

Efforts to Resolve Criminal Acts of Theft Through a Restorative Justice Approach in the Concept of Legal Certainty

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Abstract. *The case of theft in Indonesia is increasing. The criminal justice system seems to no longer create a deterrent effect for perpetrators of criminal acts, in the conventional criminal justice process it focuses more on the perpetrators only, not considering the impact on the victim. Therefore, resolving the crime of theft with restorative justice can be the best solution in resolving private criminal cases between people (natuurlijkepersonen) or legal entities (recht personen) namely by prioritizing the core problem of a crime. The purpose of this study is to analyze*

To find out and analyze the construction of the settlement of the crime of theft through a restorative justice approach 2) To find out and analyze efforts to resolve the crime of theft through a restorative justice approach in the concept of legal certainty. This type of research is included in the scope of normative legal research. The approach method used in this study is a qualitative approach. The type of data uses primary data and secondary data obtained through literature studies. The data analysis method used in this study is carried out qualitatively. The results of the study concluded that In the Criminal Code (KUHP), the concept of restorative justice is not specifically regulated. The Criminal Code tends to adopt a conventional approach to law enforcement that focuses more on punishment or sanctions against perpetrators of crimes. However, the Regulation of the Republic of Indonesia Police Number 8 of 2021 concerning Criminal Investigations Conducted by the Indonesian National Police (Police Regulation No. 8 of 2021) provides direction regarding criminal investigations by the police. The legal consequences of using Restorative Justice in resolving criminal cases are that the accused will not be automatically free without facing the consequences of the applicable

law. In this context, justice and benefit are the main objectives of the restorative approach, in accordance with the principle of legal benefits. This approach aims to reduce the negative impact of criminal acts, increase the accountability of perpetrators, and restore disturbed relationships between perpetrators, victims, and society.

Keywords: Criminal; Justice; Restorative.

1. Introduction

Indonesia is a country of law where every citizen has an obligation to obey and comply with the laws in force in this country. However, there are still many people who lack legal awareness, which causes an increase in crime cases that often occur in Indonesia. The increase in crime cases in Indonesia is not without reason. Unstable economic conditions tend to trigger various social challenges which ultimately give rise to various types of crimes, especially theft. The factors of the occurrence of theft crimes are quite complex, causing the increasing crime in Indonesia. In this context, some levels of society feel pressured by difficult economic conditions, which can lead to criminal behavior as an effort to meet the needs of life.

Law and society are closely related, as the old adage goes, where there is society there is law. In society, there are different interests among its members, so there needs to be a set of rules that can accommodate the interests of each member of society. If there are no rules of order, then conflict will occur and peace will be difficult to achieve. So that peace in society can be maintained, humans themselves, namely interested groups, create guidelines for life (guidelines that regulate human behavior), and society really needs these guidelines for life.

Laws are made to be implemented, because laws cannot be said to be laws if they are not implemented, so laws can be said to be consistent with the legal understanding if they are manifested in the form of actions that must be implemented. Implementation of Actions that

mandatory to be carried out in law is called law enforcement. In this law enforcement, the role of law enforcement is needed, which is none other than the humans who are regulated.

The large number of cases of minor theft is very inappropriate to be charged using Article 362 of the Criminal Code which carries a maximum criminal penalty of 5 (five) years. In this case, the researcher is interested in examining law enforcement against theft with restorative justice. Restorative justice emphasizes the process of direct criminal responsibility from the perpetrator to the victim and the community, if the perpetrator and victim and the community whose rights have been violated feel that justice has been achieved through joint deliberation, then criminalization can be avoided.

2. Research Methods

a. Approach Method

The approach method used in research on legal protection for women with intellectual disabilities as victims of rape is the normative legal research method. Where the normative legal approach is an approach carried out by examining theories, concepts, and legal principles along with their regulations in the Law that are relevant to this research.

b. Specification Study

In writing this thesis law, the author uses a qualitative descriptive research type. Descriptive research is to provide data that is as detailed and precise as possible about humans, conditions or other symptoms, which emphasizes the hypothesis in order to strengthen the scientific arguments obtained from the research results. While writing in a qualitative type is research that has the characteristic that the data is stated in the actual state and as it should be and does not change into the form of numbers, figures or symbols. The reason the author uses a qualitative descriptive research type is to provide a picture and explanation of everything real that is related to the form of legal protection and the position of victims of rape in the justice system in Indonesia.

c. Data source

This research uses primary and secondary data types which are explained as follows:

a. Primary Data

Primary data sources were obtained through field studies, namely by conducting interviews with relevant sources using a list of prepared questions.

b. Secondary Data

Secondary data is data obtained through literature studies.

d. Data Collection Techniques

a. Library Research

The author also conducted a literature study, namely looking for secondary data sources while also noting, reading, studying and also intervening in literature related to this research.

b. Data analysis methods

The data obtained is then arranged systematically and analyzed.

3. Results And Discussion

3.1. Legal Consequences of Settlement of Criminal Acts of Theft Through a Restorative Justice Approach in the Concept of Legal Certainty

Restorative Justice is used as a basis for regulating the process of resolving criminal cases. This principle emphasizes mutual agreement as the foundation for resolving criminal cases using a restorative justice approach. In its

implementation, the Indonesian National Police in handling criminal cases is guided by the Circular of the Chief of Police No. SE/8/VII/2021. This regulation regulates the principle of restorative justice used in resolving criminal cases at the investigation level.

In the Circular Letter of the Chief of Police Number: SE/8/VII/2018, the Guidelines for handling case resolution using a restorative justice approach are regulated, including the following:

- a. The material requirements are met, namely:
 - 1) Does not cause public unrest and there is no public rejection;
 - 2) Does not result in social conflict;
 - 3) It has no potential to divide the nation
 - 4) Not radical and separatist
 - 5) There is a statement from all parties involved that they have no objections and waive their right to sue before the law;
 - 6) Not a repeat offender based on a court decision.

To the perpetrator:The perpetrator's crime is relatively not serious, namely a mistake (schuld) or mensrea in the form of intent (dolus or opzet), especially intent

as the intent or purpose (opzet als oogmerk); and the perpetrator is not a recidivist. In criminal acts in the process: Investigation; and Investigation before the SPDP is sent to the Public Prosecutor.

- b. Fulfilled formal requirements, namely:
 - 1) Letter of request for peace from both parties (complainant and reported) except for drug crimes
 - 2) The Peace Declaration Letter (deed of settlement) and settlement of the dispute between the parties to the case (the reporter and/or the reporter's family, the reported party and/or the reported party's family, and representatives of community leaders) are acknowledged by the investigator;
 - 3) Minutes of additional examination of the parties to the case after the case has been settled through restorative justice
 - 4) Recommendation of a special case title that approves restorative justice settlement;
 - 5) The perpetrator does not object to responsibility, compensation, or does it voluntarily;
 - 6) All criminal acts can be subject to restorative justice for general crimes that do not result in human casualties.

3.2. Legal Consequences of Settlement of Criminal Acts of Theft Through a Restorative Justice Approach in the Concept of Legal Certainty

Legal certainty for the crime of theft is written in Article 362 of the Criminal Code. In this article, it clearly and absolutely creates legal certainty that the crime of theft will be punished with a maximum of 5 years in prison and a fine. This means that legal certainty for the crime of theft has been realized. So in this case it can be interpreted that if a crime of theft occurs, the legal process will be carried out formally without having to file a complaint from the parties involved. Although the legal process is automatically carried out, often the parties concerned feel dissatisfied with the final result of the legal process because in the process only focus on punishment for the perpetrator. In this case, the victim often feels more loss.

In addition to conventional legal processes, the settlement of theft crimes can be resolved using the concept of a restorative justice approach. The settlement of crimes using the concept of a restorative approach emphasizes recovery and reconciliation between the perpetrator, victim, and related parties. Through the active participation of all parties involved, restorative justice aims to create more sustainable justice, support victim recovery, and encourage meaningful accountability from the perpetrator.

Although the restorative justice approach is carried out to resolve criminal cases, it does not affect the authority of law enforcement to continue the case to the criminal realm. This is in accordance with the theory of legal certainty. The theory of legal certainty is a concept in legal science that emphasizes the importance of clarity, order, and certainty in the legal system. Legal certainty is a principle that guarantees that the law must be implemented properly and has a legal aspect that can guarantee the certainty that the law functions as a regulation that must be obeyed. However, the possibility of eliminating criminal penalties for victims can occur if there is an agreement between the parties involved. This can happen because the main goal of restorative justice is benefit and justice.

4. Conclusion

In the Criminal Code, the concept of restorative justice is not regulated, the Criminal Code refers more to the conventional approach to law enforcement which emphasizes punishment or criminal sanctions on the perpetrators. However, the Regulation of the Republic of Indonesia Police Number 8 of 2021 concerning the Investigation of Criminal Acts Carried out by the National Police of the Republic of Indonesia ("Perpol No. 8 of 2021") provides direction regarding the investigation of criminal acts by the police. The principles and procedures of the restorative concept are in the Perpol and can be applied in accordance with the authority of local police policy. The restorative justice procedure for resolving the crime of theft consists of a police report, police investigation, restorative justice approach, mediation or restorative dialogue, agreement or recovery, and utilization and follow-up.

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