

Analysis Juridical Restoration of Justice Against Perpetrator follow Criminal Corruption

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ABSTRACT

Justice , obstacles and solutions taken when the Restorative justice done . Known barriers _ is obstacle from internal Police in the form of there is a sense of fear and ways long thought , meanwhile from external Police namely the ego sense of the litigants , as well from party government that is No exists issued rules _ about implementation of the Restorative justice . Because deep enforcement priority law _ is a sense of justice Good from the victim as well from party perpetrator , so mediation between party it is very influential big in settlement case . In implementation of Restorative Justice or mediation only can held of the legal process carried out by children as perpetrator (below age) with term Diversion, however For case criminal other general yet There is the rules that govern it . The application of restorative justice that can done in situation the that is with carry out mediation between second split the party poured in letter agreement together witnessed by religious leaders or _ figure public as base in implementation title case termination investigation.

Keywords: investigation , property objects , restorative justice

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INTRODUCTION

Restorative Justice is an approach model in finish case criminal Where matter This drip weight exists follow inclusion direct Perpetrators, Victims, and Communities in the settlement process something case criminal. Approach Restorative Justice is considered the most recent from all models as well mechanism Work in system Justice criminal in handle matters _ _ criminal. Mechanism Restorative Justice approach puts public get more role _ wide For monitor implementation in results from settlement something case criminal (Pratama & Azyanti, 2022), that is to be expected with apply Restorative Justice approach can realized recovery for victims, as well involvement public can achieved and goals from punishment perpetrator can run well.1 With _ exists this Restorative Justice system expected capable applied in case follow Criminal Light (TIPIRING) deep law crime in Indonesia (Flora, 2022).

In general, Restorative Justice in Indonesia only applied in follow criminal concept child _ put the future first perpetrator, then try look for road middle solution (winsolution) for find settlement problem together (Harmanto et al., 2022). With so will There is anything else as effect wary without must through punishment prison (Sibarani, 2021). Liebmann by simple interpret restorative justice as something system purposeful law _ For return welfare of victims, perpetrators and communities damaged by crime, and for prevent violation or action crime more continue ”. System This great writer _ fair and important For applied Because with exists system This where the victim will be get recovery on what to be the loss on the crime that occurred to him , then perpetrator get guidance as well as involved in recovery, and engagement public in preservation peace in environment.

METHOD

Method Study This is study law. Study law is applied research _ or enforced specifically in science law. (F. Sugeng Istanto , 2007: 28) and (Saldi Isra, 2009 : 41). Type method research used _ method law normative with object study in internal norm perspective law. Preparation article scientific This using the statute approach (approach legislation) (Diantha & Sh, 2016). As for the ingredients law used in the preparation journal This among other things, first, materials primary law ie regulation laws relating to protection _ experienced workers _ termination work. Second, materials law secondary is material law Where own connection with material primary law like book about law (Hariyanto, 2022), opinion expert, as well journals scientific. Third, materials law tertiary is material law Where used For reference besides it also has implication with object problem. Search technique material law use technique analyze regulation legislation that has connection with object problem. Analysis study use analysis qualitative that is study the results obtained writer try analyze from corner applicable laws . _ (Soekanto, 2006) (Soekanto, 1986).

RESULTS AND DISCUSSION

A. Development history modern law application of restorative justice

At the start from implementation an outside settlement program _ Justice traditionally done _ so -called society with victim offender mediation which began in the 1970s in Canada. this program at first held as action alternative in punish perpetrator criminal child , where before held punishment perpetrators and victims are permitted meet For compile proposal law being one _ _ consideration from that's all Lots Judge's consideration . Development the concept of restorative justice in 20 years final experience very rapid development in several countries such as Australia, Canada, England and Wales, New Zealand and several other countries in Europe and the region Pacific. The concept of Restorative Justice (Justice restorative) actually has long been practiced public Indonesian customs , such as in Papua, Bali, Toraja , Minangkabau and communities other traditional still strong hold culture . If happen something follow crime by a person (incl deed oppose law is carried out child), solution dispute resolved in the community custom internally without _ involve state apparatus in it . Size justice No based on justice retributive form reply feud or punishment prison , however based on conviction and forgiveness (Dewi, 2013).

B. Definition of Restorative Justice

According to Tony F. Marshall “ Restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolved collectively how to deal with the aftermath of the offense and its implications for the futures ”. (Restorative justice is a process in which all parties with an interest in certain violations meet together to resolve jointly how to resolve the consequences of these violations for the benefit of the future). From this definition it can be concluded that the settlement in a crime by using restorative justice prioritizes the occurrence of an agreement between the litigants , with the interests of the future (Flora, 2019). Whereas according to criminologist Adrianus Meliala, the restorative punishment model was introduced because the current criminal justice and criminal justice system creates problems. In the current prison system the purpose of punishment is imprisonment, revenge, and giving suffering as a consequence of his actions.

The punishment indicator is measured by the extent to which convicts comply with prison regulations. So, the approach is more to security (security approaches).

Restorative justice as it is basically an approach to criminal law that contains a number of traditional values (Agustin et al., 2021). This is based on two indicators, namely the values on which it is based and the mechanisms it offers. This is the basis for consideration of why the existence of restorative justice is reconsidered. The existence of this approach is perhaps as old as criminal law itself. Besides imprisonment which has consequences for the prisoner's family, the current system is considered not to relieve or cure the victim. Moreover, the legal process takes a long time. In contrast, the restorative model emphasizes conflict resolution. restorative ideas This justice has also been accommodated in the Criminal Code Bill, namely the introduction of an alternative criminal system in the form of social work punishment and supervision punishment. So that in the end Restorative Justice pays attention simultaneously to the interests of victims of crime, perpetrators of crime and society.

C. Basic Restorative Justice

Enforcement process law in settlement case follow criminal through a restorative justice approach in Indonesia is carried out attorney refer to the Regulations Attorney General's Office (Perja) of the Republic of Indonesia Number 15 of 2020 concerning Termination Prosecution Based on Justice restorative. Based on Article 2 Perja Number 15 of 2020, consideration For carry out draft restorative justice is based on principle justice , interests general, proportionality, criminal as road last, and basic fast, simple, and cost light. Besides Therefore, the application of restorative justice in Indonesia is also regulated in Regulation Republic of Indonesia National Police Number 8 of 2021 concerning Handling follow Criminal Based on Justice restorative.

Besides Therefore, the application of restorative justice in Indonesia is also regulated in Regulation Republic of Indonesia National Police Number 8 of 2021 concerning Handling follow Criminal Based on Justice restorative. Case possible punishment _ resolved with restorative justice regulated in Articles 364, 373, 379, 384, 407 and 483 of the Criminal Code (KUHP). Case possible punishment _ resolved with settlement the is on matter follow criminal light . In matter this, the law given is criminal maximum imprisonment of 3 months or a fine of IDR 2.5 million (Flassy, n.d.). Apart from matters follow criminal light, solution with restorative justice too applied to cases criminal other like :

1. Case criminal follow criminal child
 - a. Republic of Indonesia Law Number 4 of 1979 concerning Child Welfare ;
 - b. RI Law Number 11 of 2012 concerning System Justice Child Crime ;
 - c. Regulation Government Number 65 of 2015 concerning Guidelines Implementation of Diversion and Handling of Children who have not 12 (twelve) years old ;
 - d. Regulation Supreme Court Number 4 of 2014 concerning Guidelines Implementation of Deep Diversion System Justice Child Crime .
 - e. SK Director General Badilum Number 1691/DJU/SK/PS.00/12/2020 dated 22 December 2020 concerning Guidelines Application of Restorative Justice in the Environment Justice General ;
2. follow criminal Light
 - a. The Criminal Code (KUHP) Article 310 ;

- b. The Criminal Procedure Code (KUHP) Article 205;
- c. Regulation RI Supreme Court Number 2 of 2012 concerning Action Limit Adjustments Criminal Light and Quantity Fine in the Criminal Code (KUHP) ;
- d. Memorandum of Understanding with the Chairman Supreme Court of the Republic of Indonesia, Minister of Law and Human Rights RI People , RI Attorney General, Chief Republic of Indonesia National Police Number 131/KMA/SKB/X/2012, Number M.HH-07.HM.03.02 of 2012, Number KEP06/E/EJP/10/2013, Number B/39/X/2012 dated 17 October 2012 about Implementation Application Action Limit Adjustments Criminal Light and Quantity Fines , Examination Fast And Deployment Justice Restorative (Restorative Justice)
- e. Director letter General of the Judiciary General Number 301/DJU/HK01/3/2015 concerning Completion follow Criminal light ;
- f. SK Director General Badilum Number 1691/DJU/SK/PS.00/12/2020 dated 22 December 2020 concerning Guidelines Application of Restorative Justice in the Environment Justice General ;

Basically _ can applied For imposition Articles 364, 373, 379, 384, 407 and Article 482 of the Criminal Code with mark loss No more from IDR 2,500,000.00 (two million five hundred thousand rupiah), which is not is follow criminal repetition .

3. follow criminal Narcotics

- a. Criminal Code ; _ _
- b. RI Law Number 35 of 2009 concerning Narcotics ;
- c. Circular Letter Supreme Court of the Republic of Indonesia Number 4 of 2010 concerning Placement Abuse, Victims of Abuse, and Addicts Narcotics to Within the Rehabilitation Institute Medical and Rehabilitation Social ;
- d. Circular Letter Supreme Court of the Republic of Indonesia Number 3 of 2011 concerning Placement of Victims of Abuse Narcotics Inside _ institution Rehabilitation Medical and Rehabilitation Social ;
- e. Chairman Joint Regulations Supreme Court of the Republic of Indonesia, Minister of Law and Human Rights RI People , RI Minister of Health, RI Social Minister , RI Attorney General, Chief Republic of Indonesia National Police , Head of the Republic of Indonesia National Narcotics Agency Number 01/PB/MA/III/2014, Number 3 of 2014, Number 11 of 2014, Number Per005/A/JA/03/2014, Number 1 of 2014, Number PERBER/01 /III/2014/BNN regarding Handling Addict Narcotics and Victims of Abuse Narcotics to Within the Rehabilitation Institute
- f. SK Director General Badilum Number 1691/DJU/SK/PS.00/12/2020 dated 22 December 2020 concerning Guidelines Application of Restorative Justice in the Environment Justice General ;

Basically _ justice restorative in case narcotics only can applied to addict, abuser, victim of abuse, dependency narcotics and narcotics use 1 (one) day as arranged in Article 1 of the Joint Regulations.

4. follow criminal opposite woman _ with law.

- a. Convention (Convention on The Elimination of All Forms of Discrimination Against Women)/ Convention about Deletion All Form Discrimination against women who have ratified with Republic of Indonesia Law Number 7 of 1984 concerning

- endorsement Convention about Deletion All Form Discrimination Against Women (Convention on The Elimination of All Forms of Discrimination Against Women);
- b. ICCPR (International Covenant on Civil and Political Rights) Convention which has been ratified with RI Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (Covenant International on Civil and Political Rights);
 - c. RI Law Number 23 of 2004 concerning Deletion Violence In House Stairs (domestic violence);
 - d. RI Law Number 21 of 2007 concerning Eradication follow Criminal Trafficking in Persons;
 - e. RI Law Number 31 of 2014 concerning Protection Witnesses and Victims;
 - f. RI Law Number 35 of 2014 concerning Child Protection ;
 - g. Regulation Government of the Republic of Indonesia Number 43 of 2017 concerning Implementation Restitution For Children Who Become Victims of Acts Criminal ;
 - h. Regulation Government of the Republic of Indonesia Number 7 of 2018 concerning Giving Compensation, Restitution and Assistance To Witnesses and Victims;
 - i. Regulation Supreme Court Number 3 of 2017 concerning Guidelines Judging Cases of Women Confront By Law;

D. Restorative Justice Terms

Condition material explained in provision Article 5 Regulations Police 8/2021 which reads : " Requirements material as meant in Article 4 letter a, includes :

- a) No raises anxiety and/ or rejection from society ;
- b) No impact conflict social ;
- c) No potentially break split nation ;
- d) No characteristic radicalism and separatism ;
- e) No perpetrator repetition follow criminal based on Decision court ; And
- f) No follow criminal terrorism , act criminal to state security , act

" criminal corruption and acts criminal to people's lives ." Then, about condition formal explained in Article 6 paragraph (1) Regulations Police 8/2021 which reads : " Requirements formal as meant in Article 4 letter b, includes :

- a) peace from second split parties, except For follow criminal drugs ; And
- b) fulfillment victims ' rights and responsibilities answer offender except _ For follow criminal drugs."

More further , in Article 6 paragraph (3) Regulations Police 8/2021 explains Meaning from fulfillment the rights of victims above, ie can form return goods, replace loss, replace costs incurred _ consequence from follow crime, and/ or replace the damage caused from follow criminal the. Based on provision articles that, can is known that there is mandatory conditions _ fulfilled If will implementing restorative justice. Condition the like there is agreement between the parties For do peace, no repetition follow criminal, have fulfillment victims ' rights, and the application of this restorative justice No get rejection from society, as well No For crimes certain.

Next, terms about application of restorative justice when in stage prosecution explained in Article 5 paragraph (1) Regulations Prosecutor's Office 15/2020 which reads : " Case

follow criminal can closed by law and discontinued his prosecution based on Justice restorative in matter fulfilled condition as following :

- a) suspect new first time doing follow criminal ;
- b) follow criminal only threatened with criminal fine or threatened with criminal prison No more than 5 (five) years ; And
- c) follow criminal done with mark goods proof or mark losses incurred _ consequence from follow criminal No more from IDR 2,500,000.00 (two million five hundred thousand rupiah)”

However, for follow criminal related treasure thing, act criminal against persons, bodies, lives, and independence, as well as If follow criminal done Because negligence, then the conditions mentioned in Article 5 paragraph (1) Regulations Pursue 15/2020 got deviated partially. because _ that is, application conditions the No enforced in a manner stiff , but can ruled out in case certain.

In addition to the 3 (three) conditions that have been dis but in Article 5 paragraph (1) Regulations Kejari 15/2020, the implementation of restorative justice is also a must fulfil a number of condition other as mentioned _ in Article 5 paragraph (6) Regulations Prosecutor's Office 15/2020 which reads : “ termination prosecution based on Justice restorative done with fulfil conditions :

- a) has There is recovery back to the situation again what was done by the suspect with way :
 - 1. return items obtained _ from follow criminal to the victim
 - 2. replace victim loss ;
 - 3. replace costs incurred _ from consequence follow criminal ; and/ or
 - 4. repair the damage caused from consequence follow criminal ;
 - 5. There have been agreement peace between the victim and the suspect ; And
- b) public respond positive ”

However , implementation _ termination prosecution based on justice restorative in Regulation Work this 15/2020 own a number of exception For matter certain . Exception the as arranged in Article 5 paragraph (8) Regulations Prosecutor's Office 15/2020 which reads : " Termination prosecution based on Justice restorative excluded For case :

- 1) follow criminal to state security , dignity President and Vice President , friendly countries , heads of friendly countries as well as vice , order general , and decency ;
- 2) follow punishable punishment _ with threat minimum sentence ;
- 3) follow criminal narcotics ;
- 4) follow criminal environment live ; And
- 5) follow crimes committed by corporations . _

Based on explanation above, can _ concluded that objective from restorative justice no focused on revenge for perpetrator follow criminal, but look for fair settlement _ with emphasize recovery back to the situation back. Then, the conditions that must be fulfilled For apply restorative justice at the time maintenance function detective criminal, investigation, or investigation, that is there is agreement between the parties to do peace, no repetition follow criminal, have fulfillment victims ' rights, and the implementation of this restorative justice No get rejection from society. Next, the conditions that must be fulfilled

For implementing restorative justice at stage prosecution, that is has created peace and restoration back to the victim, the threat criminal prison No more than 5 years, losses incurred _ No more from IDR 2,500,000.00 (two million five hundred thousand rupiah), and no repetition follow criminal. Besides that, restorative justice is not Can applied to action threatening crime _ state security, corruption, crime to people's lives, act criminal environment live and act crimes committed by corporations.

E. Draft Application Principle restorative justice In the Law of Eradication Corruption

Problem follow criminal corruption is extra-ordinary crime or often considered crime outside normal. In overcome case state corruption has allocated budget _ For prosecution problem follow criminal corruption (investigation / investigation) by apparatus Law Enforcement ie as much as IDR 382.8 billion. However effort made_in eradication corruption by the government moment This Still Not yet done in a manner truly matter This Can scrutinized through report trend prosecution case continuing corruption _ increase with total state losses caused _practice corruption throughout year 2020 reached IDR 56.7 trillion. Based on inclined loss _ fluactive Indonesia start apply draft restorative justice as solution For overcome state losses. Draft restorative justice ratified through existing UNCAC in law No. 7 of 2006.

A number of expert opinion _ as Braithwaite, Umbreit, Richardson defines justice restorative as a philosophy, a process, an idea, a theory and an intervention. Justice restorative is emphasized court _ repair on losses caused _ or related follow criminal with involve all parties (stakeholders). Dignan suggested definition justice restorative as Restorative Justice is a valued based approach to responding to wrongdoing and conflict, with a balanced focus on the person harmed, the person causing the harm, and the affected community. Justice restorative is alternative settlement case criminal with put forward approach integration perpetrator in one side and victims on the other as One unity For look for solution improvement (Purwokerto , 2012: 409).

Restorative justice is one _ form accountability restitution oriented _ _ _ loss and return like ever before happening follow criminal, concept This is necessary thinking _ invested in enforcers law specifically follow criminal corruption. Welgrave put forward that theory justice restorative is every enforcement - oriented actions _ justice with repair resulting losses _ from follow crime (Purwaning M. Yanuar , 2007: 90). If associated with return asset in follow criminal corruption, in Suite action search, freezing, confiscation, confiscation and finally stage return corrupted state assets is in line with draft justice restorative priority _ repair and return loss caused by the act criminal.

In 2016 the Court Constitution emit Decision Fill in Number 25/PUUXIV/2016 the verdict change offense formal in Article 2 paragraph (1) and Article 3 of Law Number 20 of 2001 Concerning Eradication follow Criminal Corruption become offense material . CST Chancellor state that offense material is the formulation of the offense focuses on the consequences that are prohibited and threatened with criminal by law , meanwhile offense formal is the formulation of the offense focuses on actions that are prohibited and threatened with criminal by law (CST Kansil , 2007: 40). With exists change offense formal to offense material the own meaning that element harm state finances do not Again understood as estimate (potential loss), but also should understood truly that Already happen or real (actual loss) in follow criminal corruption (Agus Sahbani , 2017). So that with thereby can

reviewed that somebody can said has do follow criminal corruption and can subject to penalty criminal if from the person's actions has clear raises loss state finances or country 's economy real.

Draft restorative justice in law eradication corruption has enforced in Indonesia which can seen through a Letter from the Chief of Police and a Circular Letter of the Junior Attorney General explaining as following :

- 1) Chief of Police Letter No. Pol. B /3022/XII/2009/ sdeops about draft Alternative Dispute Resolution (ADR), in first point _ written that handling case criminal who has loss material small , the solution can directed through the true concept of ADR own similarity with Prioritizing Restorative Justice discussion between parties involved ; _
- 2) Junior Attorney General for Criminal Circular Letter Special Number : B113/F/Fd.1/05/2010 dated 18 May 2010, one of the point in contents is instruct to whole High Court which contains appeal to deep case guess follow criminal corruption , society with _ awareness has return necessary state losses considered For No followed up on apply principle restorative justice . For perfect draft restorative justice in follow criminal corruption The Junior Attorney General Circular is back carried out by the Attorney General of the Republic of Indonesia with publication of SE Jampidsus Number : B765/F/Fd.1/04/2018 dated 20 April 2018 concerning Handling Technical Instructions Case follow Criminal Corruption Stage Inquiry , which is basically Investigation No only limited to finding incident follow Criminal Corruption form deed oppose law , but also must worked on find magnitude Loss State Finance (Habib Ali, 6:2020).

Magnitude loss state finance is one _ factor to be consideration The Attorney General's Office of the Republic of Indonesia in decide For take action in apply draft restorative justice. Small state losses Of course just No will comparable with issued state budget for the prosecution process, this is what supports system justice restorative endeavor _ offer justice for perpetrator and victim. this _ in accordance with order of the Junior Attorney General of the Republic of Indonesia in matter priority and handling in handle case corruption , and very precisely If rated from losses suffered.

Understanding restorative justice in punishment follow criminal corruption No fully negate follow criminal , but more prioritize gift sanctions that focus on crime as solution settlement follow criminal corruption form recovery . Completion case corruption through restorative justice still in accordance with Standard operational Procedure (SOP) which is handling follow the crime start from period time and others refer to the Regulation of the Attorney General of the Republic of Indonesia Number : PERJA-039/A/JA/10/2010 (Muhammad Gempa Awaljon Putra, 2018: 176), handling the includes (Habib Ali, 7:2020):

- a. Collection of data and materials information collected as part from the investigation process .
- b. In the process, also must determined that magnitude loss determined state finances solely with good calculation , coordinate _ with Apparatus Internal Control (APIP)/BPK/BPKP/ Public Accountant.
- c. If the parties involved has return state finances, then must showed through proof deposit in the State/ regional / village / pekon treasury, with notice limitations that have determined before.

- d. Done activity expose To use determine attitude and here role from leadership, in matter This namely the Attorney General of the Republic of Indonesia/ Head Attorney General/ Head District Prosecutor's Office / Branch Head of District Attorney's Office is urgently needed Because No arranged with Constitution but only one _ form discretion.

Educate endro Purwoleksono also gave statement that if whole results follow criminal corruption returned by the suspect or the accused in fact can used as removing factor _ characteristic oppose law criminal that is follow criminal corruption so that suspect or defendant No need convicted . (Educate endro Purwoleksono , 2016: 188). There are 3 (three) elements or conditions that cause loss characteristic oppose law from something follow criminal corruption namely :

- 1) suspect or defendant No benefited ;
- 2) country no harmed ;
- 3) public served .

Based on explanation the can pulled conclusion that if perpetrator follow criminal corruption has return whole results follow criminal corruption along with whole profit earned _ from results follow criminal corruption by perpetrators then basically _ perpetrator the No benefited, the state did not suffer loss finance as well as public can served through return whole results follow criminal corruption along whole the advantage the. Meaning from public served is the state can do development useful facilities _ for public wide with returned whole results corruption along whole the advantage, through draft This happen the previous change follow the suspect become follow the money and follow the asset.

CONCLUSION

Based on the description of the discussion above, it can be concluded that the concept of a restorative justice approach is ideal, implementation in Indonesia that must be reviewed. The concept of justice with a restorative justice approach when it will be implemented in Indonesia requires the readiness of the agency or agency as the implementer to carry it out including the HR perspective in it. The restorative justice approach is carried out through a diversion mechanism, in which there is a process of peace efforts between the two parties between the perpetrator and the victim. This concept should not be applied to all cases. Every case is unique, so the solution should also pay attention to that uniqueness.

That which can carried out by enforcers law, fine the Police, Prosecutors, and Judges are with use effort restorative justice approach. Fundamental to the Act System Justice Child Criminal, giving facility with method bring the parties together or give meeting between party For consult existing cases _ it and solved together, outside settlement in court. In matter use the concept of restorative justice, carried out with method give effort recovery to second split party, fine For recovery the victim above deed or action perpetrators, as well recovery party perpetrator on burden socio-economic. Targeted recovery _ to the victim is for the victim not to disturbed his soul, which can caused by upper trauma action party perpetrator. For party doer, necessary get education or more coaching so that actors No do return or repeat his deeds.

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