law policy. This policy is very much needed to provide a way out in solving various criminal cases in a more responsible way. There are two legal settlement methods, the first is through litigation and the second is through non-litigation steps. At present, Indonesia still always resolves criminal cases using litigation (through the courts). Settlement through the judiciary is expected to provide a deterrent effect for perpetrators of criminal acts by providing confinement or imprisonment. However, in practice this litigation step does not always go as expected. Because the current traditional litigation method creates new problems, such as the pattern of punishment that is still retaliatory in nature, causing a buildup of cases, not paying attention to the rights of the victims. The litigation process has several drawbacks, such as a long, complicated and expensive process, the settlement is legal and rigid,

In the settlement of a crime, the presence of a restorative approach in criminal law does not aim to destroy criminal law or fuse criminal law, because the restorative approach prioritizes the mediation route between the victim and the

perpetrator. The restorative approach actually returns the function of criminal law to its original path, namely the *ultimum remedium* function, which is the ultimate weapon when other legal remedies can no longer be used in dealing with a crime in society. In a practical setting for handling and resolving criminal cases using a restorative approach, it also offers alternative answers to a number of problems faced in the criminal justice system, for example, the difficult, long and expensive judicial administration process.

The restorative approach means that justice can be achieved if the criminal act settlement process can involve all parties involved in determining the concept of settlement and imposing sanctions. If restorative justice is stated as an answer to dissatisfaction or failure of the criminal justice system, then restorative justice is a concept of thought that responds to the development of the criminal justice system by focusing on the needs of the community and victims who feel excluded from the mechanisms that work in the existing criminal justice system at the time. This. A violation of criminal law is understood as a conflict between individuals that causes harm to the victim, the community and the offender himself. Among the three groups, the interests of crime victims are the main part. Based on this, the application of restorative justice in the criminal law enforcement system in Indonesia has been around for a long time and is widely applied, it's just that it has not been as frequent and widespread as the application of the principle of justice that has been used so far, namely retributive justice. The narrow application of the principle of restorative justice is what makes the pros and cons in its application (Sianturi, 2017).

These pros and cons then become a public question, how exactly this restorative principle can apply in the lives of Indonesian people today. This principle is also believed to be the basis for laying a criminal system that is in accordance with the principles of life of the Indonesian people. The principle of restorative justice more or less reflects the process of deliberation in resolving a case. However, this principle does not necessarily apply in every sector of criminal law. This is what then becomes indecision so that further studies and research need to be carried out on these principles in their application to the Indonesian criminal law system.

2. METHODOLOGY

This type of research is legal research that uses empirical legal research/socio-legal study research, which is research conducted with an approach to legal reality in society. This research is based on the existence of symptoms in the form of a gap between expectations (*Das sollen*) and reality (*Das sein*). This study chose a location in the Lape District area, especially in the Police Lape Sector.

3. RESULTS AND DISCUSSION

The application of the restorative justice approach has long been carried out at the Lape Police. The restorative justice approach is a method used to resolve criminal cases. Restorative justice places a higher value on the direct involvement of the parties. The victim is able to restore the element of control while the perpetrator is encouraged to assume responsibility as a step in correcting the mistakes caused by the crime and in building his social value system.

In the current criminal justice system, it has a weakness where the position of the victim and the perpetrator is still not in a position so that the interests of both are neglected. Therefore, restorative justice in its implementation is based on three principles, namely:

- a) There is recovery for those who were injured, perpetrators have the opportunity to be involved in recovery if they wish,
- b) The role of the court system is to maintain public order,
- c) Society, its role is to maintain a just peace.

Legal effectiveness according to Romli Atmasasmita, namely the factors that hinder the effectiveness of law enforcement, not only lies in the mental attitude of law enforcement officers (judges, prosecutors, police and legal advisors) but also lies in the legal socialization factor which is often ignored. (Dance, 2017).

The theory of legal effectiveness according to Soerjono Soekanto is that the effectiveness of a law is determined by five factors, namely the legal factor itself (legal substance), law enforcement factors, namely the parties that form or apply the law (legal structure), factors or facilities that support law enforcement (facilities and infrastructure), community factors, namely the environment in which the law applies or is applied (community environment), and cultural factors. These five factors are related to each other

others, because it is the essence of law enforcement, and is also a measure of the effectiveness of law enforcement.

That the restorative justice approach needs to be used as the basis for the implementation of the criminal justice system. 8/VII/2018 that the method of resolving criminal cases that reflects the application of the principles of

restorative justice which can be used as a reference in the application of the principles of restorative justice to criminal cases, is as follows:

- a) Article 76 paragraph (1) of the Criminal Code (KUHP) that except in the case where the judge's decision is still possible to be repeated, a person may not be prosecuted twice because the act in which an Indonesian judge found himself was tried with a final decision.
- b) Article 7 paragraph (1) of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) at the level of investigation, prosecution and examination of children in the District Court is required to seek diversion.
- c) Article 15 paragraph (2) of Law no. 42 of 1999 concerning Fiduciary Guarantee that a fiduciary guarantee certificate has the same executorial power as a court decision which has permanent legal force.

Based on the results of an interview with Bripka Kurnia as an investigator at the Lape Police, he explained that every community who reports or complains about their problems is always sought to be resolved in a family way or what is called restorative justice. The police are here only as mediators. The decision to make peace is left entirely to the victim, the perpetrator, and their family.

To implement the Circular Letter of the Chief of Police No. 8/VII/2018 Police investigators must comply with material and formal requirements. The formal requirements according to the Circular Letter of the Chief of Police No. 8/VII/2018 as follows:

- a) Letter of request for reconciliation from both parties (rapporteur and reporter);
- b) The Declaration of Peace (deed of dading) and the settlement of disputes between the litigants (the reporting party and/or the reporting family, the reported party and/or the reported party's family, and representatives of community leaders) are known to the investigators;
- c) Minutes of additional examination of the litigating parties after the settlement of the case through restorative justice;
- d) Recommendation for the title of a special case that approves the settlement of restorative justice (restorative justice);
- e) The perpetrator does not object to responsibility, compensation, or is done voluntarily;
- f) All criminal acts can be carried out by restorative justice against general crimes that do not cause human victims;

The application of the penal mediation policy in dealing with criminal acts must be based on the Regulation of the Head of the Indonesian National Police No. 8 of 2021 concerning the Handling of Criminal Acts according to Restorative Justice in Article 5 which states that all types of criminal acts can be resolved with restorative justice with the application of penal mediation on the condition that the perpetrator is not a recidivist. based on the court's decision, the crime committed does not cause social conflict and rejection in society, is not a crime that is breaking national unity and is a separatist radical, and is not a crime related to state security such as terrorism, corruption, and crimes against someone's life.

Penal mediation in its application, using the method of recovering the situation for losses from the crime committed, so that in this case the application of restitution is also carried out, where restitution is an effort to compensate for the consequences borne by the victim from a criminal act by the perpetrator (Mudzakir, 2013) .

Types of Crimes that can be used as prerequisites and scope of studies that can be completed in this penal mediation procedure are:

- a) The category of violation of criminal law is included in the category of complaint offense, with an absolute nature or a complaint with a relative nature
- b) The crime is a criminal fine and the violator has paid a fine (Article 80 of the Criminal Code).
- c) The violation is a "violation" category and not a "crime" that only carries a fine.
- d) The violation can be categorized as a criminal act in administrative law which places criminal sanctions as an *ultimum remedium*
- e) The occurrence of a violation of ordinary criminal law which results in the termination or the criminal act

Law enforcement cannot be separated from the role of law enforcement officers to enforce the existing legal rules because the law cannot be enforced by itself. Law enforcement will run well if law enforcers have a good mentality in carrying out or enforcing the rule of law. Law enforcement officers in carrying out their duties must refer to the purpose of the law, namely to provide protection and services to the community in order to realize justice, benefit, and legal certainty that refers to respect for human dignity.

In line with the purpose of the law, there are always indicators of effectiveness. Where the achievement of the legal objectives becomes measurable and directed. To see or measure the success or failure of law, it can be done by measuring 5 (five) factors, namely:(Pohan, 2019):

- a) The legal factor itself (law)

- b) Factor enforcer law, that is parties which shape nor apply the law
- c) Factors of legal facilities and facilities that support law enforcement
- d) Community factors, namely the environment in which the law applies or is applied
- e) Cultural factors, namely as a result of creative work and taste based on intention.

Adding to the factors measuring the effectiveness above, Soerjono Soekanto predicts the benchmark for the effectiveness of certain elements of infrastructure. Where the infrastructure in question must clearly be a part that contributes to the smooth running of the duties of the apparatus at its work location (Rahman, 2017).

In addition to the factors mentioned above, the factor of repetition of actions by the perpetrator and a sense of revenge by the victim or the victim's family is important to be reviewed in terms of the effectiveness of this restorative justice. Because they may make peace in front of the police, but when they return to their homes they repeat their evil deeds or the victim takes revenge.

Based on the results of the interview with Bripka Kurnia, it turned out that while reconciling the perpetrator with the victim, there was never a repeat of the evil act by the perpetrator or revenge by the victim or the victim's family. Because when the peace process at the Lape Police Sector was agreed upon, the perpetrator and the victim had agreed that if the same act occurred, the law would be processed directly without going through a restorative justice process.

The restorative justice approach can be said to be a suitable settlement method for criminal cases that occur in the jurisdiction of the Lape Police. This is because the restorative justice approach is a settlement method that in practice is able to accommodate the wishes of the parties involved in certain matters. So that cases that occur can be resolved according to the wishes of the parties involved (Star, 2021).

By agreeing on the application of restorative justice by both parties involved in the case, the perpetrator must carry out the provisions as a form of responsibility that must be carried out by the perpetrator. The form of responsibility or compensation to the victim for what has been done by the perpetrator. This is in accordance with one of the formal requirements for the application of restorative justice in accordance with SE Kapolri No. 8/2018, that the perpetrator does not object to responsibility, compensation, or is done voluntarily. (Wadjo & Saimima, 2020).

Based on several factors that influence the effectiveness of the application of restorative justice principles in the process of resolving criminal acts at the Lape Police, it can be concluded that the legal substance, legal structure, facilities and infrastructure, community factors, legal culture, repetition of actions, and victim revenge are very influential. on whether or not the application of the principle of restorative justice in the process of resolving criminal acts at the Lape Police Sector is effective.

4. CONCLUSIONS

1. The effectiveness of the application of restorative justice in the implementation of the process of resolving criminal acts at the Lape Police based on the Circular Letter of the Chief of Police Number: SE/8/VII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases is very effective, which can be seen from the lack of crime rates in the area Lape Police, there is no repetition of the evil deeds that have been committed and no revenge attempts have been made by the victim or the victim's family.
2. The application of restorative justice occurs with the agreement of the parties involved in criminal cases, without any police intervention in it. The application of the restorative justice approach in resolving criminal cases in the jurisdiction of the Puncak Jaya Police is said to be very effective because it is better able to accommodate the wishes of all parties involved in criminal cases. So that this avoids the emergence of conflicts that could arise when one party feels that its wishes/interests are not being accommodated.

5. REFERENCES

- [1] Aprilianda, N. (2017). *The Indonesian Criminal Justice System: Theory and Practice*. Universitas Brawijaya Press.
- [2] Bintang, Dedy Syahputra. (2021). *The Effectiveness of the Application of Restorative Justice in Resolving Criminal Cases in the Legal Territory of the Puncak Jaya Police*. Tarumanagara University.
- [3] Henny Saida Flora, "The Restorative Justice Approach in the Settlement of Criminal Cases in the Criminal Justice System in Indonesia, in the journal (*Jurnal Law Pro Justita*), Volume 2, Number 2 2017.
- [4] Mudzakkir, *Penal Mediation for the Application of Restorative Justice Values in the Settlement of Criminal Acts*, Hasanuddin University Publisher, Jakarta, 2013

- [5] Regulation of the Head of the National Police of the Republic of Indonesia No. 8 of 2021 concerning the Handling of Crimes according to Restorative Justice
- [6] Pohan, Hotman T. (2019). Analysis of the effect of institutional ownership, Tobin's q ratio, option accruals, effective tax rates, and deferred tax costs on tax avoidance in public companies. *Journal of Information, Taxation, Accounting, and Public Finance*, 4(2),
- [7] Rahman, Syaiful. (2017). *Compensation Due to Default in Sharia-Based Business Transactions in Indonesia*. Jakarta Veterans National Development University.
- [8] Rufinus Hotmaulana Hutahuruk. 2018. *Combating Corporate Crime Through a Restorative Approach A Legal Breakthrough*. Jakarta: Sinar Graphic.
- [9] Tarigan, Irwan Jasa. (2017). *The Role of the National Narcotics Agency with Social Organizations in Handling Narcotics Abusers*. Depublish. 1945 Constitution of the Republic of Indonesia
- [10] Wadjo, Hadibah Zachra, & Saimima, Judy Marria. (2020). Legal Protection for Victims of Sexual Violence in the Context of Realizing Restorative Justice. *JOURNAL BELO*, 6(1).

