

Legal Power for Settlement of Criminal Actions Using A Restorative Justice Approach in Indonesia

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ABSTRACT: The three basic legal values, namely the values of certainty, justice and expediency in practice have experienced a shift. Initially, the value of legal certainty was emphasized so much that there was a principle that criminal cases could not be resolved in a way that was contrary to legal certainty. Based on the legal needs of society in the form of peace, restoration and efforts to restore balance, the value of justice and the benefits of law become increasingly important. This is in line with the shift in the value of justice in criminal cases which previously emphasized retribution, shifting to restorative justice. Restorative Justice is a new approach in resolving criminal acts by emphasizing ideal goals in resolving criminal cases. Apart from justice, there is also another goal, namely the benefit for the perpetrator, victim and their family as well as for the community. In terms of legal practice, existing regulations at the police, prosecutor's office and court levels need to be consolidated by carrying out legal reforms, namely forming a law specifically regarding Restorative Justice.

Keywords: Legal Strength, Restorative Justice

I. Introduction

Legal resolution of criminal cases should ideally fulfill the three basic values of law as stated by Gustav Radbruch, namely the values of legal certainty, expediency and justice. The value of legal certainty is needed so that the case no longer becomes a problem in the future, the value of benefit is needed to ensure that the legal settlement provides positive lessons for the parties and also society. Meanwhile, the value of justice is needed to avoid unequal treatment by the law itself.

In reality, harmonizing the three basic values of the law is not easy, because each of the three has its own purpose. When the value of benefit is prioritized, certainty and justice are not optimal. When the value of justice is prioritized, the value of benefit and certainty cannot be fulfilled optimally. Likewise, if you only prioritize legal certainty, then the other two basic values, namely benefit and justice, will become meaningless.

Based on the thoughts above, currently in resolving criminal cases there has been a paradigm shift, along with efforts to fulfill a sense of justice. This demand is in the form of the need for a criminal law settlement which aims to restore the situation as it was before the criminal case occurred, which is known as restorative justice. There has been a shift in the meaning that criminal cases are no longer seen as public problems that are represented by law enforcement officers in resolving them, but the function of law enforcement has shifted from previously having "absolute authority" in resolving criminal cases, towards the function of law enforcement officers who must share authority with other parties to resolve criminal cases to achieve restorative justice.

II. The Essence of Restorative Justice

Restorative justice essentially means an effort to restore a situation or relationship and atone for mistakes made by the perpetrator criminal acts and their families towards victims. This approach is an effort to resolve criminal acts outside of court with the aim of resolving on the basis of consent and agreement between

the parties. Justice in criminal law has experienced a shift from retributive or retaliatory justice to restorative justice, namely a process where all parties involved in a particular criminal act work together to solve the problem. Restorative justice is a model for resolving criminal cases that prioritizes restoring relationships between victims, perpetrators and society. The main principle in this process is the participation of victims and perpetrators, participation of residents as facilitators, so that there is a guarantee that the perpetrators will no longer disturb the harmony that has been created in society.

III. Legal Basis for Implementing Restorative Justice

In Indonesia, the resolution of criminal acts with restorative justice is regulated by regulations issued by each law enforcement agency. At the police level, the legal basis for fulfilling the value of legal certainty in resolving criminal cases using a restorative justice approach is the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice.

The issuance of this regulation is an effort by the police to realize the resolution of criminal acts by emphasizing restoration to its original state and balancing the protection and interests of victims and perpetrators of criminal acts. The orientation of resolving criminal cases is not on punishment.

This regulation is also intended to meet the development of society's legal needs. This regulation is based on Article 16 and Article 18 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia. Article 16 of Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia essentially states that in the field of criminal proceedings, the State Police of the Republic of Indonesia has the authority to: a. carry out arrests, detention, searches and confiscations; b. prohibit anyone from leaving or entering the crime scene for investigation purposes; c. bringing and presenting people to investigators in the context of an investigation; d. ordering suspected people to stop and asking for and checking personal identification; e. carry out inspection and confiscation of letters; f. summon people to be heard and examined as suspects or witnesses; g. bringing in experts needed in connection with the case examination; h. terminate the investigation; i. submit case files to the public prosecutor; j. submit a request directly to the authorized immigration official at the immigration checkpoint in an urgent or sudden situation to prevent or deter a person suspected of committing a criminal act; k. provide guidance and investigative assistance to civil servant investigators and receive the results of investigations by civil servant investigators to be submitted to the public prosecutor; and l. carry out other actions according to the law that are responsible. What is meant by other actions are investigations and investigative actions that are carried out if they meet the following requirements: a. does not conflict with a legal rule; b. in line with the legal obligations that require the action to be carried out; c. must be appropriate, reasonable, and included in the scope of the position; d. reasonable consideration based on compelling circumstances; and e. respect human rights. The authority mentioned above constitutes general authority and authority in criminal proceedings, in the implementation of which members of the Indonesian National Police are required to show their identity. Furthermore, in essence, it explains that in the public interest, officials of the Indonesian National Police in carrying out their duties and authority can act according to their own judgment, if the conditions are met, namely that this can only be done in very necessary circumstances by paying attention to statutory regulations, as well as the Professional Code of Ethics for the National Police of the Republic of Indonesia. The meaning of "acting according to his own judgment" is an action that can be taken by members of the Indonesian National Police who, in acting, must consider the benefits and risks of their actions and are truly in the public interest.

Furthermore, at the prosecutor's level, the legal basis for implementing restorative justice is the Republic of Indonesia Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The purpose of this regulation is that the prosecutor's office as a government institution that exercises state power in the field of prosecution, in carrying out its duties must realize legal certainty, legal order, justice and truth based on the law and pay attention to religious norms, decency and decency, and is obliged to explore values. humanity, law and justice that live in society. Settlement of criminal cases by prioritizing restorative justice which emphasizes restoration to the original state and a balance of protection and interests of victims and perpetrators of criminal acts that is not oriented towards

retribution is a legal need for society and a mechanism that must be built in the implementation of prosecutorial authority and reform of the criminal justice system.

Furthermore, it is also based on the understanding that the Attorney General has the duty and authority to make the law enforcement process more effective by paying attention to the principles of fast, simple and low-cost justice. Apart from that, it also has the authority to determine and formulate case handling policies for successful prosecutions which are carried out independently for the sake of justice based on law and conscience, including prosecutions using a restorative justice approach which is carried out in accordance with the provisions of statutory regulations. At the court level, Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Trying Criminal Cases Based on Restorative Justice applies. The background is that the development of the criminal system does not only rely on the punishment of the defendant but has led to the alignment of the interests of the victim's recovery and the accountability of the defendant using a restorative justice approach. Apart from that, it is also based on the consideration that the restorative justice approach is not sufficiently regulated in the criminal justice system, especially regarding the types of cases, conditions and procedures for its application at the trial level to decisions that contain the restorative justice approach. The aim of trying criminal cases based on Restorative Justice is to: a. recover victims of criminal acts; b. restore relations between the Defendant, Victim, and/or the community; c. advocating for the accountability of the Defendant; and d. prevent everyone, especially children, from deprivation of liberty. The application of the principles of Restorative Justice does not aim to eliminate criminal liability. The provisions in this Supreme Court Regulation also apply in adjudicating children's cases in accordance with the provisions of Article 5 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

These guidelines for adjudicating criminal cases based on Restorative Justice apply and must be implemented by all courts, based on the applicable criminal procedural law. Judges apply guidelines for adjudicating criminal cases based on Restorative Justice through recovering victims' losses and/or restoring relations between the defendant, victim and the community through decisions.

IV. Conclusion

The legal basis for implementing the resolution of criminal cases using a restorative justice approach is still not at the level of law. These various regulations ideally need to be consolidated and written down in the form of law. This needs to be done to avoid the potential for legal resistance to legal decisions to resolve cases using the restorative justice approach.

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