Construction of Restorative Justice Law Enforcement by The Prosecutor: Development Law Theory Perspective

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Abstract

The development and dynamics of society is very complex. Complexity also includes law enforcement in Indonesia. There are so many problems: first, prison overcapacity; second, handling small crimes and legal action against children and narcotics problems are a series of problems that exist in Indonesia. Restorative Justice is here to show changes in all these legal problems. This writing is a normative juridical writing with a conceptual approach (Conceptual Approach) and a statutory approach (Statute Approach). This writing is presented in a qualitative descriptive. The results of this paper discuss specifically about the urgency of Restorative Justice law enforcement in the Indonesian criminal justice legal system and the form of social engineering construction of restorative justice law enforcement by the prosecutor's office. The form of social engineering initiated by the prosecutor's office as an active actor in law enforcement is expected to form a more humane prosecutor's institution and improve its image as a law enforcement agency with integrity.
A. Introduction

The pandemic in Indonesia has begun to subside. But problems regarding law enforcement have not subsided and are showing signs of improvement. There are many problems, such as the condition of detention houses and prisons that experience excess capacity, law enforcement for children who have not prioritized a sense of justice, and there are still many facts that show the law does not provide proportional justice to justice seekers in society. These arguments are certainly supported by facts. The Institute for Criminal Justice Reform (ICJR) reported that the burden of prisons and prisons for use by inmates was 223 percent overcapacity, which was reported as of January 2022.1 The excess condition of prison capacity is not without reason. The reason is because prisons and remand centers are dominated by narcotics convicts and convicts with other light sentences. Not only factors from the composition of prisoners but the effects of the pandemic also have a real impact on these conditions. There was an increase in the number of prisoners from 131,931 to 270,721 as of March 30, 2020.2

The government certainly takes action, as evidenced by the government issuing a policy to accelerate assimilation at home so that hunger capacity is reduced to 175%.3 However, in June 2021 the number of inmates living in detention centers and prisons increased to another 200%, and lastly, as of January 2022, prison capacity reached 223 percent. Then there is data on children in conflict with the law. Recorded data reports from the Indonesian Child Protection Commission recorded that there were 123 cases as of August 2020. It was recorded that this ABH was dominated by physical violence violations as many as 30 cases, sexual violence as many as 28 cases, traffic accidents as many as 13 cases, theft as many as 12 cases, psychological violence as many as 11 cases and cases of possession of sharp weapons as many as 9 cases.4 These facts show that there are still many legal issues that need to be resolved effectively and efficiently. The author presents these data, which is certainly relevant to the concept in the discussion in this paper, namely the concept of restorative justice.

Restorative justice or restorative justice has a definition listed in the Guidelines for the Implementation of Restorative Justice in the General Courts Environment, defining restorative justice. The principle of restorative justice is one of the principles of law enforcement in resolving cases that can be used as an instrument of recovery.5 Restorative justice is an alternative for resolving criminal cases in the mechanism of criminal justice procedures focusing on the sentencing process which is converted into a dialogue and mediation process.6 The dialogue and mediation involve victims, perpetrators, families of perpetrators/victims and other parties who are connected to jointly create an agreement on the settlement of criminal cases that is fair and balanced for all parties.7 The important point is to prioritize the restoration to its original state and restore the pattern of good relations in society.8 This concept shows a development in the criminal justice system in Indonesia, with regard to the effectiveness of the

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law enforcement process. The notion of restorative justice, of course, includes only a few cases that are included in this concept.

Restorative justice is certainly given limitations, what cases are the scope of the restorative justice. The first case is a case of a minor crime. Second, regarding matters involving children. Third, regarding cases involving women who are in conflict with the law. Fourth, regarding restorative justice related to narcotics cases. The case regarding narcotics is certainly very critical to be applied considering the cause of the excess capacity of prisons in Indonesia is dominated by narcotics convicts.

Relevant to this article will certainly be closely related to the prosecutor's office. The Prosecutor's Office is one of the law enforcers owned by the state in addition to judges and the police. Of course, the role of the prosecutor's office is very central in the construction of ideas for livelihood and civilizing the principles of restorative justice in the criminal justice system. This restorative justice will be discussed further by the author in this paper.

The author tries to show that restorative justice is an idea that needs to be developed and used as an instrument of social engineering to achieve the desired goals. Based on this background, the author considers that the problems to be discussed in this paper are: First, the urgency of law enforcement with restorative justice by the prosecutor's office. Second, the construction of restorative justice social engineering in law enforcement in the perspective of development law theory. This writing uses a normative juridical method. The author uses a conceptual approach and a statutory approach. The data source used is a secondary data source with a qualitative descriptive.

B. Discussion

1. The Urgency of Law Enforcement with Restorative Justice by the Prosecutor

Restorative justice is a new concept that law enforcers in Indonesia want to implement consistently. Of course, it is necessary to first examine the definition of restorative justice. According to Ogugua, he explains about restorative justice as follows:

“Restorative Justice is a theory of justice that emphasizes repairing the harm caused by criminal behavior. The concept of restorative justice sometimes also called reparative or transformation justice in other jurisdictions, is the practical application of some of the components of ADR to criminal matters and causes. The concept emerged as a social movement for justice reform. It is an approach to criminal justice that focuses on the needs of victim, offender as well as the involved community instead of satisfying abstract legal principles of punishing offenders, victims take active role in the process of justice dispensation, while offenders are encouraged to take responsibility for their actions to repair the harm they have done- by apologizing, returning stolen goods/restitution, compensation, community service etc.”

Based on this definition, it explains that Restorative Justice is a theory of justice that emphasizes repairing losses caused by criminal behavior. The concept of restorative justice, sometimes also called reparative or transformational justice in other jurisdictions, is the practical application of some of the components of ADR to criminal issues and causes. The concept emerged as a social movement for justice reform. This is a criminal justice approach that focuses on the needs of victims, perpetrators and the community involved rather than fulfilling abstract legal principles of punishing the perpetrator, the victim takes an active role

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in the process of dispensation of justice, while the perpetrator is pushed to account.\textsuperscript{11} for their actions to repair the damage they have done—by apologizing, returning stolen goods/restitution, compensation, community service, etc. Based on this opinion, it is explained that in essence restorative justice is an approach in the criminal justice system that focuses on recovering losses and focuses on the needs of victims and the community. Restorative justice will certainly be carried out by Indonesian law enforcers, one of which is the Prosecutor's Office of the Republic of Indonesia. Why is this urgency attached to the prosecutor's law enforcement. Of course the author has a basis for this.

The criminal justice system has a structure in which there are components that have their respective roles. The police have a function as investigators and the prosecutor's office as a public prosecutor and the court in this case the judge has the task of adjudicating and the correctional institution has a function to socialize the people who have been convicted. Of course this is an integrated system to achieve the objectives of law enforcement, namely justice, certainty and benefit.\textsuperscript{12} Based on this, the author sees that the role of the prosecutor's office has urgency to implement the principle of restorative justice. Given that the police only have a duty in terms of investigation and investigation and an active role in the judiciary is held by the prosecutor's office.

The next argument is about the role and position of the prosecutor's office as the controller of silverware or often referred to as dominus litis. The Prosecutor's Office certainly functions as a filter in controlling cases in terms of determining and deciding whether a case can be brought to court or not based on valid evidence.\textsuperscript{13} The Prosecutor's Office also has the title of Executive Ambenaar, this implies that the Prosecutor's Office has the authority to carry out criminal courts.\textsuperscript{14} The author is of the view that the urgency and urgency of law enforcement by the prosecutor's office in realizing restorative justice is very necessary. Seeing the role that is owned by an active prosecutor rather than other law enforcers such as judges will certainly determine the success of this restorative justice implementation. After examining the conceptual aspect, the prosecutor's office also has urgency in the juridical field and demands for laws and regulations.

Based on the scope that regulates the Prosecutor's Office of the Republic of Indonesia in implementing restorative justice, it is contained in the Regulation of the Prosecutor's Office of the Republic of Indonesia No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. In this regulation restorative justice is defined in Article 1 paragraph (1), namely:\textsuperscript{15}

“Restorative Justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation.”

Subsequently, the Supreme Court issued Supreme Court Regulation (PERMA) Number 2 of 2012 concerning Adjustment of Limits for Minor Crimes and the Amount of Fines in the Criminal Code. So many cases of minor crimes that are entered and handled by the court have become a concern and have given rise to an unfavorable response in the community to the

\textsuperscript{14} Op. Cit, Slamet Tri, Peran Kejaksaan dalam…, hlm. 63
\textsuperscript{15} Article 1 paragraph (1), Peraturan Kejaksaan Republik Indonesia No 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif
existing justice system in Indonesia which is felt and seen as not fulfilling the community's sense of justice, because actions that should have been given light punishments, however, were imposed with criminal penalties. In addition, the amount of fines in the Criminal Code is very light and not in accordance with the current state of society, so that fines as a threat of alternative punishment are not effective. Then the author tries to take an inventory of the juridical provisions which are rules of implementation and notification of the urgency or urgency in implementing restorative justice.

Here are the rules:

a. Perma Number 2 of 2012 concerning Adjustment of Limits for Minor Crimes and the Amount of Fines in the Criminal Code

b. Perma Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System.

c. Perma Number 3 of 2017 concerning Guidelines for Prosecuting Women's Cases in Confrontation with the Law.

d. Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation institutions.

e. Joint Decree of the Chairman of the Supreme Court of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Head of the Indonesian Police and the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia and the Minister of State for Women's Empowerment and Child Protection of the Republic of Indonesia Number 166A/KMA/SKB/XII/2009, 148 A/A/1A/12/2009, B/45/XII/2009, M.HH-08 HM.03.02 Year 2009, 10/PRS-s/KPTS/2009, 02/Men.PP and PA/XII/ 2009 on Handling Children in Conflict with the Law.

f. Memorandum of Understanding with the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Indonesian Police Number KEP-06/E/EJP/10/2012, Number B/39/x/2012 concerning the Implementation of the Implementation of Boundary Adjustments Minor Crimes and the Number of Fines for Quick Examination Procedures and the Application of Restorative Justice.

g. Joint Regulation of the Chief Justice of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Head of the Indonesian National Police, the Head of the Indonesian Narcotics Agency Number 01/PB/MA/III/2014 Number 03 of 2014 Number Per-005/A/JA/03/2014, Number Perber/01/III/2014/BNN concerning Handling Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.

Based on these regulations, it can be seen that the prosecutor's office is included in the program to realize restorative justice in the criminal justice system in Indonesia. This is done in order to reach a peace that will be offered by the Public Prosecutor to the suspect and the victim without pressure or coercion and intimidation. Restorative justice efforts are carried out at the prosecution stage, where the public prosecutor will act as a facilitator when handing over

responsibility for the suspect and the evidence collected. At least, there have been approximately 1000 cases that have been resolved by the Attorney General's Office using the principles of restorative justice.\textsuperscript{18}

2. Construction of Social Engineering in Realizing Restorative Justice by Attorney Law Enforcers

The practice of Restorative Justice (RJ) has evolved worldwide since circa 1974.\textsuperscript{19} The practice of RJ has developed locally through consultation with local community justice stakeholders.\textsuperscript{20} The concept of restorative justice is certainly closely related to the social conditions of the community, this instrument is a principle that is trying to be initiated to make the community order better.\textsuperscript{21} Based on the opinion Martina revealed:

Restorative justice understands crime not only as a legal infraction that requires public condemnation, but also as an injury to real people and relationships that needs healing. The impact of crime, therefore, creates a complex range of justice needs for the people involved - needs which the conventional justice system struggles to meet adequately. That is not to say that the system is totally indifferent to these needs, however in practice, the dominant goals of the system, in determining guilt and apportioning punishment, often eclipse any attempt to address the full reality of the offender's experience and needs. Those caught up in the event are left with a range of physical, emotional, psychological, spiritual and material needs, and these so-called 'justice needs' have to be addressed if they are to feel that justice has been served. Offenders also have justice needs. They need a fair trial and due process. They need to come to terms with the consequences of their actions and be held accountable for them.\textsuperscript{22}

Based on this opinion it means that restorative justice understands crime not only as a violation of the law that requires public condemnation, but also as an injury to real people and relationships that require healing. The impact of crime therefore creates a complex set of justice needs for the people involved – needs that conventional justice systems find difficult to adequately meet. That is not to say that the system is completely indifferent to this need, but in practice, the dominant goal of the system, in determining guilt and the distribution of punishment, often goes beyond any attempt to address the full reality of the offender's experience and needs. Those caught up in these events are left with various physical, emotional, psychological, spiritual and material needs, and these so-called 'needs for justice' must be addressed, if they are to feel that justice has been served. Offenders also have a need for justice. They need a fair trial and process. They have to accept the consequences of their actions and take responsibility for what they do.

Based on this opinion, it can be seen that the need for justice for the perpetrators and victims is very much needed, especially for the victims. Juridical punishment alone will not solve the problems that have been caused both physically, emotionally and psychologically and materially. Therefore, the concept of restorative justice is present as a social engineering instrument to form an ideal society. Of course, the concept of RJ does not just appear without

\textsuperscript{22} \textit{Op.Cit}, Ogugua…, hlm.94
a load of principles. There are several principles in the idea of restorative justice. The principles according to Stacy-ann Robinson reveal:

“The Restorative Justice identifies several: empowerment, honesty, respect, engagement, voluntarism, healing, restoration, personal accountability, inclusiveness, collaboration and problem-solving. Moralising, healing, empowering and transforming are other principles noted in the literature.”

Based on this opinion, at least there are principles in RJ that can be taken, namely empowerment, honesty, respect, involvement, volunteerism, healing, recovery, personal accountability, inclusivity, collaboration and problem solving, moralization, healing, empowerment, and transformation. The author is of the opinion that based on these principles, RJ must run and be carried out by the prosecutor's office. Then the author argues that restorative justice is included in the social engineering agenda carried out by law enforcement. In this regard, the author sees from the point of view of the theory of development law from Mochtar Kusumadmadja.

Based on the theory of development law, Mochtar is at least of the view that the law is not only a complex of rules and principles that regulate it, but also includes the institutions and processes needed to realize the enactment of the law in reality. There are two aspects that form the background of this legal theory of development, namely: first, that there is an assumption that the law cannot play a role and even hinder changes in society. Second, in reality, people in Indonesia have experienced a change in the nature of people's thinking towards a more modern law. Based on Mochtar Kusumaatmadja's theory, it shows that the main purpose of law is reduced to one thing, namely order which is the main requirement for an orderly society. In addition, according to Mochtar Kusumaatmadja, law is expected to be a way and function as a means of renewal in society "law as a tool of social engineering" or as a means of development. This view is in line with the discussion in this paper, "the law includes the institutions and processes needed". The Prosecutor's Office is an institution that is used to engineer the social order of society through the process of implementing restorative justice.

More comprehensively, Mochtar argues that the definition of law as a means can go beyond the definition of law as a tool. The reasons are: first, the role of legislation in Indonesia in the process of carrying out legal reform is more prominent, when compared to the United States of America which places jurisprudence (particularly the decision of the supreme court) in a more crucial and important place; Second, the concept of law which is defined as a "tool" will be able to produce results that are not much different from the implementation of "legism" which was applied during the Dutch East Indies era, reflecting on the current condition of Indonesia, there is an attitude that shows the sensitivity of the community to reject the application of such a concept. Based on this opinion, of course, the author is of the view that the concept of restorative justice in all laws and regulations is a means to carry out reforms, a legal view that does not focus on law as a mere tool will produce an extraordinary role in

27 Mochtar Kusumaatmadja, Konsep-Konsep Hukum dalam Pembangunan (Bandung: Alumni, 2002).hlm.3
shaping order in society. Of course the author will also provide an illustration of the position of the prosecutor's office in carrying out social engineering.

![Diagram showing the process of Restorative Justice and social engineering]

Source: Chart by the author

Based on the illustration, it shows that the process of social engineering begins with the process of legislation in laws and regulations in accordance with the views of the theory of development law. Then when RJ already has a strong legal basis and position, it will certainly be implemented and implemented by state institutions, especially the prosecutor's office. The prosecutor's office with the status of dominus litis and executive ambenaar will increase the effectiveness of the application of the concept. Then in the end, the social engineering order desired by law enforcers will be formed. In addition, this will improve the image of the prosecutor's office as a humanist state institution in the law enforcement process in Indonesia.

C. Conclusion

Based on the discussion, it can be concluded:

1. The urgency of law enforcement with restorative justice by the Attorney General's Office is a must. The Prosecutor's Office as an institution that plays an active role in the criminal justice process is a state organ that greatly determines the success of the implementation of Restorative Justice. The prosecutor's office is also an executive ambenaar, which can have implications in terms of carrying out criminal courts. And the prosecutor's active action in using the concept of Restorative Justice is supported by the laws and regulations in Indonesia.

2. The construction of social engineering in realizing Restorative Justice by the Attorney General's Office is based on the view of development law theory. Based on this theory, law is also seen as institutions and the whole process in it. Through the concept of restorative justice that has been included in the regulations, the prosecutor's office can maximally carry out its role. Of course, carrying out the process of social engineering in forming a social order in accordance with the objectives of the law. All activities carried out by the public prosecutor's office can have an impact on improving the humanist image of the public prosecutor's office in the eyes of the community as a whole. However, there is still disharmony regarding the implementation of restorative justice between the prosecutor's office and the police, so there is a need to emphasize a
comprehensive new regulation regarding the most appropriate restorative justice to be implemented.

Based on the explanation above, the novelty in this study is law enforcement through restorative justice is carried out with the values of legal certainty to achieve justice and benefit from the application of the law. The prosecutor in carrying out his role in the construction of social engineering in realizing restorative justice must solve it proactively so that the problem of overcrowded in prisons can be overcome.

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