



Future Implementation of *Ius Constituendum* and Restorative Justice in the Criminal Justice System

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ABSTRACT

The notion of restorative justice is presently implemented in the Indonesian criminal justice system through Law No. 11 of 2012, which oversees the juvenile court system. Future expansion of the application of restorative justice within the criminal justice system is a topic of discussion. As a research methodology, legal norm research is employed. Deductive reasoning is used to reach conclusions. On the basis of research findings, the Government and the DPR are expected to swiftly formulate guidelines for the implementation of the concept of restorative justice issued by the Criminal Justice Subsystem in laws and regulations, both in the form of laws and in the Draft Code of Criminal Procedure (RKUHAP) and the Draft Law – Criminal Law (RKUHP). The implementation or application of the concept of restorative justice in the resolution of criminal cases involving these offenders shall be governed by these rules.

Keywords: Criminal Justice System; Future Regulation; Restorative Justice

1. Introduction

Without considering the relationship between jurisprudence and the issues to be resolved, law has been viewed as a rigid set of rules that overemphasizes certain components of the legal system (Arianto, 2010). Therefore, we need a legal idea that is acceptable to the community and reflects the traits and patterns of communal life (adaptable). Laws that are rigid or inflexible add complexity and conflict to people's lives. To make Indonesian national law a law that can coexist and evolve, it is vital to seek out community-respected principles that are still held. The Criminal Justice System has developed into a manual that illustrates a key systems-based approach to crime prevention techniques. According to a remark by Romli Atmasasmita from Mardjono, the criminal justice system consists of police, prosecutors, courts, and prisons (Siregar, 2020).

According to Satjipto Raharjo, the slow pace of law enforcement is due to the judicial system's resolution of cases, which results in court decisions. This is because there are various tiers of law enforcement, including the police, the attorney general's office, the district court, the supreme court, and the highest court itself. Ultimately, this impacts the quantity of court cases that have accrued. In addition, formal justice does not always reflect a feeling of justice; it is costly, time-consuming, and laborious, and it does not resolve the issue. Worse, it is rife with favoritism, collusion, and corruption (Rahardjo, 2003).

In Indonesia, the sub-system of criminal justice is producing regulations or rulings guiding the application of the idea of restorative justice. The National Police issued the policy during the investigative phase, the Office of the Public Prosecutor during the prosecution phase, and the Supreme Court during the judicial phase. However, the criminal justice subsystem's policies and regulations are executed differently and in various ways.

Regarding Restorative Justice in the Settlement of Criminal Cases, see SE/8/VII/2018, per circular from the Chief of the National Police, National Police number: This Police Chief Circular on Restorative Justice will then be used as a legal basis and guide for Polri investigators and investigators conducting investigations, including as a guarantee of legal protection and supervision in the application of the concept of restorative justice to investigations and criminal investigations, in order to realize the public interest and a sense of community justice (Fianhar, n.d.).

The Attorney General Office of the Republic of Indonesia No. 15 of 2020 on stopping prosecution based on restorative justice also applies restorative justice. "The out-of-court settlement of cases referred to in paragraph 2(e) may occur if" under paragraph 3(b) "the procedure des afdoening buiten" has been completed, restoring the original condition of affairs a justice approach that the prosecutor has the authority to discontinue (Peraturan Kejaksaan Republik Indonesia Nomor 15, 2020).

In addition, the Supreme Court of the Republic of Indonesia has issued directives and directives about restorative justice. The most recent example is Decree No. 1691/DJU/SK/PS.00/12/2020 of the Director-General for Justice of the Supreme Court of the Republic of Indonesia on the Implementation of Guidelines for Restorative Justice (Restorative Justice). This judgment aims to optimize the implementation of Supreme Court Regulations and Supreme Court Circulars.

In the context of general courts, the following crimes may be handled through restorative justice:

a. Minor criminal cases

Restorative justice may be used to resolve small criminal cases including the offenses outlined in Criminal Code Articles 364, 373, 379, 384, 407, and 482 when the loss does not exceed Rp. 2,500,000.00 (two million and fifty thousand rupiah)

b. Child Problem

Restorative justice must take precedence in juvenile justice, and any diversionary decision constitutes restorative justice. If the diversion attempt fails or does not match the criteria, the judge will seek a restorative justice decision pursuant to Articles 71 to 82 of Law No. 11 of 2012.

c. Conflicts involving women and the law.

d. Drug case.

According to Article 1 of this rule, only addicts, victims of abuse, victims of abuse, and individuals dependant on drugs for at least a day are eligible for the restorative justice approach. Republic of Indonesia No. 01/PB/Mama/III/2014, No. 03 of 2014, No. 11 of 2014, No. 03 of 2014, No. Per-005/A/JA/03/2014, No. 01 of 2014, No. Perber/01 /III/2014/BNN for the care of opiate addicts and victims of opiate abuse in restaurants.

This paper discusses about the politics of the future application of the notion of restorative justice to the criminal justice system as a result of the tendency toward the creation of institutional arrangements of procedural law. While the regulations and policies established by the criminal justice subsystem are recognizable in connection to non-criminal criteria that can be handled through restorative justice, implementation and the circumstances for an offense to be eligible for restorative justice resolution vary.

2. Method

This paper discusses the challenges using research that describes, explains, and analyzes the future application of restorative justice in the criminal judicial system. This form of inquiry is known as normative or literary legal research. Soerjono Soekanto defines normative legal research as "legal research performed using literature or secondary data as a research basis" and "legal research conducted using literature or secondary data as a research basis" (Soekanto & Mamudji, 2001).

3. Result and Discussion

3.1 The Concept of Restorative Justice in the Judicial System

Restorative justice strives to enable victims, criminals, families, and communities to repair a violation of the law by employing understanding and belief as a basis for enhancing social life. This demonstrates that the concept of restorative justice is not inherently hard. Restorative justice is a doctrine of justice that stresses restitution for victims of wrongdoing.

As part of the Pancasila notion of the rule of law, the new method of restorative justice is tacitly recognized in the constitution and somewhat controlled in a number of criminal statutes and regulations. These include the SPPA Law or the Special Autonomy Law of the Province of Papua, which recognizes the existence of a "consensus-consensus" Institutional regulations such as the Police through the Chief of Police Circular Letter

Number SE/8/VII/2018 concerning the Implementation of Restorative Justice in Settlement of Criminal Cases, the Prosecutor's Office regulations through the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice) and the Supreme Court through Decisions Director General of the General Courts of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 Concerning the Implementation of Guidelines for the Implementation of Restorative Justice, which is governed by the Code of Criminal Procedure, which serves as the parent formal law, or the penal code, which serves as the primary substantive law. From the standpoint of the *ius constituendum*, legal policy and policy are required to regulate the application of the concept of restorative justice in law enforcement during the investigation, prosecution, and trial phases (Tambir, 2019). In conformity with the reality of human behavior, the theory of coherence is implemented at the level of *jus constituendum* (legal concepts) in relation to legal truth. The legal truth that must be upheld in this case is an essential element of justice. Each individual or group's concept of justice is so diverse that it appears difficult to apply this notion absolutely to expose the law's truth. Because apparent fairness does not always equate to legal certainty and practicality (Salam, 2019).

According to Soedarto, legal policy is the endeavor of the appropriate bodies to construct the desired regulations in accordance with the current state and government policies, to communicate the contents of these rules to society, and to ultimately accomplish the desired result. According to Abdul Hakim Garuda Nusantara, political law is the application or implementation of legal policies by a particular state government, whose responsibilities include the consistent implementation of existing legal regulations in the process of reform and legislation designed to take a critical stance towards the law with legal dimensions. This is the understanding of legal policy, the constitution, and legal formation from the perspective of *jus constituendum*, affirmation of institutional functions, training of law enforcement officials, and public awareness of legal matters (Putuhena, 2013).

Barda Nawawi Arief thinks that criminal law policy is equivalent with "crime prevention policy with criminal law" because the objective of criminal law regulatory activities and standards is to prevent crime. As part of law enforcement policy, this effort also includes measures to combat crime through criminal law. Criminal justice policy includes policies on substantive criminal justice, formal criminal justice, and prosecution. In addition, Barda Nawawi Arief says that the policy of criminal law is an integral aspect of social policy or social policy, as the prevention of crime through the formulation of laws is an integral part of social welfare efforts. Consequently, it also encompasses social policy in the sense of social welfare and defense policy (Kenedi, 2017).

3.2 Structuring the future of the criminal justice system with restorative justice ideas

The Criminal Code and Code of Criminal Procedure are unable to address a lot of crime issues due to the rapid growth of Indonesian society, which conforms to international trends and the high demand for legal certainty and justice. Subsystem (police, prosecutors, and supreme court) responsible for implementing law enforcement policy. Not only the criminal justice subsystem (police, prosecutors, and the Supreme Court), which must still evaluate the principle of legitimacy in terms of local and situational knowledge, but also the principle of legality. The legality of the policies of the criminal justice subsystem – police, prosecutors, and the Supreme Court – can still be questioned, as in the normative perspective of the Criminal Code and the Code of Criminal Procedure, they are not considered in accordance with these principles. Even Andi Hamzah, who serves as DPR chairperson for the Code of Criminal Procedure drafting committee, is of the opinion that, according to Article 1 of the Dutch Code of Criminal Procedure (Sv), criminal procedures may only be conducted in conformity with the procedure prescribed by law. Therefore, criminal procedure cannot be governed with less formality than the law (Hamzah, n.d.).

Therefore, it is not surprising that the Police, Attorney General's Office, and Supreme Court of the Republic of Indonesia are currently issuing recommendations on the application of restorative justice in the settlement of specific adult offences. Given the tendency toward the emergence of institutional regulations such as the Police Chief's Regulation, the Attorney General's Regulation, or the Supreme Court Regulation, which governs the procedural law of the juvenile justice system, the author believes that the application of the concept of restorative justice must be implemented in its entirety and regulated in specific laws and regulations such as the System Act.

For this reason, it is necessary to develop laws and regulations, in the form of both current laws and recommendations, regarding the application of restorative justice to adult criminal cases by the police, the

prosecution, and the Supreme Court. The Procedural Law (RKUHAP) and Draft Criminal Code (RKUHP) are intended to provide a criminal justice subsystem consisting of the Police, Attorney General's Office, and Supreme Court with a clear legal basis for enforcing the law through the application of restorative justice in adult criminal cases. This is due to the fact that not all of the present guidelines and rules established by the criminal justice subsystem are susceptible to fraud. the application of restorative justice Due to the fact that the Restorative Justice case can only be resolved prior to the prosecutor receiving the Notice of Commencement of Investigation (SPDP), Polri's investigators have only seven (seven) days from the start of the investigation to complete Restorative Justice under the mediation process. Attorney General's Order No. 15 of 2020 stipulates a maximum of five years without drug offenses, petty crimes, and criminal threats. Through the Chief of District Court, the Supreme Court has also devised a method to provide supporting justice. The most recent directive is the Director General of Justice of the Supreme Court of the Republic of Indonesia Decree No. 1691/DJU/SK/PS.00/12/2020 on the Implementation of Policies for Restorative Justice. According to this ruling, the scope of restorative justice is limited to cases involving violations of the law involving minor offenses, children, drugs, and women.

4. Conclusion

In the Indonesian criminal court system, cases involving adult offenders have been resolved using the concept of restorative justice. Through Circular No. SE/8/VII/2018 from the Chief of Police, Prosecutor's Office Order No. 15 of 2020, and Supreme Court rulings. As Director-General of the Investigative (Police) Level Courts of the Supreme Court of the Republic of Indonesia, the existing policies may be translated into laws and regulations in the future, either in the form of legislation such as the SPPA Act or in the form of Bills – The Code of Criminal Procedure (RKUHAP) and the Draft Criminal Code (RKUHP) because the guidelines and rules that are being prepared and issued contain uniformity or similarities in relation to the criteria. RKUHP to give law enforcement personnel with a clear legal basis for implementing restorative justice in the resolution of criminal cases involving offenders, and to provide legal certainty, strength, and clarity.

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