

The Implementation of Restorative Justice Approach through Restorative Justice Handling in Criminal Acts of Fraud & Embedding

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Abstract.

The objectives of this study are as follows: To find out and analyze the application of case settlement through a restorative justice approach in handling fraud and embezzlement crimes. The method used by the researcher is juridical sociological approach. The specifications in this study are descriptive. The sources and types of data in this study are secondary data obtained from library studies. Data analyzed qualitatively. Based on the results of the study that the application of case resolution through a restorative justice approach in handling the crime of fraud and embezzlement is carried out through a mechanism of several stages so that the action is truly an effort to enforce the law by prioritizing the principle of restorative justice. The application of this principle is a breakthrough in law enforcement, so that it can speed up the settlement of cases, the costs incurred are relatively cheaper and indirectly have an impact on improving the performance of investigators.

Keywords: Application; Embezzlement; Fraud; Justice; Restorative.

1. Introduction

The life of the nation and state, security is a determining factor in the administration of a sovereign and authoritative government, which is the main requirement to support the realization of a just, prosperous, prosperous and civilized civil society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. To realize domestic security efforts are made by implementing the functions and roles of the police whose duty is to maintain public security and order, law enforcement, protection, protection and service to the community by upholding human rights.¹

Article 1 (3) of the 1945 Constitution of the Republic of Indonesia is a state of law. Indonesia as a country that upholds the law and human dignity in relation to the law and the government must enforce the law without exception.²

Efforts to eradicate criminal acts are carried out through the criminal justice system. The criminal justice system or the criminal justice system in short can be interpreted as a system in society to tackle crime, so that it is still within the limits

¹H.M Muslich, (2012), *Catur Penegak Hukum Dalam Spirit Religius& Pesan Moral Budaya*, Prodi Syariah FIAI Universitas Islam Indonesia, Yogyakarta, p. 13

²Lailatul Nur Hasanah and Sri Endah Wahyuningisih, *The Application Of Justice Principles Of Rapid Simple Fee In Criminal Justice System In The State Court (Case Study in State court of Pati)*, Jurnal Daulat Hukum Volume 2 Issue 4, December 2019 ISSN: 2614-560X

of community tolerance.³ In general, in the criminal justice process, a person who has committed a crime against him will be investigated by the police if there is a complaint or is caught in the act of committing a crime.⁴

One of the main tasks of the National Police in realizing internal security is stated in Law No. 2 of 2002 concerning the Indonesian National Police, namely law enforcement through the process of investigation and investigation. Based on Article 1 paragraph (2) of the Criminal Procedure Code, what is meant by "investigation" is a series of investigators' efforts according to the method regulated in the law in order to find and collect evidence of a criminal act which with that evidence makes it clear about the crime that occurred and to find out who the suspect is. Meanwhile, investigators according to Article 1 paragraph (10) of the Police Law no. 2 of 2002 is an official of the State Police of the Republic of Indonesia who is given the authority to carry out investigative efforts.⁵The process of investigation and investigation by Polri investigators is the first entry point in law enforcement through the criminal justice system in Indonesia. The process of investigating a criminal case is the main key in determining whether or not a criminal case can proceed to the prosecution and criminal justice processes.

Settlement of conflicts that occur in the community can be done with two options, namely by litigation and non-litigation. Litigation is a way of solving problems through the Court, while non-litigation is a way of solving problems outside the Court.⁶

The restorative justice approach in resolving criminal cases is usually known to child perpetrators.⁷The special criminal justice system for children certainly has a special purpose for the future interests of children and society which contains the principles of restorative justice, the definition of restorative justice itself is not uniform, because there are many variations of models and forms that develop in its application. There are many terms used to describe the concept of restorative justice, such as communitarian justice, positive justice, relational justice, reparative justice, and community justice.⁸

As according to Prof. Satjipto Raharjo about his progressive legal theory, that the law must be able to give happiness to its people.⁹The basic essence of

³Rizky Adiyanzah Wicaksono and Sri Kusriyah, *Implementation Of Restorative Justice Approach In Legal Protection Against Lightweight Crime By The Children*, Jurnal Daulat Hukum Volume 1 Issue 4 December 2018 ISSN: 2614-560X

⁴Hadi Noor Cahyo and Maryanto, *Implementation Of The Settlement Of The Case Restorative Justice In Fights By Children Because The Effect Of Liquor (Case Study In The Polres Kudus)*, Jurnal Daulat Hukum Volume 2 Issue 1, March 2019 ISSN: 2614-560X

⁵Act No. 2 of 2002 concerning the Police of the Republic of Indonesia, Citra Umbara Bandung, 2010, p. 4

⁶Arif Septria Hendra Saputra, Gunarto, Lathifah Hanim, *Penerapan Restoratife Justice Sebagai Alternatif Penyelesaian Tindak Pidana Penganiayaan Di Satreskrim Polsek Lasem*, Jurnal Daulat Hukum Vol. 1. No. 1 March 2018 ISSN: 2614-560X

⁷Marlina, (2006), *"Pengembangan Konsep Diversi& Restorative Justice Dalam Sistem Peradilan Pidana Anak di Indonesia (Suatu Studi di Kota Medan)"*, Disertasi, Sekolah Pascasarjana Universitas Sumatera Utara, Medan.

⁸United Nations (PBB), (2006), *Handbook on Restorative Justice Programmes*, United Nations Publication, New York, p. 6

⁹Satjipto Rahardjo, (2010), *Penegakan Hukum Progresif*, Kompas Media Nusantara, Jakarta, p. 37

progressive law is that law is for humans, not humans for law. The law was created to achieve human welfare and happiness. The birth of Satjipto Raharjo's concept of progressive law began with his anxiety about the rule of law in Indonesia, which has so far failed to realize a good legal life. According to B. Arief Sidharta, progressive legal characters stick to their conscience and reject material slaves.¹⁰ The reality so far is that the law is understood only as a formulation of the law, then it is implemented just by applying a syllogism. Law enforcement officers are forced to even exist for the sake of being safe, intentionally placing themselves as mouthpieces of the law without any room and willingness to act progressively.¹¹

The objectives of this study are as follows: To find out and analyze the application of case settlement through a restorative justice approach in handling fraud and embezzlement crimes.

2. Research Methods

The method used by the researcher is juridical sociological approach. The specifications in this study are descriptive. The sources and types of data in this study are secondary data obtained from library studies and data analyzed qualitatively.

3. Results and Discussion

3.1. Implementation of Case Resolution through a Restorative Justice Approach in Handling Fraud and Embezzlement

The concept of a restorative approach is a development of human thought based on the traditions of the ancient Arabs, Greeks, and Romans where the principles are in accordance with the principles in Indonesian culture as well as in solving problems including solving the problem of criminal acts.¹²

The main basis of the settlement of criminal acts through restorative justice is a settlement that is not just a tool to encourage both parties to mediate a penal in terms of finding an agreement, but restorative justice aims to penetrate the hearts and minds of both parties involved in the conflict in order to understand the meaning and purpose of carrying out a remedy and the sanctions applied are preventive sanctions.

The instrument of criminal procedure law and the criminal system in Indonesia formally regulates the procedure for the settlement of criminal cases. However, it is known that in practice it is often used as a repressive tool only by law enforcement officers. While the fundamental problem faced by the community is full social control through efforts to protect life and property by every member of the community and to realize the desired social order and is described through order, propriety and harmony. This can only be realized if the government can

¹⁰Satjipto Rahardjo, (2012), *(dalam Romli Atmasasmita, Teori Hukum Integratif)*, Genta Publishing, Yogyakarta, p. 86

¹¹Zainudin Ali, (2005), *Sosiologi Hukum*, Sinar Grafika, Jakarta, p.11.

¹²RufinusHutahuruk, (2013), *Penanggulangan Kejahatan Korporasi Melalui Pendekatan Restoratif Suatu Terobosan Hukum*, Sinar Grafika, Jakarta, p.103

implement the law in order to create a sense of justice in society.¹³ Justice as an object that is desired, demanded and fought for by anyone.¹⁴

In realizing justice, it is very important to know the nature of someone who is a victim in a criminal case. According to Nils Christie, there are 6 (six) attributes to determine the identity or identity of a victim of a particular crime, including: 1) "The victims are weak in relation to the offender; 2) The victim is, if not acting virtuously, then at least going about their legitimate, ordinary everyday business; 3) The victim is blameless for what happened; 4) The victim is unrelated to and does not know the stranger who has committed the offense; 5) The offender is unambiguously big and bad; 6) The victim has the right combination of power, influence or sympathy to successfully elicit victim status without threatening (and thus risking opposition from) strong countervailing vested interest".¹⁵

The restorative justice approach in handling criminal acts is no longer limited to crimes with child perpetrators and only minor crimes. Since the issuance of the Regulation of the State Police of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, all criminal acts that meet formal and material requirements can be resolved at the investigation or investigation level without having to be delegated to the Prosecutor's Office. At Polrestabes Semarang, restorative justice efforts are often applied with a meeting process between the Reporting Party and the Reported Party and involving related parties such as families from both parties, village officials/ local environmental leaders, as well as local figures. In this case, the police act as a mediator and/or facilitator. The meeting of the litigants can be held at the local Police office or can be held at a place that has been agreed upon by the parties. After the meeting succeeded in reaching an agreement, then the agreement was stated in a written statement.

2) that the result of the decision (output) is more likely to be retaliatory or punitive rather than giving a "win-win solution" (beneficial to both parties) in accordance with the will of the parties; and 3) the perceived justice is retributive (emphasizing justice on retaliation) and restitutive (justice that emphasizes on the basis of compensation), and does not think of ways to provide restorative justice that can be felt thoroughly by all interested parties (stakeholders)".¹⁶

When viewed more deeply, law enforcement activities based on restorative justice against criminal acts of fraud and embezzlement which are pure offenses by the Indonesian National Police are not fully carried out under the Criminal Procedure Code. This is because in criminal law in Indonesia there is no known settlement outside the court, especially for pure offenses, and if there is a peace agreement, it can only be used as a basis for judges' considerations to decide cases. The reason for the termination of the investigation is regulated in Article 109

¹³Scheb JD, John M., & Scheb II, John M., (2008), *Criminal Law and Procedure*, 6th Edition, Belmont: Thomson Learning, p. 3.

¹⁴Wasitaatmadja, Fokky Fuad., (2020), *Filsafat Hukum Rasionalisme & Spritualisme*, Prenada Media Group, Jakarta, p. 31.

¹⁵Dignan, James, (2005), *Understanding Victims and Restorative Justice*, Berkshire: Open University Press – McGraw-Hill Education, p. 17.

¹⁶Karim, 2016, "Tanggung Jawab Pelaku Pidana Pelanggaran Dalam Perspektif Restorative Justice", *Jurnal Yuridika*, Vol. 31, (3), p. 410-411.

paragraph (2) of the Criminal Procedure Code, namely because there is not enough evidence, or the event is not a criminal event or the investigation is terminated for the sake of law.¹⁷

Comparative studies are needed in legal reform, because comparative studies of law to understand how the development of law in other countries as well as legal reforms that we carry out are reasonable to adjust (adapt) to the development of other countries in general.

The implementation of the concept of restorative justice through Diversion in New Zealand can be an illustration of the success of implementing the functions of law enforcement officers in dealing with the problems of children involved in criminal cases. In New Zealand, the history of diversion began with the success of family group conferencing, namely negotiations between the victim and the perpetrator in the settlement of criminal acts in the community, which finally reformed the juvenile justice law in 1989. The application of special juvenile justice has provided space for widespread diversion. Changes in the general court towards a court that prioritizes child protection and diversion.

In the perspective of Islamic law, the criminal acts of fraud and embezzlement are included in *Jara'im al-ta'zir* (crimes that are judged) so that the sanctions given to these types of crimes are included in the *'uqubah al-ta'zir* (*Ta'zir* crime). The law of *Ta'zir* must be applied in accordance with the demands for benefit, in this case there is a rule that says "this *Ta'zir* is very dependent on the demands of the benefit". *Jarimah Ta'zir* in the Encyclopedia of Islamic Law is divided into two types:¹⁸

- *Jarimah Ta'zir* determined by syarak such as usury, embezzling other people's deposits, cursing others, bribes/bribes, and other violations that are not threatened with *Hudud*, *Qisas* and diat punishments.
- *Jarimah Ta'zir* whose punishment is determined by the authorities on conditions in accordance with the interests of the community and not contrary to Islamic law.

In www.lawjenayah.com, it is stated that the errors included in the *Ta'zir* are:

- *Hudud* or *Qisas* errors which are not sufficient evidence to be subject to *Hudud* or *Qisas* punishment.
- Seclusion errors.
- Acts that disturb the peace of society such as swearing, cheating, gambling, etc.¹⁹

Restorative justice approach can also be seen from Islamic Law Perspective the implementation of restorative justice is seen thickly in the application of *Qisas* and diyat and *Ta'zir*. In relation to criminal acts of fraud and embezzlement which are included in the *Ta'zir* crime, forgiveness can be given by the victim to the perpetrator, in addition there are the authority of the judge or authority to determine the amount, type and duration of the crime, as well as to decide on the termination of the investigation or the pardon of the perpetrator.

¹⁷Harun M. Husein, (1991), *Penyidikan & Penuntutan Dalam Proses Pidana*, Rineka Cipta, Jakarta. p. 311.

¹⁸In the Encyclopedia of Islamic Law, Op-cit, p. 414.

¹⁹Sri Endah Wahyuningsih, (2013), *Perbandingan Hukum Pidana Dari Perspektif Religious Law System*, Cetakan Kedua, Unissula Press, Semarang, 75

The division of criminal acts (*jarimah*) according to Islamic law in various literatures is divided into three types that is:²⁰

- *jara'im al-Hudud*(crimes that are punishable by *hudud*),
- *jara'im al-qisas wa al-diyat*(crimes that are threatened with *Qisas* and diat), and
- *jara'im al-ta'zir*(predictable crimes).

While the sanctions for the three types of crimes are called '*uqubah* (punishments), each of which is called:

- '*uqubah al-had* (criminal *had*).
- '*uqubah al-qisas wa al-diyat* (*Qisas* and diat crimes), and
- '*uqubah al-ta'zir* (criminal *Ta'zir*).

Of the three crimes above, *Hudud* and *Qisas*-diat crimes are highly oriented to the interests of the community, the reason being that the actions of the perpetrators of these crimes can damage certain systems which are the basis of people's lives and existence.²¹

Through the imposition of the right punishment, it is hoped that the judge's decision, in addition to trying the perpetrators, is also an effort to deter the perpetrators and is also an effort to prevent other parties from participating in criminal acts.²²

Efforts to resolve problems outside the court carried out by the perpetrator of a crime (his family) and the victim of a crime (his family) are later expected to be the basis for consideration in the process of examining the perpetrators of criminal acts in court in imposing criminal sanctions by the judge / panel of judges. Justice is a consideration in the criminal law implementation system and is included in the new Criminal Law Legislation (KUHP), especially for complaint criminal offenses (Klacht delict) so that it focuses on the conditions for creating justice and balancing legal treatment for perpetrators of criminal acts and victims of criminal acts can be achieved properly, without having to always use criminal sanctions (imprisonment) in the final settlement. Due to the deterrent effect as the ultimate goal of sentencing (imprisonment) the perpetrators of criminal acts are no longer achieving their targets as expected. There needs to be a breakthrough in the implementation of the criminal system in Indonesia, not only through imprisonment but also through the application of restorative justice.²³

A criminal case of fraud and embezzlement that uses the concept of restorative justice, the role and involvement of community members is very useful and important to help correct errors and irregularities that occur around the community concerned in resolving the case. Settlement with a restorative justice system is expected so that all parties who feel aggrieved will be recovered and there will be appreciation and respect for victims of a crime. Respect is given to the victim by requiring the perpetrator to recover from the consequences of the crime

²⁰Jimly Asshidiqie, (1995), *Pembaharuan Hukum Pidana Indonesia*, Angkasa, Bandung, p.136

²¹ Sri Endah Wahyuningsih, Op.cit

²²Achmad Sulchan, (2018), *Kemahiran Litigasi Hukum Pidana*, Unissula press, Semarang, p.18

²³Annis Nurwianti, Gunarto, Sri Endah Wahyuningsih, 2017, *Implementasi Restoratif / Restorative Justice Dalam Penyelesaian Tindak Pidana Kecelakaan Lalu Lintas Yang Dilakukan Oleh Anak Di Polres Rembang* Jurnal Hukum Khaira Ummah Vol. 12. No. 4

he has committed. Recovery carried out by the perpetrator in the form of compensation, social work.²⁴

The application of case resolution through a restorative justice approach in handling the crime of fraud and embezzlement is carried out through a mechanism of several stages so that the action is truly an effort to enforce the law by prioritizing the principle of restorative justice. The application of this principle is a breakthrough in law enforcement, so that it can speed up the settlement of cases, the costs incurred are relatively cheaper and indirectly have an impact on improving the performance of investigators.

4. Conclusion

The application of case resolution through a restorative justice approach in handling the crime of fraud and embezzlement is carried out through a mechanism of several stages so that the action is truly an effort to enforce the law by prioritizing the principle of restorative justice. The application of this principle is a breakthrough in law enforcement, so that it can speed up the settlement of cases, the costs incurred are relatively cheaper and indirectly have an impact on improving the performance of investigators.

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²⁴Ibid, p. 47

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