


Restorative Justice As An Alternative Form Of Criminal Case Resolution

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Article Info	ABSTRACT
Keywords: Restorative, Justice, Case, Criminal Justice.	This article aims to analyze the history, concept, and role of the restorative justice approach as an alternative solution in the context of crime and criminal justice. The analysis is conducted by examining historical and contemporary literature on restorative justice, crime, and criminal justice. The research method used in this article is juridical-normative legal research, where the focus is on written legal regulations or research based on prevailing rules or norms in societal life, aimed at uncovering a truth based on the logic of law from a normative perspective. This research also emphasizes the implementation practice with the legal practices.
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INTRODUCTION

Settlement of cases outside of court through restorative justice is something new and requires further study from theoretical aspects and its implementation within the scope of justice. Restorative justice is a term that is often used for an approach in the criminal justice system that focuses more on the parties including victims and society, and excludes the punishment of criminals. The meaning of restorative justice in the legal system in Indonesia has been stated in a Joint Decree of the Minister of Law and Human Rights, Minister of Women's Empowerment and Child Protection, Minister of Social Affairs, Attorney General of the Republic of Indonesia, Indonesian Police and the Supreme Court regarding Handling of Children in Conflict with the Law (SKB concerning Handling of Children in Conflict with the Law). The definition of restorative justice in the SKB is a fair resolution of cases involving the perpetrator, victim, family and other parties involved to resolve the criminal act together with the aim of restoring the situation of all. Public discontent has sparked a wave of innovation, and reformers have proposed alternatives such as fixed prison sentences, transit facilities, work-based release programs, and part-time prisons. In the search for new sentencing options, legislators and commissions are increasingly turning to restitution as a constructive solution to prison violence and probation laxity. However, as support for restitution increases, strong theoretical challenges emerge to its appropriateness in the criminal justice system. Indonesia is known as a legal country and has one of these laws and regulations known as a criminal system (the sentencing system) which are statutory regulations relating to criminal sanctions and punishment.

Restorative justice can be defined as a systematic response to unlawful acts by focusing on healing victims, perpetrators and society caused by crimes. Thus, restorative justice acts against the law as a violation of a relationship, while restorative justice sees crimes as violations against the state. The difference between settlements using methods restorative justice compared to the solution methods that we know so far is in terms of the approach used. The criminal justice system that we know so far uses a normative approach, namely what criminal act was committed, how to prove the criminal act, as well as the impact of the act, including the imposition of a crime in accordance with the act committed. to perpetrators of crime or prevention in order to protect society but has expanded to an integrated criminal system that unites various law enforcement agencies in implementing the system in accordance with the ideals say.

The criminal system must have responsibility from the time it takes to prevent crime, the creation of crime by criminals and other stages up to the reintegration of criminals as complete human beings in society and the strong role of law enforcement in it. In this case, restorative solutions emphasize dialogue between the victim and the perpetrator plus a neutral facilitator, which can also involve or without involving law enforcement officials. Based on the background of the existing problem, there are several problem formulations that can be formulated by the author, including the following: how historicization of the birth and development of the restorative justice approach (Restorative Justice)? what is the conception of a restorative justice approach (Restorative Justice)? and what is the role of the restorative justice approach (Restorative Justice) as an alternative solution to criminal cases.

METHOD

The research method used by the author in this scientific work is the normative juridical legal research method, where the research is focused on written legal regulations or legislation as well as research based on rules or norms that apply in people's lives aimed at finding the truth. which is based on the logic of legal science from its normative side. The data in this research was obtained through literature study or library research, which is a form of assessment. This research is a type of empirical juridical legal research, which integrates legal-dogmatic/conceptual and legal empirical approaches (conceptual and empirical legal research), with the aim of gaining an understanding of law at a normative level and its implementation in practice. Normative law is a normative juridical approach, where analysis is carried out on various library materials as a source of data relevant to the problems to be discussed. The qualitative approach is applied in the context of historical, philosophical and juridical studies or studies that describe the perspective of philosophical values towards restorative justice.

RESEARCH RESULTS AND DISCUSSION

The basis for the formation of the concept of a restorative justice approach As an Alternative Resolution in Criminal Cases

The history of the development of modern law in the application of restorative justice began with the implementation of a settlement program outside of traditional justice carried out by

the community called victim offender mediation which began in the 1970s in Canada. This program was initially implemented as an alternative measure in punishing child criminals, where before the sentence was carried out the perpetrator and victim were allowed to meet to prepare legal proposals which became one of the judge's many considerations. The development of the concept of restorative justice in the last 20 years has experienced very rapid development in several countries such as Australia, Canada, England and Wales, New Zealand and several other countries in Europe and the Pacific region. The concept of Restorative Justice has actually been practiced by Indonesian indigenous peoples and other traditional communities who still strongly adhere to their culture. If a criminal act occurs by someone (including an unlawful act committed by a child), the dispute resolution is resolved within the traditional community internally without involving state officials in it. The measure of justice is not based on retributive justice in the form of revenge or imprisonment, but based on conscience and forgiveness. The application of restorative justice first began in 1974 in Ontario through a reconciliation program between victims and perpetrators which subsequently developed in several countries, including the United States and New Zealand.

Restorative justice can be defined as a systematic response to unlawful acts by focusing on healing victims, perpetrators and society caused by crimes. From the perspective of historical analysis, according to Markus D. Dubber, the history of crime and criminal justice as well as historical analysis of criminal law are very important topics in legal studies. Dubber highlights the importance of understanding how crime and punishment have evolved over time, as well as how the criminal justice system has evolved in response to changing social and political challenges. In this approach, Dubber analyzes various historical aspects of criminal law, including how the concepts of crime and punishment have changed over time, as well as how the criminal legal system has reacted to changes in society and cultural values. It helps us understand how criminal law has played a role in shaping our society today, as well as providing valuable insight into how we can improve the criminal legal system in the future. Dubber explained that historical analysis of criminal law is an important part of studying legal history as an aspect of critical analysis of law. Both conceptually and historically, the prominence in criticism of state criminal power reflects the invasive and overtly illegitimate nature of that power. State criminal power is closely related to state sovereignty, so much so that it is difficult or perhaps even impossible to imagine one without the other, especially over long history.

It is this seemingly impossible challenge that is the primary, most incisive, sharpest, yet most revolutionary focus of critical analysis of state power as a law of how state acts of violence against individuals who have the capacity for self-government can be considered legitimate? How can state actions that violate the autonomy of individuals who give their autonomous consent to their own existence be considered legitimate? From the perspective of modern law, the state actions that are most clearly and directly related to the idea of sovereignty, and hence the existence and power of the state, are those that most need legitimacy but appear to lack it the most. Restorative Justice, understood as an intellectual tradition or approach to political practice, involves fundamental change. In this view, restorative justice is not only a way to reform the criminal justice system, but also to change

the entire legal system, family life, workplace behavior, and political practices. Regarding principles, Braithwaite explains the principles of holistic restorative justice at two levels. First, examine holism at a theoretical level to determine the type of theory needed, such as restorative justice jurisprudence or criminology. Second, it presents suggestions for values that can be used to evaluate the achievements and failures of restorative justice. Restorative justice is an effort to fight injustice in the most restorative way. The aim is not only to reduce crime, but also to provide practical guidance on how to live a good life as a democratic citizen by fighting injustice.

The social movement for restorative justice is important because it provides a new practical program in fighting injustice and stigmatization, which is based on moral values that are well known in the history of the spirituality of the world's great religions. Restorative Justice is an alternative approach to the criminal law system that emphasizes restoration and reconciliation between all parties involved in a crime. This approach places victims, perpetrators and the community as integral parts in the process of resolving criminal cases. Restorative Justice offers a more humanitarian-oriented alternative, with a focus on repairing social damage caused by criminal acts. This approach represents a paradigm shift from the traditional retributive approach, where punishment is "punitive" and often does not pay attention to the needs of victims and perpetrators to repair relationships and correct their mistakes. Restorative Justice it also has the potential to reduce excessive imprisonment rates, provide justice that is more responsive to community needs, and increase confidence in the criminal justice system. However, whether restorative justice will live up to these expectations remains to be seen.

Restorative justice initially began as an effort to address burglary and other property crimes that were often considered relatively minor offenses. Today, however, restorative approaches are available in some communities for the most severe forms of criminal violence, including deaths from drunk driving, assault, rape, and even murder. Based on the experience of the Truth and Reconciliation Commission in South Africa, efforts are also being made to apply a restorative justice framework to situations of mass violence. Although the concept of Restorative Justice has been recognized and adopted in several jurisdictions, its implementation is often inconsistent or not yet fully integrated into the criminal justice system. Some countries have had difficulty implementing this approach widely due to cultural changes, lack of policy support, or lack of resources. The effectiveness of Restorative Justice is also still a matter of debate.

Even if it's a definition Restorative Justice Indonesia's current legal framework still contains several notes, namely that its orientation is still defined as settlement or peace, but there are still several legislative regulatory frameworks that provide opportunities to support the implementation Restorative Justice as an approach to resolving criminal cases that is carried out by providing space to involve the parties, whether victims, perpetrators or related parties, to carry out the process and aim of resolving cases that seek recovery. For the record, this regulatory framework does not always use the term (terminology) restorative justice. In the view of contemporary criminal law, Restorative Justice is one of the goals of punishment. Restorative Justice is defined as a mechanism for overcoming criminal

law problems by involving perpetrators, victims or their families and other related parties to seek viable justice with an emphasis on restoring the situation. In many places, restorative justice is seen as a sign of hope and direction for the future.

The term restorative justice was introduced by Albert Eglash in 1977 to classify the criminal justice system into three groups, namely retributive justice, distributive justice, and restorative justice. Retributive justice aims to punish the perpetrator, distributive justice aims to rehabilitate, and restorative justice aims to restore conditions to the situation before the crime was committed. In their book on Restorative Justice, Mark and Ralph reveal that the concept of restorative justice is not a new concept and has been traditionally recognized to solve various problems in its history. This concept, which was born from traditional values, is then called progressive steps.. The restorative justice approach is basically the goal of the criminal justice system to make improvements to the criminal justice system in several ways, namely: First, the system of involving victims in the criminal justice system, which to date is still very minimal; second, reducing and even eliminating conflicts between perpetrators, victims and society; Thirdly, the restorative justice process must reduce the consequences of criminal acts which result in helplessness for victims and society and provide improvements to the main problem. This concept of restorative justice resembles the practice of penal mediation which has been widely implemented in Indonesia. Penal mediation is the resolution of criminal cases with an agreement between the perpetrator and the victim.. After a violation occurs, the best solution is sought first between the perpetrator and the victim.

Criminal proceedings are only used if such a resolution cannot be reached. The difference between restorative justice and penal mediation is that restorative justice is implemented simultaneously with law enforcement, while penal mediation can be carried out by the perpetrator and victim alone without involving other parties, including law enforcement. The emergence of the concept of restorative justice is a form of law enforcement that is in accordance with the legal awareness they have or in accordance with the values that exist and are highly upheld by the community. Because, when law enforcement is carried out, basically society expects legal certainty, because with legal certainty society will be more orderly, it is a justifiable protection against arbitrary actions so that someone will get something in certain circumstances. On the other hand, society hopes that there will be benefits in implementing and enforcing the law, so don't let the implementation or enforcement of the law actually cause unrest in society. The public is also very interested in the implementation or enforcement of the law paying attention to elements of justice, even though the law is not identical with justice, because the law is general in nature and binds everyone or generalizes, while justice is subjective, individualistic and does not generalize. The concept of restorative justice (restorative justice) In the criminal law enforcement system it has been implemented by three main law enforcement structures, namely the Police, the Prosecutor's Office and the Supreme Court.

Based on the legal basis owned by each agency in its implementation. Of course, in terms of mechanisms, models, classification of criminal acts and procedures, they can be different. Decree of the Director General of the General Justice Agency Number:

1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Court Environment (hereinafter referred to as with the Decree of the Director General of Badilum regarding Implementation Guidelines Restorative Justice) states: Restorative justice (restorative justice) is one of the principles of law enforcement in resolving cases which can be used as an instrument of recovery and is an alternative resolution of criminal cases through a dialogue and mediation approach involving the perpetrator, victim, family of the perpetrator/victim, and other related parties in order to jointly create agreement on a fair and balanced resolution of criminal cases for both victims and perpetrators by prioritizing restoration to the original situation, and restoring patterns of good relations in society. Without cooperation between victims and witnesses, the criminal justice system will still function, but these individuals are ignored by the criminal justice system or only used as a tool to identify and punish criminals/law violators. Article 1 number 3 of the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Criminal Action Plans Based on Restorative Justice (hereinafter referred to as the Political Regulation on Restorative Justice) states:

Restorative justice is the resolution of criminal acts by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a just resolution through peace with an emphasis on returning to the original state. Furthermore, Article 1 numbers (1, 2, 3 and 4) of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (hereinafter referred to as the Perjak on Restorative Justice) states: Restorative Justice is the resolution of criminal cases involving the perpetrator, Victims, families of perpetrators/victims, and other related parties to work together to seek a just solution by emphasizing restoration to the original situation, and not retaliation; Victims are people who experience physical, mental or economic suffering or loss resulting from a criminal act; The Public Prosecutor is a prosecutor who is authorized by law to carry out prosecutions and carry out the judge's decisions; A suspect is a person who, because of his actions or circumstances, based on preliminary evidence, is reasonably suspected of being the perpetrator of a criminal act. Restorative justice based on the Perjak on Restorative Justice involves victims, suspects and public prosecutors as instruments of state power who have the authority to close cases in the interests of law.

The Role of Implementing the Restorative Justice Approach (Restorative Justice) As an Alternative Resolution in Criminal Cases

In formulating criminal law norms and formulating criminal threats, there are at least 3 (three) things that are to be achieved by implementing criminal law in society, namely forming or achieving the ideal of social life or the desired society, maintaining and upholding noble values. in society, and maintaining something that is considered good (ideal) and followed by society with negative norm formulation techniques. The purpose of imposing criminal sanctions is influenced by the reasons used as the basis for the threat and imposition of a crime. In this context, the reasons for punishment are retaliation, expediency, and a combination of retaliation that has a purpose or retaliation given to the perpetrator with a specific aim and purpose. According to Tony F. Marshall "Restorative justice is a

process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future". (Restorative justice is a process where all parties interested in a particular violation meet together 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 resolution of a criminal act using restorative justice prioritizes an agreement between the parties involved, with the interests of the future. Meanwhile, according to criminologist Adrianus Meliala, the restorative punishment model was introduced because the current criminal justice and punishment system is causing problems. In the current prison system, the aim of punishment is deterrence, revenge and suffering as a consequence of one's actions. Punishment indicators are measured by the extent to which convicts comply with prison regulations. So, the approach is more about security (security approach). Restorative justice is basically an approach to criminal law that contains a number of traditional values. This is based on two indicators, namely the values on which it is based and the mechanisms it offers. .

This is the basis for considering why the existence of restorative justice is being taken into account again. The existence of this approach is perhaps as old as criminal law itself. Apart from imprisonment which has consequences for the prisoner's family, the current system is considered not to provide relief or healing to victims. Moreover, the legal process takes a long time. In contrast, in the restorative model the emphasis is on conflict resolution. This idea of Restorative Justice has also been accommodated in the Criminal Code Bill, namely the introduction of an alternative criminal system in the form of social work sentences and supervision sentences. So that in the end Restorative Justice pays attention simultaneously to the interests of crime victims, crime perpetrators and society. The existence of criminal law is very important in ensuring public security from the threat of criminal acts, maintaining state stability and is a moral institution that plays a role in rehabilitating criminals. So that criminal law continues to develop in accordance with the demands of societal development. One of these developments is the emergence of the idea of conflict resolution which does not only focus on the legal process in court, but is resolved by the parties in conflict by restoring the existing situation.

This principle became known as restorative justice which was introduced in the Draft Criminal Code Bill through a number of provisions in Article 2, Article 12, Article 54 and Article 55, mediation in Article 145 letter d, as well as diversion towards children in the juvenile criminal justice system. especially to provide a balance of attention between stakeholders criminal law, namely perpetrators, victims, society and the state. Furthermore, this balance can also be seen in terms of criminal regulations (straf/punishment) with settings regarding actions (measure/treatment/measures) and the possibility of combined sanctions between criminal and action (double track system), considering the heterogeneity of crime problems, as well as awareness of the importance of appropriate therapy for victimless crime. Apart from that, in the current development of criminal law, penal mediation is also known. In criminal law practice, penal mediation is considered a derivative of restorative justice, because there is no need to enforce criminal law through the courts.

Even though the case was resolved outside of court (Alternative Dispute Resolution/ADR) generally or commonly applied in civil matters, but not for criminal matters.

Meanwhile, the position of the perpetrator is in the prison chair and must always be ready to accept the criminal sanctions that will be decided against him. Inversely proportional, of course, is the judicial process through litigation and non-litigation through restorative justice in criminal cases. Concept restorative justice offers a recovery process that involves the perpetrator and the victim or the victim's family directly in resolving the problem. Legal development is not identical and should not be identified with the development of laws or statutory regulations according to the terms commonly used in Indonesia. Forming as many laws as possible does not mean the same as forming laws. The rule of law is not a state of laws. The formation of laws only means the formation of legal norms. However, the social, economic, cultural and political order is not merely a normative order. Therefore, a certain spirit or spirit is needed so that this order has capacity. ²³ The development of criminal law in resolving non-litigation problems is also known as the penal mediation system.

This concept is relatively new in the process of enforcing criminal law and also holding the perpetrators accountable. Philosophically, this concept offers a form of resolving various legal cases that occur outside the existing criminal justice process, so that society does not only depend on current procedures in accordance with the reflection of Pancasila values, namely deliberation to achieve social justice. One form of solution offered is a settlement process in the context of restorative justice. Therefore, if in implementing development, law is interpreted as a means to achieve state goals, national legal politics must be based on a basic framework, namely: National legal politics must always aim at the nation's ideals, namely a just and prosperous society based on Pancasila; Legal politics must be aimed at achieving state goals; Legal politics must be guided by the values of Pancasila as the basis of the state, namely based on religious morals, respecting and protecting human rights without discrimination, uniting all elements of the nation, placing power under the authority of the people, and building social justice;

When linked to the legal ideals of the Indonesian state, legal politics must protect all elements of the nation for the sake of national integration or integrity, realize social justice in the economy and society, realize democracy (people's sovereignty) and nomocracy, rule of law, and create tolerance for religious life based on civility and humanity; The direction of legal development is not something that stands alone, but is integrated with the direction of development in other fields, requiring harmonization. Penal Mediation is a form of dispute resolution outside the Court (Alternative Dispute Resolution) which is more popular in civil cases, but that does not mean it cannot be applied in the criminal law environment. The legal basis for implementing penal mediation in Indonesia is:

Republic of Indonesia State Police Letter No. Pol: B/3022/XXI/2009/SDEOPS, dated 14 December 2009, Regarding Handling Cases Through Alternative Dispute Resolution (ADR). This letter is a reference for the police to resolve light crime cases, such as Articles: 205, 302, 315, 352, 373, 379, 384, 407, 482, this letter is effective if a case is still in the investigation and inquiry stage. . Several points of emphasis in the Police Letter include

efforts to handle criminal cases that have small material losses, resolution can be directed through ADR; Settlement of cases through ADR must be agreed upon by the parties involved in the case, but if no agreement is reached, it must be resolved in accordance with applicable legal procedures in a professional and proportional manner; case resolution through ADR must be based on the principle of deliberation and consensus and must be known to the local community; case resolution through ADR must respect social/customary legal norms and fulfill the principles of justice; and for cases that have been resolved through ADR so that they are no longer touched by other legal actions.

The offense committed is in the form of "an offense that is only punishable by a fine". According to Article 82 of the Criminal Code, the authority/right to prosecute an offense is extinguished if the defendant has paid the maximum fine for the offense and the costs that would have been incurred if the prosecution had been carried out. This provision in Article 82 of the Criminal Code is known as "afkoop" or "peaceful fine payment" which is one of the reasons for abolishing prosecution.

Criminal acts committed by children under 8 years of age. According to Law Number. 3/1997 (Children's Court), the age limit for delinquent children who can be brought to court is at least 8 years and not yet 18 years. For children under 8 years old, investigators can hand the child back to their parents or guardians. (Article 5 Law No. 3/1997)

Law Number 39 of 1999 concerning Human Rights Courts which gives the authority to Komnas HAM (which was formed based on Presidential Decree Number. 50/1993) to carry out mediation in cases of human rights violations. Some of the legal instruments above can be used as references in resolving criminal cases, especially minor criminal cases. Because what is actually sought in a criminalization process is justice, so that the judge will be able to make a decision based on justice and not based on law, just like the popular adage "Fiat Justisia Ruat Coelum", even if the sky falls, justice must be upheld.

CONCLUSION

Restorative justice places attention on repairing the social, emotional, and material impacts of a violation, as well as strengthening social bonds and healing for all parties involved. One way to implement restorative justice is through programs such as mediation, restorative conferences, or victim-offender lectures (mediation). In the context of criminal law, this often involves a meeting between the victim and the perpetrator to repair the damage caused by the criminal act. Empirical studies have shown that restorative justice can produce positive outcomes in the handling of criminal cases. For example, the mediation process can help victims gain healing and understanding of the events that occurred, while perpetrators can feel accountability for their actions and improve relationships with victims and society. In addition, restorative justice has also been shown to reduce re-criminal rates and strengthen social bonds among community members. Even though it has great potential, the implementation of restorative justice in the context of criminal law is not without challenges. One of the main challenges is ensuring voluntary participation from all parties involved, including victims, perpetrators and the community. In addition, there are also concerns

regarding justice and security in the restorative process, as well as logistical and administrative challenges in organizing and administering restorative justice programs.

Restorative justice offers a more humane and sustainable approach to handling criminal cases, placing attention on healing, reconciliation, and accountability. While implementation challenges remain, it is important for legal systems to continue to integrate restorative justice principles as part of their efforts to achieve more comprehensive and sustainable justice. Thus, restorative justice has great potential to increase effectiveness and fairness in handling criminal cases, as well as strengthen social ties between community members. The basis for the formation of the Restorative Justice Concept comes from the implementation of a traditional out-of-court settlement program carried out by the community called victim offender mediation which began in the 1970s in Canada. Restorative justice is a reform of the juvenile criminal justice system which provides a new change in creating a system based on justice, the best interests of children and seeking punishment for children as a last resort (*Ultimum Remedium*). The concept of Restorative Justice based on Law No. 11 of 2012 concerning the Juvenile Criminal Justice System is a solution that involves the perpetrator, victim, their family and other parties involved in a criminal act, jointly seeking a resolution to the criminal act and its implications with recovery, and not revenge. Restorative Justice is required at the Investigation, Investigation, Prosecution and Trial stages for Enforcers.

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