

Settlement of Criminal Acts of Abuse Through Restorative Justice

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Abstract. *The purpose of resolving criminal acts of abuse through restorative justice. The research method used is empirical juridical by examining the law as a pattern of behavior shown in the application of legal regulations. The resolution of criminal acts of abuse through Restorative Justice with a successful peace process, then the case is resolved by stopping the prosecution based on restorative justice. Both parties reached the conclusion that the peace process had been proposed and that the suspects and victims agreed to unconditional peace, and agreed to end the peace process unconditionally.*

Keywords: Abuse; Justice; Restorative; Settlement.

1. Introduction

The opening of the 1945 Constitution of the Republic of Indonesia states that the ideals of the Indonesian nation, which are also national goals, are to protect all Indonesian people and all of Indonesia's territory, advance general welfare, improve the life of the nation and participate in implementing world order based on independence, eternal peace and social justice..

Law enforcement as a means to achieve legal goals should mobilize all energy so that the law is able to work to realize moral values in the law.¹Law enforcement efforts are essentially efforts to combat criminal acts in society. Combating criminal acts can be done either through penal (criminal law) or non-penal (outside criminal law) channels, both are a pair that cannot be separated from each other, it can even be said that both complement each other in efforts to combat criminal acts in society.²

¹Satjipto Raharjo. (2009). Law Enforcement: A Sociological Review. Semarang: Genta Publishing, p. 8

²Muladi. (1995). Selected Chapters on the Criminal Justice System. Semarang: Diponegoro University Publishing Agency, p. 18

Law enforcement as a means to achieve legal objectives should mobilize all energy so that the law is able to work to realize moral values in law. Law enforcement efforts are essentially efforts to overcome criminal acts in society. Overcoming criminal acts can be done either through penal (criminal law) or non-penal (outside criminal law) channels, both are a pair that cannot be separated from each other, it can even be said that both complement each other in efforts to overcome criminal acts in society.

Handling of criminal acts through non-penal means (outside of Criminal Law) can mean an atmosphere outside the criminal justice system and without using criminal sanctions. Handling of criminal acts through non-penal means can be done based on a restorative justice approach.³So the restorative justice approach is assumed to be the most recent shift from various models and mechanisms working in the criminal justice system in handling criminal cases.⁴

The position of the Attorney General's Office of the Republic of Indonesia as one of the subsystems useful for enforcing the law, is also inseparable from the basic principles that must be met by the Attorney in carrying out his profession. The Attorney as one of the parts that carries out the judicial function, must stand alone without any intervention from other parties. The authority it has as the implementer of the dominus litis principle, namely the Attorney General's Office as the controller of the case process, as an institution the Attorney General's Office can determine whether a case can be submitted to the Court or not based on valid evidence according to the Criminal Procedure Law.⁵Meanwhile, the legal principle gives authority to the public prosecutor to prosecute or not to prosecute with or without conditions a person or corporation that has committed a crime in the public interest.⁶

The law enforcement process through a restorative justice approach in resolving criminal cases refers to the Republic of Indonesia Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This provision as a form of prosecution discretion is expected to be used by the Prosecutor to see and balance the applicable regulations with the principle of benefit to be achieved. As a form of follow-up to the involvement of community elements, in every effort to reconcile the settlement of cases by involving victims, suspects, community leaders or representatives, and other parties in the case

³Gomgom Tp Siregar, Rudolf Silaban. "The Relevance of Criminal Close to the Modern Criminal Justice System". Jurnal Daulat Hukum Vol. 5 No. 4, (2022), Url :<http://jurnal.unissula.ac.id/index.php/RH/article/view/27612> Accessed on November 17, 2024.

⁴Sarwadi, Bambang Tri Bawono. "Restorative Justice Approach in Diversion System for Settlement of Criminal Cases for Children in Indonesia." Journal of Legal Sovereignty Vol. 3 No.4 (2020), Url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/13145> Accessed on November 17, 2024.

⁵Hamzah. (2015). Introduction to Indonesian Criminal Procedure Law. Jakarta: Ghalia Indonesia, p. 113

⁶Andi Hamzah. (2010). Indonesian Criminal Procedure Law. Jakarta: Sinar Grafika, p. 12

resolution process that is oriented towards the realization of substantive justice. The crime of assault is one of the crimes that can be resolved through restorative justice by the parties, with not all crimes having to go through the trial process. PThis research aims to find out resolution of criminal acts of abuse through restorative justice.

2. Research Methods

The writing method used empirical juridical by examining the law as a pattern of behavior shown in the application of legal regulations. The empirical juridical approach is carried out by collecting primary data information obtained directly in the field which is aimed at the application of the law with the use of family witnesses.⁷This approach aims to find out and describe about resolution of criminal acts of abuse through restorative justice.

Specification Analytical descriptive research takes a problem or focuses on a problem when the research is conducted and the results are processed and analyzed. Data sources consist of primary and secondary data. Legal material sources consist of primary, secondary, and tertiary legal materials.

The data collection method consists of three stages. First, researchers collect data through observation and questions; second, they conduct library research by reading, reviewing, and processing literature, laws and regulations, articles, or writings related to the research topic.⁸

Data analysis method is done qualitatively and presented in the form of words or sentences. Qualitative data is analyzed using a deductive approach. One way to make specific conclusions about general things The author uses an interactive analysis model. So, the qualitative data analysis method collects and selects data from literature studies.⁹

3. Results and Discussion

The Indonesian state is based on law (*rechtsstaat*) and not based on mere power (*machtsstaat*), so law enforcement efforts adhere to the principles of the rule of law, namely: the supremacy of law, the principle of equality before the law and the guarantee of human rights by law. In the context of the teachings of the welfare state, the government is obliged to synergize efforts to enforce regulations based on the values of justice, not violating individual rights. Meanwhile, the construction of the criminal law system that has been developed recently in Indonesia still aims to uncover crimes that occur, find the perpetrators

⁷Soerjono Soekanto. (2012). Normative Legal Research. Jakarta: PT Raja Grafindo, p. 14

⁸Abdulkadir Muhammad. (2004). Law and Legal Research, First Edition, Bandung: Citra Aditya Bakti, p. 50

⁹Ibid,

and punish the perpetrators of crimes with criminal penalties, especially corporal punishment, both imprisonment and imprisonment.¹⁰

When you first hear the word beating, it is definitely identical to a criminal act of abuse, beatings / abuse in Indonesia are regulated in Article 351 of the Criminal Code to 356 of the Criminal Code with a threat ranging from 2 years 8 months to 8 years + 1/3 if the act falls into the category of planned serious abuse against a person. While in general, criminal acts against the body in the Criminal Code (KUHP) are called "assault". The establishment of regulations on crimes against the human body is intended to protect the legal interests of the body from acts in the form of attacks on the body or parts of the body that cause pain or injury, even because such injuries to the body can cause death.

Poerdaminto believes that maltreatment is arbitrary treatment in order to torture or oppress other people. This abuse is clearly carrying out an act with the aim of causing pain or injury to another person, the element of deliberate action here must include the aim of causing pain or injury to another person, the element of deliberate use here must include the aim of causing pain or injury to another person. In this case, there must be a touch on another person's body which automatically results in pain or injury to another person. For example hitting, kicking, stabbing, scratching, and so on.¹¹

The settlement of criminal acts of abuse so far, in law enforcement, is still centered on the fact that all cases of criminal acts of abuse must still be included in the realm of criminalization through the litigation process, even though these cases are criminal acts with relatively small losses or minor crimes. This is valid in the theory of positivism, provided that the act is clearly accommodated in the law (the principle of legality is fulfilled). However, not infrequently this process actually injures the sense of justice in society. The existence of law should be present in order to resolve conflicts and through this legal approach, conflicts that cannot be resolved through peace can be prosecuted through the courts. Meanwhile, legal reform can be realized if there is a system that "allows" that the rules can change. Rules are seen not as an established and independent system, but have other elements outside the rules that can influence the rules themselves.¹²

Legal policy aims to make law a rule that provides protection for every citizen's rights. Along with developments, new ideas are needed regarding the direction of legal policy in the future. As a developing country, it should require new ideas in creating legal policies that are in line with development progress, one of the

¹⁰ Muhammad Ridwan Lubis, The Settlement of Child Cases in Conflict with the Law in the Concept of Restorative Justice, *Journal of Legal Sovereignty Volume 5 Issue 4, December 2022*, Ur: <https://jurnal.unissula.ac.id/index.php/RH/article/view/24357> Accessed on 24 November 2024

¹¹WJS Poerwadarminta. (2005). General Dictionary of the Indonesian Language, Third Edition, Jakarta: Balai Pustaka, p. 21

¹²Mou Rifqi. (2008). Reconciliation of Political Figures as an Effort to Resolve Conflict in the Perspective of Legal Sociology, tp: Yogyakarta, p.23

concepts offered in resolving criminal acts of abuse with the application of restorative justice.¹³

Responding to problems with the restorative justice approach provide a different perspective when handling criminal cases. Through the restorative justice approach, victims and perpetrators, the perpetrator's family, also victims of criminal acts and other related parties so that they can help find a balanced way out using a focus on healing. The restorative justice approach process is carried out with guidelines, so that the process of resolving criminal acts is moved outside the criminal justice process and resolved through a deliberation process. Restorative justice, which encourages community participation in justice, can provide a way for perpetrators of crimes to resolve conflicts between perpetrators and victims that have been ignored in the traditional retributive criminal justice system.¹⁴

The case as described above can be attempted to be stopped based on restorative justice, based on the order of the Head of the Magetan District Attorney's Office Number Print-101/M.5.32/Eoh.2/07/2023 dated July 10, 2023 to resolve the criminal case Number PDM-46/MGTAN/-07/2023 dated July 6, 2023 with the name of the suspect AB Bin P with the crime of assault which is suspected of violating Article 351 Paragraph (1) of the Criminal Code, the implementation of the peace was carried out on Monday, July 10, 2023 at the Magetan District Attorney's Office, successfully on the grounds that the following requirements were met:

- (1) The suspect committed a crime for the first time, which is in accordance with the provisions of Article 5 paragraph (1) letter a of the Prosecutor's Regulation Number 15 of 2020.
- (2) The suspect is suspected of violating Article 351 paragraph (1) of the Criminal Code or Article 335 paragraph (1) of the Criminal Code with a prison sentence of less than 5 years.
- (3) The suspect has been responsible to the victim by replacing medical expenses worth Rp. 1,500,000,-
- (4) There is an agreement to make peace between the perpetrator and the victim.
- (5) The suspect regretted his actions and promised not to repeat them.
- (6) Community leaders support the peace.

¹³ Ira Alia Maerani, Siti Rodhiyah Dwi Istinah. "The Formulation of the Idea of Forgiveness in Indonesian Criminal Law Policy (A Study Based on Restorative Justice & Pancasila Values)." *Journal of Legal Sovereignty* Vol.5 No. 4 (2022), Url :<http://jurnal.unissula.ac.id/index.php/RH/article/view/24290/7688>, Accessed on 28 November 2024.

¹⁴Yulia, Rena. (2010). *Victimology of Legal Protection for Crime Victims*. Yogyakarta: Graha Ilmu, p. 191

The peace process is successful, then the case is stopped and a letter of determination of the settlement of the case is made based on restorative justice in the case of the above criminal act of abuse, the case is resolved by stopping the prosecution based on restorative justice and by agreeing to the peace negotiations proposed by the public prosecutor. Both parties reached the conclusion that the peace process had been proposed and that the suspects and victims agreed to unconditional peace, and agreed to end the peace process unconditionally. This is in accordance with the authority of the Public Prosecutor (JPU) who stops the prosecution of the defendant in the criminal case of abuse if the parties agree to reach peace.

According to Dedi Prastyo, Restorative Justice is an approach in the criminal justice system that is oriented towards comprehensive recovery involving all related parties, including perpetrators, victims, and the community. This is a new approach, so that restorative justice is still a debate, even at the theoretical level. Although in reality it has been widely implemented and has influenced legal policies and practices in various countries.¹⁵

If the criminal case of abuse as regulated in Article 351 (1) of the Criminal Code (KUHP) received by the Magetan District Attorney's Office on May 23, 2023, is prosecuted in a trial, which ultimately results in the court's decision only being retaliatory against the perpetrator by imposing a prison sentence without recovering the losses experienced by the victim, which is also considered very disproportionate to the perpetrator's actions. Even though his mistake can be punished for his actions. The nature of the relationship between illegality and punishment becomes clear when we consider illegality as the basis for punishment. Because, a criminal act is to punish a crime, and that is the essence of criminal law.¹⁶

That in order to be able to charge someone with committing a crime, it is not enough that a crime has been committed; there must also be a "fault" or "inner attitude" that is reprehensible but should not be done, The principle of negligence is the basic principle of criminal law. Guilt or negligence refers to inappropriate behavior that is objectively the responsibility of the perpetrator. While negligence is the basis for justifying punishment for perpetrators of crimes.¹⁷In conditions like this smaterial unlawful nature, unlawful acts do not always conflict with statutory regulations. An act that is contrary to the law can be excluded as an act that is not against the law. Unlawful is either contrary to the law or can be blamed on him or

¹⁵Dedi Prastyo. (2023). Restorative Justice: A Transformation Strategy Towards Precision Police. Depok: Raja Grafindo Perkasa, p. 44

¹⁶Eko Adi Susanto, Gunarto, Criminal Responsibility for Using Fake Documents Reviewed from Article 263 Paragraph (2) of the Criminal Code, Jurnal Daulat Hukum *Vol 1, No 1 (2018)*. Url :<https://jurnal.unissula.ac.id/index.php/RH/article/view/2558>, Accessed on 28 November 2024.

¹⁷ D. Schaffmeister et al. (1995). Criminal Law. Yogyakarta: Liberty Publisher, p. 83

not. In criminal law, this kind of liability is called "absolute liability" or "strict liability".¹⁸

Thus it can be said that every act of a person that violates, fails to comply with, the commands and prohibitions in criminal law can be set aside by implementing a restorative justice approach if the following conditions are met: a process of resolving cases outside of formal court that has a new way of thinking and paradigm in viewing a crime committed without merely imposing a criminal penalty.¹⁹ The handling can be done by considering the wider impact on the victim, the perpetrator, and the community. The concept of restorative justice begins with the understanding that crime is an act against a person or community and is related to the violation/damage of a legal norm in force. The violation committed by the act is not only an act of destroying the legal order that has been made by the state, but also destroying the social order, because the crime concerns the interests of the victim, the environment, the wider community and the state.²⁰

4. Conclusion

Settlement of criminal acts of abuse through Restorative Justice with a successful peace process, then the case is resolved by stopping the prosecution based on restorative justice. Both parties reach the conclusion that the peace process has been proposed and that the suspects and victims agree to unconditional peace, and agree to end the peace process unconditionally. If the case of criminal acts of abuse as regulated in Article 351 (1) of the Criminal Code (KUHP). If the prosecution is carried out in a trial which ultimately the court's decision is only retaliatory against the perpetrator by imposing a prison sentence without restoring the losses experienced by the victim, which prison sentence imposed is also considered very disproportionate to the perpetrator's actions. The settlement of criminal acts of abuse so far, in law enforcement, is still centered on the fact that all cases of criminal acts of abuse must still be included in the realm of criminalization through the litigation process, even though these cases are criminal acts with relatively small losses or minor crimes.

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¹⁸ Buchari said. (2009). Material Criminal Law. Bandung: FH UNPAS, p. 67

¹⁹ Jean Calvin Simanjuntak. (2023). Restorative Justice Metamorphosis of Indonesian Local Wisdom. Depok: Rajawali Pres, p. 16

²⁰ Bambang Waluyo. (2016). Law Enforcement in Indonesia. Jakarta: Sinar Grafika, p. 109

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