

The Concept of Restorative Justice as a Means of Legal Protection for Victims of Crime in Indonesia



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ABSTRACT: This research aims to determine how the concept of legal regulation regarding Restorative Justice is used as legal protection for victims of criminal acts in Indonesia. The analysis used in this study is qualitative with a normative juridical approach. This study concludes that the restorative justice paradigm offers another way of dealing with crime. According to the restorative justice paradigm, the process of resolving crimes involves the perpetrators, victims, and the community. The Criminal Code regulates more about protecting the rights of suspects, defendants, and convicts as part of protecting human rights. Progressively various laws and regulations have become the legal basis for the settlement of criminal cases by implementing the restoration of justice as the protection of victims of crime, social recovery, and reducing the burden on the state. The Criminal Code is also still oriented towards retributive justice, which is punitive as retaliation for the perpetrators of criminal acts. In the retributive justice paradigm, the sanctions imposed are not aimed at retaliating against the perpetrators of the crime but sanctions that can arouse the perpetrator's responsibility for the suffering of the victim or sanctions that aim to restore the suffering of the victim.

KEYWORDS: Restorative Justice, Legal Protection, Crime, and Law

INTRODUCTION

As one of the tools that can be used to resolve conflicts, criminal law is an ancient field of law (Faisal, 2021). The history of the growth and development of criminal law itself cannot be separated from the development of legal science, especially the science of criminal law, which is the scientific basis and the development of society/state as an ecosystem of life (Flora, 2017). The use of criminal law to tackle crime cannot be separated from questions about what types of sanctions are appropriate and how the process of resolving the crime is carried out. Meanwhile, how criminal law is formulated depends on the basic assumptions about the crime and the methods and means that can be used to tackle the crime (Octavia, Sanusi, & Rahman, 2021). One of the basic assumptions that have long roots in the history of the formation of criminal law is retributivism.

Even according to Michael S. Moore (Hasibuan, 2022), the view of retributivism is the first and foremost view. In the view of retributivism, criminal law is built on a legal fiction which, in the development of legal science, is considered to ignore aspects of objectivity or real daily life experiences. Traditionally and dogmatically, a *crime* is defined as a violation of the public order or an act against society, against the collective body of citizens, or a set of standards set by democratic institutions. Thus, any reactions to public order violations are the state's responsibility. The formulation of crime as a violation of public order regulated in the state law becomes the basis of legitimacy for the state, which positions itself as a substitute for the victim, to formulate and impose criminal sanctions on the perpetrator (Irawan, Bawole, & Rorie, 2022).

In criminal law, which is built on the premise of retributivism, the state takes over the role of the prosecution, which is the right of the victim on the grounds of minimizing the potential for personal retaliation and proper punishment based on rational considerations for the sake of the victim and society as a whole (Indarsih, 2020). Thus, every stage in the criminal justice system has reduced the existence of victims and the community so that they only become passive participants. The victim is not an interested party in the case being tried. Victims have the same rights as citizens: to become reporters and witnesses (if necessary for prosecution and punishment). The focus of criminal law (sanctions) based on the view of retributivism is the violator of the law. So everything related to the issue of punishment must be considered from the perspective of the violator, starting from the reasons or background of the sentence to the purpose and impact of the punishment (Hafrida, 2019).

In criminal law, which is made according to retributivism, the recovery of victims, as part of society, is not considered. When a crime occurs, the victim is the party who directly experiences suffering or loss. In other words, even though in a criminal act, the victim is the party whose welfare is disturbed, in the criminal case settlement, the recovery of the victim's welfare is less or even not considered (Hasibuan, 2022). This fact can, of course, be interpreted as a condition that is not following the primary goal of criminal politics. A society can be said to be prosperous society if each member of the community can achieve prosperity.

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In contrast to the view of retributivism, restorative justice views crime not only as an act of violating criminal law as state law but also as an act that causes harm to the victim (victimization). In other words, restorative justice views a crime or crime as a conflict between the perpetrator and the victim. The perception of crime according to restorative justice implies that the victim aspect must also be considered in crime prevention so that the criminal sanctions that are formulated and then imposed are not only valid for the perpetrator and the wider community but are also helpful in recovering the suffering or loss of the victim (Murdiyambroto, 2021). Restorative justice also views the importance of involving victims in resolving cases.

The formulation and application of criminal sanctions that pay more attention to the principle of balancing the interests of perpetrators, victims, and the community is expected to restore order in social life and peace because conflicts can be resolved more substantially. The need for a return to a comfortable and peaceful living atmosphere as well as a more substantial conflict resolution is more pronounced in social life.

METHOD

This research is a type of normative legal research, namely research conducted to find legal regulations, legal principles, and legal doctrines to answer the legal issues faced and obtain arguments, theories, or concepts. The approach method used is a statutory approach and a conceptual approach. Sources of research data are secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The data were analyzed using a qualitative descriptive method, which describes in detail the legal events that are the object of research and analyzed with legal theories, concepts or principles, and positive law using words that are easy to understand scientifically.

RESULT AND DISCUSSIONS

Sanctions for Criminals in Restorative Justice

Criminal sanctions formulated based on the retributive paradigm tend to cause suffering to criminals. According to the retributive paradigm, criminal sanctions that are/aim to suffer the perpetrators of criminal acts are not wrong because criminal sanctions are indeed imposed on the perpetrators as retaliation for their wrongdoing to the victim. In the retributive paradigm, the victim is considered to have been represented by the state (including in terms of his sense of justice), so that when the state (through its law enforcement officers) imposes sanctions on the perpetrator, it is considered to have given justice to the victim (Setyowati, 2020). The actions of law enforcement officers based on the rule of law based on the retributive paradigm are also considered to represent the interests of the victims in resolving cases. Resolving criminal cases in a legal system based on the retributive paradigm has never involved the victim significantly.

Departing from the description above, criminal sanctions and the process of resolving criminal cases in the criminal law system based on the retributive paradigm are lacking, even not paying attention to the interests of victims but more concerned with the needs of the state so that its citizens are lawful. The interests of the apparatus to carry out their authority in enforcing the law, then The resulting justice is only normative or procedural justice, not substantive justice.

Regardless of the underlying theory, the use of criminal sanctions as a means to resolve cases according to the view of retributivism in its development began to be opposed by criminal law experts themselves by raising various opinions or thoughts on the use of alternative means in overcoming criminal acts. Restorative justice is one of the views or thoughts that try to provide other alternatives to resolve these criminal cases. This alternative thinking is called the term restorative justice because it focuses on restoration efforts or repairing/restoring damaged conditions resulting from a crime. As for what will restored/repaid/recovered are victims, perpetrators of criminal acts, and other damages resulting from criminal acts in society (Sukardi & Purnama, 2022).

Philosophically, the repair/healing effort is carried out not by looking back, namely the crime that has occurred, as the basis for justification. The restoration/repair/healing is done so that, in the future, a better society can be built. In addition to the term restorative justice, other terms are also used to refer to the same idea regarding alternative ways or means of dealing with these crimes, such as relational justice, positive justice, reintegrative justice, communitarian justice, and redemptive justice (Eddyono, 2021).

The idea of restorative justice first appeared among criminal law experts as a reaction to the negative impact of the application of criminal law (sanctions) with its repressive and coercive nature. This can be seen from the statement of Louk Hulsman (Fawaid, 2019), who said that the criminal law system was built based on the thought: criminal law must cause misery. Such thoughts, according to Hulsman, are perilous. Therefore, Hulsman proposed abolishing the criminal law system, which brings more suffering than good and replacing it with other ways considered better.

The general understanding of restorative justice was first put forward by Barnett (Herudiansyah, Pijiono, & Rochaeti, 2022) when he pointed to certain principles used by legal practitioners in America in mediating between victims and perpetrators of criminal acts. However, the development of thinking about restorative justice itself ideologically cannot be separated from the emergence of the abolitionist movement, which wants to replace criminal law with other means of crime prevention, and the emergence of new science, namely victimology.

According to Muladi's notes (Flora, 2018), the academic abolitionist movement began to emerge in 1983 in Vienna, Austria, in the form of ideas presented at The Ninth World of Criminology and pioneered by scientists from Europe (especially Norway) and

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America (especially North America). However, there are differences in emphasis on the goals to be achieved among the movement's initiators. The abolitionist movement in America emphasizes efforts to abolish prison sentences (prison abolitionists). Meanwhile, the abolitionist movement in Europe emphasizes the abolition of the criminal justice system. However, the abolitionists have the same opinion, namely that solving crimes using penal means cannot solve the problem. The emergence of the abolitionist movement, both in Europe and in America, cannot be separated from the influence of the thoughts that exist in critical criminological theories.

Ideologically, the emergence of the abolitionist movement cannot be separated from the influence of the community protection movement pioneered by Filippo Gramatica. According to Grammatica, as quoted by Muladi, the law of community protection (law of social defense) must replace the existing criminal law. The law of community protection taught by Grammatica principally rejects conceptions of criminal acts, criminals, and criminals.

The pioneers of the abolitionist movement, such as Louk Hulsman, have a thesis, as quoted by Muladi, which states that communication between the parties related to crime, namely victims and perpetrators, in a meeting held will result in a better and smoother settlement than by imprisoning the perpetrator. Conflicts will be more easily resolved in meetings where power, guided by trained mediators, does not influence and is open to criticism. As far as possible, resolving conflicts, including crimes, is carried out using a civil law approach (Capera, 2021).

So in the context of crime prevention, the abolitionists are not just talking about reforming criminal law but offering replacement theories and methods of crime prevention in the following ways: a) Decarceration or deinstitutionalization, namely by abolishing prisons and replacing them with ways of fostering and serving in the community; b) Diversion, namely by avoiding formal criminal justice processes against perpetrators and replacing them with community-oriented institutional systems; c) Decategorization, including delabelling and destigmatization, namely by replacing theories and concepts about crime; d) Delegalization and deformalization, namely by finding something that new in conflict resolution, strengthening and empowering traditional conflict resolution methods and introducing other forms of justice outside the formal criminal justice system; e) Deprofessionalization, namely by replacing the professional monopoly and power in criminal justice, social workers, and psychiatry by forming networks in social control, public participation, helping and providing informal services (Widiartana, 2017).

The development of thought about restorative justice was influenced not only by the abolitionist movement but also by the emergence of victimology. In simple terms, it can be said that victimology is a branch of science that studies the problem of victims. At the beginning of its emergence, the study of victimology was only focused on studying crime victims (special victimology) as a balance and a form of dissatisfaction with some criminologists against crime studies that focused too much on the perpetrator's side (offender oriented). In general, a crime will cause victims to other people/parties. So in this context, the victim and the perpetrator are like two sides of a coin. Therefore, it can be understood that the emergence of victimization, as a science that studies victims, also influences the concepts and theories of crime prevention (Fithri & Wahyuni, 2020). The concept and theory of crime prevention, which was initially more offender oriented, then began to pay attention to the interests of the victim in that regard.

Victimological considerations in crime prevention efforts can provide a sense of justice for victims. Aside from being a manifestation of legal responsibility, sanctions oriented towards the recovery of victims will more or less arouse the moral responsibility of the perpetrator towards the victim. If, in the retributive approach, criminal sanctions are more of payment or redemption of the perpetrator's guilt to the state, then by studying the nature of the victim and his suffering, victimology provides a rationale for exploring the possibility of formulating and implementing sanctions that are more of payment or redemption of the perpetrator's guilt to the victim, for example by providing compensation or compensation and repairs for the damage caused as a result of the crime that occurred.

Criminal sanctions formulated and imposed in criminal law based on a restorative paradigm must be rehabilitative sanctions. Criminal sanctions formulated and imposed in criminal law, which are built based on a restorative paradigm, also do not aim to retaliate against the perpetrators of the crime. Restorative sanctions are sanctions that can arouse the perpetrator's sense of responsibility for the suffering experienced by the victim as a result of his actions. Criminal sanctions formulated and imposed in criminal law that is built based on a restorative paradigm are sanctions that pay attention to the perpetrator's need to make amends, sanctions that consider the needs of victims to recover from their suffering, and sanctions that consider the interests of the state to maintain/maintain peace in social life (Garcia, 2020).

In addition, the process of resolving criminal cases based on a legal system based on a restorative paradigm is a settlement process involving parties involved or related to the criminal event. Resolving criminal cases based on a legal system based on a restorative paradigm also opens up a vast space for the involvement of other parties interested in resolving the conflict (criminal case). In this settlement process, the parties will face each other on an equal basis so that it is expected to support the achievement of substantive justice.

Application of Restorative Justice as Legal Protection for Victims of Crime in Indonesia

From various legal arrangements regarding restorative justice, the criminal justice system in Indonesia has implemented the settlement of criminal cases based on a restorative justice approach with efforts other than to restore social conditions after the

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occurrence of criminal acts, especially to give more attention to victims of criminal acts directly and to their families who suffer losses and suffering even to lighten the burden of the state.

Regarding all interested parties, 3 (three) significant components must be brought together in resolving cases through restorative justice. The three of them are the victim (victim), the perpetrator (offender), and the environment/society (community). In his book *Changing Lenses: A New Focus for Crime and Justice*, Howard Zehr added that the settlement of cases by restorative justice is different from the conventional judicial process. Through the description above, it has been stated that the settlement of cases with a restorative justice approach must be carried out by empowering stakeholders in criminal cases. According to Mc Cold, the stakeholders of criminal cases are the perpetrators, victims, and the community (Soekorini & Hartoyo, 2022).

Restorative Justice practices and programs are reflected in their objectives which address criminal acts by a) Identifying and taking steps to repair the harm (identifying and taking steps to repair the loss or damage); b) Involving all stakeholders (involving all interested parties) and; c) Transforming the traditional relationship between communities and their government in responding to crime (Prayitno, 2012).

The use of Restorative Justice Programs is as follows: a) Restorative justice programs can be used in every stage of the criminal justice system; b) The restorative justice process is only used if there is sufficient evidence to prosecute the perpetrator of the crime and is accompanied by the freedom and voluntarism of the victim of the perpetrator. This includes the freedom of perpetrators and victims to withdraw their consent during the process. Agreements must also be reached voluntarily and contain reasonable and proportionate obligations; c) The agreement is based on fundamental facts relating to the case in question, and the perpetrator's participation cannot be used as evidence of an admission of guilt in subsequent legal proceedings; d) Disparities due to imbalance, both strength and cultural differences must be considered in implementing the restorative justice process; the safety of the parties must be considered in the restorative justice process; e) If a restorative process is inappropriate or impossible, the case must be returned to the criminal justice system officials, and a decision must be taken to process the case immediately without delay (Zulfa, 2011). In this case, criminal justice officials must encourage perpetrators to take responsibility for dealing with victims and the harmed community and continue to support efforts to reintegrate victims and perpetrators into society.

The application of restorative justice in a formal juridical manner has been implemented in the criminal justice system in Indonesia through the stages of the criminal procedure process at the investigation, prosecution, and general court levels. Currently, the practice of all law enforcement institutions in Indonesia, including the Supreme Court, the Attorney General's Office, the Indonesian National Police, and the Ministry of Law and Human Rights of the Republic of Indonesia, have adopted the principle of restorative justice as a way to resolve a criminal case.

In 2012 these four institutions made a mutual agreement, namely the Memorandum of Understanding with the Chief Justice of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Head of the State Police of the Republic of Indonesia Number 131/KMS/SKB/X/2012. Number M-HH-07.HM.03.02 Year 2012, Number KEP-06/E/EJP/10/2012, Number B/39/X/2012 dated October 17, 2012, concerning Implementation of Adjustment of Limits for Minor Crimes and Amount of Fines, Quick Examination Program and the Application of Restorative Justice, which regulates the settlement of criminal cases through the principles of restorative justice.

In this Memorandum of Understanding, the principle of restorative justice first gets a definition in Article 1, paragraph (2): "Restorative Justice is the settlement of cases of minor crimes committed by investigators at the investigation stage or judges. From the beginning of the trial involving the perpetrators, victims, families of perpetrators/victims, and related community leaders to jointly seek a fair solution by emphasizing the restoration to its original state. This Memorandum of Understanding does limit the application of restorative justice, which is only for minor crimes. Nevertheless, in its development, not only minor crimes can be resolved with this restorative justice principle.

This memorandum of understanding has been followed up with further regulations by the respective institutions of the Indonesian National Police, the Attorney General's Office, and the Supreme Court as a guideline for resolving criminal cases with the principle of restorative justice, which is carried out in every process of law enforcement in criminal cases starting at the investigation level, prosecution and up to the stage of examination of court hearings, including a) Circular Letter of the Head of the Indonesian National Police Number SE/8/VII/2018 the Year 2018 concerning the Application of Restorative Justice in settlement of Criminal Cases; b) Regulation of the Head of the State Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigations; c) Regulation of the State Police of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice; d. Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice; and e) Decision of the Director General of the General Judiciary Agency of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Enforcement of Guidelines for the Implementation of Restorative Justice.

The implementation of the restoration of justice at the level of investigation or investigation has been regulated based on the Regulation of the Indonesian National Police Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice. A restorative approach can be taken if it fulfills material requirements, among others, does not cause unrest or rejection from the community, does not have an impact on social conflict, does not have the potential to divide the nation, is not a type of radicalism

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and separatism, is not a repeat offender based on a court decision and is not a criminal act of terrorism, crimes against state security, criminal acts of corruption and crimes against people's lives. While the formal requirements of a general nature can be carried out, a restorative approach, if it meets the elements of peace from both parties as evidenced by a peace agreement, the fulfillment of the rights of the victim and the responsibility of the perpetrator, in the form of returning goods, compensation, compensation for costs incurred as a result of criminal acts or replace the damage caused by a criminal act as evidenced by a statement letter and is excluded for narcotics crimes.

Special requirements in handling criminal acts based on restorative justice are additional requirements for other criminal acts, including crimes of information and electronic transactions, drug offenses, and traffic crimes. Special requirements for handling criminal acts based on restorative justice for types of criminal information and electronic transactions, at least covering criminals who spread illegal content, are willing to delete content that is being uploaded, submitted to investigators in the form of soft copy and hard copy, submit an apology via a video uploaded on social media is accompanied by request to delete the content that has spread and the perpetrator is willing to cooperate with police investigators to carry out further investigations (Juhari, 2018).

As for drug crimes, special requirements apply among others, drug addicts and victims of drug abuse who apply for rehabilitation, when caught red-handed, found evidence of narcotics used for one day classified as narcotics and psychotropic. No evidence of drug crime was found, but urine test results showed positive for drugs, not proven to be involved in the network criminal acts of drugs, dealers, or dealers. An integrated assessment team has conducted an assessment, and the perpetrators are willing to cooperate with police investigators to conduct further investigations.

Sentencing through a Restorative Justice approach is essentially a philosophy of punishment that is in line with Pancasila and the 1945 Constitution of the Republic of Indonesia because through Restorative Justice, the concept of punishment will be in line with the nation's philosophy of life, namely local wisdom that prioritizes deliberation and consensus efforts in solve various problems. This is, of course, in line with the concept of Restorative Justice, which emphasizes deliberation efforts in resolving criminal acts, so it can be explained that the concept of Restorative Justice is a criminal system that follows the criminal law politics of the Indonesian nation based on Pancasila and the 1945 Constitution of the Republic of Indonesia so that the legal apparatus always put forward a humane perspective in handling it.

CONCLUSION

Criminal sanctions that can be formulated and imposed following the paradigm of restorative justice are sanctions that do not aim to retaliate against the perpetrators of crimes but are types of sanctions that can arouse the perpetrator's responsibility for the suffering of the victim or sanctions that aim to restore the suffering of the victim, for example, compensation sanctions. The process of solving crimes following the paradigm of restorative justice is the process of resolving crimes involving perpetrators, victims, and the community. Law Number 8 of 1981 concerning the Code of Criminal Procedure and Law Number 1 of 1946 concerning the Criminal Code are still very limited in regulating the protection of victims of criminal acts so that victims of criminal acts and their families continue to bear the burden of suffering both morally and materially. as a result of the criminal act. The Criminal Procedure Code regulates more about protecting the rights of suspects, defendants, and convicts as part of protecting human rights. Progressively various laws and regulations have become the legal basis for the settlement of criminal cases by implementing the restoration of justice as the protection of victims of crime, social recovery, and reducing the burden on the state. The Criminal Code is also still oriented towards retributive justice, which is punitive as retaliation for the perpetrators of criminal acts.

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