

RESTORATIVE JUSTICE APPROACH IN PROVIDING PROTECTION FOR VICTIMS OF CRIME LAW

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ABSTRACT

Restorative justice approach is a paradigm that can be used as a frame of criminal case management strategies aimed at answering dissatisfaction over the working of the criminal justice system that exists today. The position of the victim in the criminal justice system and in judicial practice relatively less attention because Indonesian law still rests on the protection of performers. Victims of crime is basically the most suffered in a crime because it did not receive as much protection as provided by law to perpetrators, consequently when the offender has been sentenced by a court of criminal sanctions, such as the condition of the victim of crime does not care at all. Though the problem of justice and respect for human rights does not only apply to the perpetrators but also victims of crime. Restorative justice is done to restore the good things to be back to normal with the involvement of victims, offenders and the community in the search for a solution that prioritizes repair, reconciliation and back protection. The method used is a normative legal research, namely the study of the principles of law which starts from the fields of a particular legal system, while the data collection method is by using secondary data is data that already form so-called legal materials, tools data collection is the study of literature and data analysis techniques used are qualitative data processing. The concept of restorative justice likely to be applied in the criminal justice system in Indonesia by looking at various aspects of the criminal aspects of indigenous customary penal settlement where indigenous peoples in Indonesia using the principles contained in the restorative justice as reconciliation and restoration of peace

Key words: Restorative Justice, Legal Protection, Victims of Crime

Introduction

Arrangements for the protection of victims in the sentencing process in Indonesia indicates that criminal law arrangements for victims of crime do not show a clear pattern. The victims were part of a crime, other than that the victim also had a role in the occurrence of a crime. Crime is a violation of positive law that is resolved by the criminal justice system. With the criminal justice system to resolve or deal with a crime is a violation of positive law is expected to punish or absolve a person from the threat of crime. but in the criminal justice system can not be otherwise unfair to the victim of a crime that occurred, the position of the victim in the criminal justice system less attention because in the criminal justice system tend to be oriented offender and criminal acts can be seen from the Regulatory concerning criminal offenses which is that of legislation that no one oriented to the victim, so it can be seen that the lack of justice for victims in the criminal justice system in Indonesia.

The concept of restorative justice approach is an approach that is more focused on the creation of conditions for the balance of justice perpetrators and victims themselves. Mechanism ordinances and criminal justice that focuses on the criminalization converted into a process of dialogue and mediation to create an agreement or settlement of criminal cases are more fair and balanced for the victim and the perpetrator. Restoration includes restoration of the relationship between the victim and the perpetrator. Recovery of this relationship can be based on mutual agreement between the victim and the perpetrator. The victim can be expressed about the losses suffered and the offender was given a chance for redemption, through the mechanism of compensation, peace, social work, or other agreements. This is important because conventional sentencing process does not provide sufficient space for the parties involved, in this case the victim and the offender to participate active in solving their problems. Any indication of a crime, regardless of escalation actions, will continue to be rolled into a legal context which only came under the jurisdiction of the law enforcement. active participation of the public seemed not to be important anymore, it all just comes down to the decision of sentencing or punishment without seeing the essence.

In conventional criminal proceedings such as when there has been a reconciliation between the offender and the victim, and the victim has forgiven the offender, then it can not affect the powers of law enforcement to continue to carry forward the case to the criminal sphere which later led to the sentencing of the criminal offender. The formal criminal process time consuming and does not provide certainty for the offender and the victim does not necessarily meet definite and restore the relationship between the victim and the perpetrator, the concept of restorative justice offers a recovery process that involves the direct perpetrators and victims in the resolution of the problem. Conventional criminal process will only make the victim as a witness in the trial level is not much influence the sentencing decision, the task is still given to the prosecution attorneys only accept files for further investigation made into the basic demands of criminal prosecution, without knowing and understanding the issues in real conditions, and the perpetrator was a prisoner in the chair to receive her punishment to be imposed. Thus restorative justice arise because of dissatisfaction with the criminal justice system who have been there, which does not involve the parties in conflict, but only between state actors. The victim and the people are not involved in the conflict resolution, unlike the case with

restorative justice where the victim and the community involved as parties to resolve the conflict. In Indonesian criminal cases resolved through the criminal justice system.

The criminal justice system is by and against Mardjono Reksodiputro system in a community to solve crimes. The purpose of the criminal justice system, namely:

- a. Prevent people becoming victims of crime victims
- b. Resolving cases of crimes so that the public is satisfied that justice has been done and the guilty are punished and the
- c. Ensuring that those who have committed a crime not to repeat the crime.

However, if it is connected with the history of the emergence of restorative justice, the criminal justice system did not perform as expected due to failing to give adequate space to the interests of potential victims and potential defendants in other words, the conventional criminal justice system today in various countries often lead dissatisfaction and disappointment. Criminal law is the reference defining a crime, according to and against Mardjono Reksodiputro as a reaction to the act or any person who has violated the moral norms and laws, and therefore had threatened the foundations of government, law, order, and social welfare. The offender is considered to have no care for the general welfare, safety, and property of others. Thus, on the basis of protection to the citizens of the state that dealing with offenders, hence the position of the victims, who are basically the most disadvantaged in relation to a criminal offense lost its role. Therefore it is in the protection of victims who become key note is the use of Restorative Justice approach "the presence of restorative justice basically be the key to opening a rethinking of the position of the victim in a criminal case settlement." Handling criminal cases restorative justice approach offers different views and approaches in understanding and dealing with a criminal offense. restorative justice in view of the main victims of the occurrence of a crime is not a state, and therefore a crime creates an obligation to fix the broken relationship due to the occurrence of an offense ". It is also in line with Gandjar L Bondan thinks restorative justice theoretically and practically can be used in solving a crime. Gandjar explained as follows: "In a philosophical framework, the presence of restorative justice approach in criminal law is not intended to abolish the criminal law, criminal law, or melt and civil law, as restorative justice approach that prioritizes the path mediation between victims and perpetrators. Restorative justice approach to precisely restore the function of the criminal law to track its position at the function *remedium ultimum*, an ultimate weapon when other remedies are no longer used to face a crime in the community. In the practical order handling and settlement of criminal cases by using a restorative justice approach offers alternative answers to some of the problems facing the criminal justice system, such as the administration of justice is a difficult, long, and expensive, an accumulation of case or court decisions that do not accommodate the interests of the victim. "If restorative justice is expressed as an answer to dissatisfaction or failure of the criminal justice system, the "restorative justice is a concept of thought that responded to the development of the criminal justice system with emphasis on the need for community involvement and the victim feels marginalized by the mechanisms that work on the existing criminal justice system at this time "

In Practice, the parties should be aware that the victim's role is parties involved in the implementation of a mechanism for handling criminal cases through a restorative justice approach. Parties in question are:

1. Victims of crime, its interests must be completely protected in any restorative justice process. preparation must be done before the victim by the perpetrator met. The preparation may require weeks or months. The victim participated voluntarily informed of their rights, among others, should not withdraw at any time of the restorative justice process. The victim may or immature organizations, both must be represented and legal counsel
2. Offenders. By participating voluntarily and pleaded guilty, the offender has the right to obtain legal advice and may at any time withdraw the perpetrator is responsible for the obligations and fulfill the promise of meeting an agreement.
3. Police. Legislation should regulate the police authority and transferring the case to a restorative process, especially in the case and the cases are more severe. According to the practice in some countries the options that may be taken by the police is as a facilitator, as a user of restorative justice approach in resolving conflicts and petty as monitoring the implementation of the agreement and a violation of the agreement.
4. Attorney. Almost in all countries in the world, the prosecutor is *Dominus litis*, the determinant of the case so instrumental in submitting the case to a restorative path especially with a system such as suspend prosecution, the prosecutor pointed to the results of restorative justice is appropriate that the case in question, to be more successful, the prosecutor handling the case must have been actively discussing his case with the police.
5. lawyer, he can play a role to enlighten the offender restorative process and push their clients choose the restorative process for the sake of a more favorable outcome. Proactive attitude attorneys can lower the pending lawsuits.
6. Court. Both in common law countries as well as in civil law countries, judges can play a major role in transferring the case to a restorative justice process. he can be active in the process or in the event of the imposition of sanctions circumference (circle sentencing). In practice Thus, the judge may conduct hearings or make settlement conduct monitoring. Criminal conditional instance can be based on the results of a restorative process. So hearing the application of sanctions should await the outcome of restorative postponed.
7. Officers jail. Restorative process performed also in the prison environment. Authorized prison officials should consider the results of restorative mediation between the inmates with his victim, before deciding granting conditional loose. Restorative justice programs can be helpful in overcoming the pressures that are not fun, especially if there is a conflict between the prison population.
8. Society. Not a few members of a suspect community restorative justice program as a means to alleviate the perpetrators, particularly in the context of serious crimes. Preventing such an attitude, the members of the community be given enlightenment principles and practices, and likened the process of restorative justice.

Restorative justice is the goal:

1. Victim who agree to be involved in the process can do it safely and come out satisfied
2. Offenders understand how Reviews their action has affected the victim and other people, Assume responsibility for the Consequences of Reviews their action and commit to making reparation

3. Flexible measures are the agreed-upon by the parties roomates emphasize repairing the harm done and wherever possible, also address the Reasons for the offense
4. Offenders Reviews their commitment to live up to repair the harm done and attempt to address factors that led to tha Reviews their behavior, and
5. The victim and the Offender both understand the dynamic that led to the specific incident, gain a sense of closure and are reintegrated into the community

Research Design

The concept of restorative justice offers a recovery process involving the offender, the victim and the community directly in solving the problem. Restorative justice is possible that the removal of the stigma of the individual offender. In addition, it also applies a pragmatic view as saving the state and reduce the burden on the courts. Settling disputes outside of the criminal justice system is also accompanied by a process in the criminal justice system which is the completion of a two-way, in this case the restorative approach is usually used for settlement outside the criminal justice system, while the settlement in the criminal justice system continues to run as processes that take place in conventional, restorative justice process is basically done through discretion and diversion is an effort to divert from the criminal justice process outside the formal process to be resolved amicably. Research method used normative legal research. With the model of restorative justice the perpetrators do not have to go to jail if the interests and the damage has been restored, the victim and the community had already forgiven. However, its application is not easy, restorative models should be implemented from the police that is currently in the process of investigation, on the prosecutor, and the court should be implemented, so that the judge acted wisely and be careful when using a limited freedom in considering and deciding a case especially in accommodating justice restorative in order to set properly in accordance with the basic principles of restorative justice. Restorative justice can be used as an alternative for settling disputes in the Indonesian criminal justice if given a place in the criminal justice system in Indonesia and also given clear rules at each stage of restorative justice restorative justice that have legal certainty in its application in Indonesia.

Application of Restorative Justice Concept in Criminal Justice

In the criminal justice process, there are several steps that must be passed for the seekers of justice both at the inquiry, investigation, examination in court until the judgment imposing punishment phase even if the legal remedy used by the parties which of course requires energy, time, and cost of not less for those seeking justice. This of course is contrary to the principle of justice mentioned in Law No. 48 of 2009 on Judicial Power Article 2 (4) confirmed the lower court is done with a simple, fast and inexpensive. This principle is simple justice requires not too formal or legalistic, the convoluted and protracted and prefer the justice of the rule of law. The time required in the process is quick simple and cost required in the process of being affordable by any society can not afford. One of the important issues that can lead to less justice can run fast and simple is the accumulation of the court because the number of cases that go through the formal process of legalistic and not supported by the productivity of law enforcement in resolving any such case in the Supreme Court which is the level the highest court once the court of last resort for seeking justice is to take legal actions to the Supreme Court. The process of settling disputes through the courts considered very slow, wasting time, costly and cumbersome. The longer the justice seekers do not believe, and less sympathetic to the performance and the process of law enforcement in Indonesia. Therefore need to look for a solution as the solution more basic. One way to streamline the entry into force of the principle is simple, fast and inexpensive in criminal justice is to enforce the concept of restorative justice, both at the first court or the court of last resort.

The concept of restorative justice is a concept that aims to empower victims, offenders, families and communities to improve an unlawful act, using awareness and conviction as a basis to improve community life. Size of justice is no longer based on retaliation in kind from the victim to the perpetrator (whether physical, psychological or punishment), but the act of painful healing by providing support to victims and requires offenders to take responsibility, with the help of families and communities when needed. Now the criminal justice system in many countries led to the achievement of restorative justice. Restorative justice emphasizes the improvement that occurs as a result of criminal acts caused by empowering the process of recovery and the interests of all involved both the offender and the victim and the community. This concept has been universally accepted even by the United Nations Basic Principles through on the Use of Restorative Justice Programmes in Criminal Matters.

General Principles of Restorative Approaches

Interpret restorative justice approach that can be achieved when the criminal acts resolution process can involve all parties involved can define the concept of settlement and sanctions. This concept has brought a paradigm shift in understanding the concept of administration of justice in the criminal justice system. So that because the concept of the criminal justice system of justice generally considered to have been reached when the offender can be sanctioned by the state and the victim has no place in the process of completion, whereas in the framework of the concept of restorative justice, criminals, victims and the entire community is involved in completing the follow-criminal directly and focus on recovery suffered by the victim (victim-centered), while the state serves as a facilitating role in the process of settlement of a criminal offense. Some of the principles that apply universally inherent in the concept of restorative approaches in the resolution of criminal offenses are as follows:

1. Principles of Fair Settlement (Due Process)

In any criminal justice system through out the country, the suspects are always given the right to know beforehand about certain procedural-procedural protection when faced with prosecution or punishment. The judicial process (due process) should be considered as a form of protection to give balance to the power of the state to hold, and carry out the punishment of a decision to punish. Among the identified protection-protection that has been accepted internationally and are included as the idea of due process is the right to be presumed innocent (presumption of innocence) and the right to a fair trial (fair) and the right to legal

counsel for assistance. In the completion of a restorative process, a formal process limit is always given to the accused at any time, both during and after the restorative process rights of the accused to get a fair trial is maintained. However, if the suspect is required to relinquish the power and choose to participate in a restorative process, then the suspect must be informed about the implications of his decision to pick a restorative intervention. Conversely, if the verdict settlement through restorative offender can not meet the decision because they reduce the rights of suspects too heavy or burdensome, then the verdict given additional protection, the suspect can allowed to appeal against any agreement reached in the restorative process is based on reasons not guilty. In the process of implementation mechanisms restorative approach requires the desire to keep the protection of suspects associated with due process. However, because the process requires the restoration of the guilty verdict prior then this raises questions about the extent to which informed consent (informed consent) fund voluntary waiver (waiver of rights) can be used as the initial fair settlement. The basic concept through the completion of a restorative approach that requires the recognition of guilt to the perpetrator is a requirement to get a way out resumption of the recovery process as well as a signal that the perpetrators must be held accountable for his actions because of a guilty perpetrator is another form of a responsibility.

2. *Equal Protection*

In the process of settlement of criminal acts through a restorative approach, justice must arise from a process of understanding the meaning and purpose of justice, regardless of race, sex, religion, national origin and social status. There are doubts about the ability of restorative approaches in solving a problem and provides a "sense of justice" among the different participants as it can be one of the parties has the advantage of the strength of the economic, intellectual, political or even physical, so that there will be an inequality between the parties who participate in a restorative process. Examples which may be indicated that there are other inequalities between the rich and corporations among individual employees, relationship (spouse) married one involving abuse or arbitrariness and physical or verbal, and the relationship between parents and children. A party who does not have the potential power to accept an agreement that gave him what was far less than what he should get, so that the restorative process expected a mediator must be fair and neutral in guiding the process of mediation to reach a negotiation but not also rule out the possibility mediator will be tempted to support the position of the weaker party or stronger. According to Wright, there are three ways to compensate for the inequalities that can be implemented. First, mediators can support the weaker party in the restorative process. For example, a mediator can help participants who are less articulate their feelings, thoughts and emotions. Secondly, legal counsel can advise the parties who have weaker bargaining power not to accept an unequal treaty or produced in a way that is not fair. These three cases can be rejected, for example, cases involving landlord or innkeeper who tried to resolve the case by some tenants to avoid aggregate bargaining power of tenants that may not be suitable or appropriate for informal processes, which the innkeeper uses his power to improve its bargaining position.

3. *Rights of Victims*

In the resolution of a problem through a restorative approach, the rights of victims need attention because the victims are the stakeholders that should have accrued to (legally) in the process of completion. In the criminal justice system in general, it is suspected that the victim does not receive equal protection of the holder of the authority of the criminal justice system, so that the essential interests of the victim are often overlooked and if it exists only to fulfill the administrative or management system of criminal justice. Rowland argues, that the interests of victims often intersects with the interests of the state. Proponents of the concept of the protection of the rights of victims are also of the view is obviously unfair to the victim when the state more heed to the needs of the material, psychological, legal, for violators, while the state does not provide responsibility for a decent life for victims. Though very basic stage of the problem solving process in particular is a victim advocate must obtain a position to participate in the process, in order to protect their interests, including the right to give evidence (testimony) on the stage of investigation and the imposition human error, the right to receive redress, the right to be informed of court proceedings and the right to be represented by counsel.

4. *Proportionality*

The idea of fairness in the restorative system is based on consensus agreement that provides alternative options to solve the problem while in notion of proportionality is related to the scope of the common suffering sanctions must be imposed on offenders who commit violations. In criminal justice in general, considered to have been met if the proportionality has fulfilled a sense of retributive justice (balance tradeoffs between Punish and reward), whereas in the restorative approach can impose sanctions against violators disproportionate use within the same offense. Some victims may only want an apology understated while other victims may expect full restoration of offenders. In the formal justice system, a balance between uniformity and flexibility of sentence is not a priority because the system has considered the mitigating factors and aggravating factors in determining a sanction. While the restorative process allows the parties to consider the particular circumstances around the crime of when negotiating a form sanctions as an agreement. Third, guidelines and rules can be made to limit the possibility of tough sanctions imposed because of undue was a mistake to give the courts a role in ensuring that there are no large gaps in the charging of the offender in the informal processes. Fourth consistency and proportionality gives an abstract notion of fairness, which in the criminal justice system (perceived), and vice versa restorative justice seeks to restore the social imbalances in communities affected by crime. Restorative process of giving a series of sanctions including options to change the sanctions in the future with specific conditions remain if an agreement (agreement) can not be achieved then sanctions can be handed over to the judicial officers (judges) within a certain scope. Disparity between the imposition of sanctions can occur when the offender was sentenced only on the offense alone, or according to the actual loss caused by the offense, or when the offender has a different ability to perform recovery and compensation (reparation).

5. *Presumption of Innocence*

In criminal justice in general, the state has the burden of proof to prove the guilt of the suspect. Since the burden of proof and get it done, suspects should be considered innocent. Unlike the case in the restorative process, which requires that a guilty offender is a condition of the settlement can proceed problem. In restoratif processes, the rights of suspects on the presumption of innocence can be compromised in a way that the suspect has the right to do termination of the restoration process and reject the recognition that he is guilty, and then choose an option a formal process in which errors should be proven. or the suspect may gain the right to appeal to the court and all treaties agreed in the restorative process has no binding force stated. Advocate or legal counsel must be provided at all times to inform the suspect of the implications of participation in a restorative process that

confirms that participation in a restorative process should not be as a formal recognition of the error, and that the statements made in the process should not be accepted in a formal judicial examination.

6. Rights Consultation Aid or Legal Counsel

In the restorative process, advocates or legal counsel had a strategic role to establish the offender's ability to protect its rights vis-à-vis the legal aid counsel. In all stages of informal restorative process, the suspect can be informed through the assistance of legal counsel regarding the rights and his duty which can be used as a consideration in making the decision. However, once the suspect chooses to participate in a restorative process, he should act and speak in its own name. Their positions that allow attorneys representing greater participation in all stages of points during the restorative process, will destroy many of the benefits expected from the encounter (encounter) as a direct communication and expression of feelings, and collective decision making proactive lawyer can also be very helpful in giving advice their clients about the most likely outcome is obtained and should be expected.

Conclusion

The setting of the victims in the sentencing process in Indonesia indicates that criminal law regulation of the victim has not been a clear pattern can also be said that there has not been any justice, especially for victims of crime. Rather than privileging the law, professionals and the state, restorative resolutions more directed to the solution of justice, involving disadvantaged people, offenders and the affected communities to find solutions which promote repair, reconciliation and rebuilding relationships. Restorative justice seeks to build partnerships to reestablish mutual responsibility for constructive responses correct errors within the community itself. Restorative approaches seek a balanced approach to the needs of an evil, victim and community through processes that preserve the safety and dignity of all parties. Application of the principle of restorative justice it depends on what the legal system adopted by a country. If the legal system does not want it can not be enforced the application of restorative justice. The principle of restorative justice is an option in the design of a country's legal system. In Indonesia itself does not adhere to the principle of restorative justice but there are some nuances legislation the principle of restorative justice as in Law No. 11 of 2012 on the Criminal Justice System Children. Even if a country does not embrace it, but it is possible to apply the principles of restorative justice in order to provide fairness, certainty, and legal expediency.

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