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Restorative Justice Application as an Alternative Completion of the Criminal Matters

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Abstract:

The existence of Restorative Justice in the Criminal Justice System in Indonesia based on the law of progressive legal thought that the concept of "best law" should be put in the context of integration that is integral (holistic) in understanding human problems. The law is for man and not vice versa. Based on it, the birth of the law is not for himself, but for something more spacious, namely; for human dignity, happiness, prosperity and glory of man, when there is a problem in the law, then it is the law that should be reviewed and improved, not man pushed to be included in the legal scheme. not the purpose of human law, but the law is just a tool. So that substantive justice will take precedence than procedural justice, it is merely in order to show the law is a solution for human problems.

1. Introduction

The use of the minimum rule of law is an important principle in direct law enforcement efforts, and reduce power usage of business law is important because violence often shift the genuine nature and moral person who received it. Coercion (coercion) can disrupt a person's moral and soul and stimulate it to lose the attitude of willingness to accept the existing law.

The law is for humans, then the implementation of the law or law enforcement must give the benefit or usefulness to society. Society is very concerned that in the implementation or enforcement of the law, justice noted. In connection with the enforcement of this law, B. Arief Sidharta said that the legal order that operates in a society is basically the embodiment of ideals of law adhered to by the communities concerned in the various legislation, legal institutions and processes (the behavior of the government bureaucracy and citizens).

In criminal law enforcement 4 (four) aspects of public protection that should receive attention, namely:

- a. "Society needs protection against anti-social acts that harm and endanger the public. Starting from this aspect of the natural that law enforcement aimed at crime prevention.
- b. Society needs protection against the dangerous nature of a person. Naturally, if the enforcement of Criminal Law also aims to improve crime person or trying to change and influence its behavior in order to re-comply with the law and being good citizens and useful.
- c. Society needs protection also against the abuse of sanctions or the reaction of law enforcement as well as from the public at large. Naturally, if the criminal law enforcement also has to prevent the conduct or actions that arbitrary extrajudicial.
- d. Society needs protection against balance or alignment of interests and values are disrupted as a result of the crime. Naturally, also when a criminal law enforcement should be able to resolve conflicts caused by a criminal act, can restore balance and bring a sense of peace in society. "

1.1. Establish an Act as a Criminal Offense, to Consider the Following General Criteria

- a. Whether the act was recognized by the community as detrimental, or harmful, bring the victim;
- b. Is the cost of criminalizing balanced with the results to be achieved. This means that the cost of legislation, oversight and enforcement, the burden borne by victims and perpetrators of the crime itself must be balanced with the situation of law and order will be achieved;
- c. What will increasingly burden of law enforcement officers resulting imbalance capabilities and workload, or obviously cannot be carried by the capabilities of law enforcement officers;
- d. Is the act impeding or prevent the ideals of the Indonesian nation, which is the realization of a just and prosperous society that constitutes a danger to public safety?

Responsible for a crime means that the person concerned can legitimately be subject to criminal acts which he has done it. An offense is liable to be valid if they witness to the action is already there are rules in a system that relationship and the legal system of law that applies to the actions taken it. In other words, the action was not justified by the system. This is the basic concept. Law aims to achieve fairness and justice prevalent defined similarity. In the use of criminal witnesses as one of the means of social sanctions in all the limitations, Muladi said that the terms of optimal use of criminal witness should include such things as:

1. Acts that are banned by most members of the community were prominently considered a danger to society, considered important by society.
2. The application of criminal witness against the prohibited acts, consistent with the purposes of sentencing.
3. Eradication against such acts will not hinder or impede people's behavior is desired.
4. Such behavior can be understood in a way that is not biased and not discriminatory.
5. The arrangement through the process of criminal law, will not give the impression aggravate, both qualitatively and quantitatively.
6. There are no choices repose of witnesses the crime, to deal with such behavior.

1.2. *Enforcement of Criminal Law is Essentially a Policy Enforcement through Several Stages*

- a. the formulation stage, the stage of rule of law in abstract to by the law-making body;
- b. application stage, i.e. the stage of implementation of the Criminal Law by law enforcement officers from the police to the court. This stage can also be called the stage of judicial policy;
- c. the execution phase, the implementation phase of the criminal law in concrete by the officers for executing the criminal. This stage can also be called the stage of executive or administrative policy. "

According Soedjono Dirdjosisworo, in crime prevention efforts common ways conceptional, made by combining various elements relating to the mechanism of criminal justice and public participation:

- a. Improvement and strengthening of law enforcement officials, including strengthening of organization, personnel and infrastructure for the settlement of the criminal case;
- b. Legislation which can function analyze and stem crime and have reach into the future;
- c. Effective criminal justice mechanisms that the terms of a fast, inexpensive and simple;
- d. Coordination among law enforcement officials and other government personnel related, to increase the efficiency in the prevention of criminality;
- e. Community participation to help facilitate the prevention of crime.

In connection with the "crime prevention" includes steps as follows: a. Settling coaching and Law Enforcement Apparatus that includes organizational structure, personnel, and equipment, which are aligned with the development pattern of criminality, which is influenced by the development of the communities and technologies; b. Utilizing the procedures and mechanisms of criminal justice, which is aligned with the image of crime prevention, such as the judiciary is fast, inexpensive, accurate and indiscriminate; c. The renewal legislation, in tune with the demands of social and technological developments; d. Coordination among law enforcement agencies, between government officials whose duties relate to the prevention of crime by law enforcement officials. Coordination is integral / integrated for the purpose of law enforcement; e. Community participation in crime prevention, through fostering a sense of security and sense of responsibility for the security and peace of the region.

Laws have components which are: a. The substantive component, in the form of rules that have the nature of a relatively constant; b. Spiritual component, in the form of values that has a tendency to dynamic; c. Structural components, consisting of layers ranging from customs, habits, laws and legislation; d. cultural component, in the form of the order of human life that have a nature aligns itself with the environment. In this regard, the Code of Criminal Procedure dual function, namely on the one hand trying to find and discover the real truth about all crimes that question can be convicted as a reward for his actions, on the other hand is as far as possible to avoid an innocent person in order not to be sentenced criminal. Observe and discuss the goals of punishment, not off to do with discussing the theories of punishment is this:

- 1) The theory of Absolut or absolute, that every crime must be followed by a criminal, and should not be no penalty goal is revenge. This theory is known and adhered to scholars such as Immanuel Kant, Van Bemmelen, Van Hattum, and Hegel.
- 2) Theory of Relative or relative, that is to say that crime does not absolutely have to be followed by a criminal, where the purpose of punishment is that the crime committed was not repeated again and also to improve the villain.
- 3) Combined Theory is a combination of both of the above theory, adherents are Pompe, Hugo de Groot and Rossi.

If you look at the theories mentioned above, then we can know that the penalty is retaliation for a criminal offense committed person. Where it initially sentenced at the time of the birth of this theory is contrary to humanely and in practice have the intent to frighten or deter others. For the execution of the sentence like a death sentence carried out in public in order to be known by the public.

On the Theory of Relative or relative, the sentences handed down to a person is based on guaranteeing the rule of law and order in society. The purpose of punishment is based on the theory are:

- a. Interest repressive namely recover losses suffered by the community as a result of the crime.
- b. The purpose of preventive namely to prevent the crime in order not to happen again. While this preventive purposes can be divided into two parts:
 1. generale preventie, namely the threat of punishment aimed at the general public so that they do evil;
 2. speciale preventie, namely that the threat of punishment is addressed to the inmate so that he could no longer commit evil deeds in the future.

Associated with the merger theory is a combination of theory with the theory of Absolute Relative. The emergence of this theory due consideration:

a. The theory of retaliation may lead to acts of unfair, because the problems that affect a person to commit a crime, is not taken into account by this theory;

b. Relative theory or the theory of relative also considered biased by merger theory, because by improving the nature of the criminal alone is not enough, because thus the legal consciousness rather than the general public or society not given steadiness. According to the theory also must take into account the combined considered against the inmate.

Choice of individual moral values a person by law to give a wider space to the moral person to be willing to accept the rule of law voluntarily. Such considerations make the need to prioritize the issue of arrangements for convicts known as the principle of diversion. The use of diversion is done when there are several alternatives that may be done to resolve the conflict. Implementation of diversion seeks to reduce the use of force and trying to resolve and end the dispute or conflict. The use of the punishment as the ultimate conflict resolution effort by the government to ensure compliance with the law. So improve public confidence in the rule of law and the purposes and the rule of law itself.

The main principle of the concept of diversion that persuasive action or non penal approach and provides the opportunity for someone to fix the error. Officers performed versioned show the importance of obedience to the laws and officers in implementing diversion by means of persuasion and avoid catching the use of violence and coercion.

Implementation of diversion aimed at realizing justice and law enforcement correctly by minimizing criminal coercion. Diversion is done with a reason to give an opportunity for offenders to become a good person back through non-formal pathways involving community resources.

Application of the principle of diversion is directing usage rights. discretion by officers to reduce the force of the criminal law for handling the case. Implementation of diversion involving all law enforcement officials of any line. Diversion implemented at all levels of the criminal justice process. The process begins and request an agency or institution first reported the criminal or the victim himself who gives consideration to do versioned.

Diversion is the person to be issued and the criminal justice system. Diversion can do two things: the act of entering or remove a person from the criminal justice system.

Three types of diversion program implementation carried out, namely:

1. Implementation of social control (social control orientation), namely law enforcement officers hand over the perpetrator in the oversight responsibility or community observations, with strict adherence to the agreement or warnings given. Offender to accept responsibility for his actions and was not expected their second chance for the offender by the community.

2. The social services by the public against the perpetrator (social service orientation), which carry out the functions to monitor, interfere with, improve and provide services to offenders and their families. Society can intrude into the perpetrator's family to provide repairs or servicing.

3. Towards a restorative justice process or negotiations (balanced or restorative justice orientation), which is to protect the public, allowing offenders directly accountable to victims and the community and making a collective agreement between the victim and the perpetrator society. Implementation of all stakeholders be brought together to jointly achieve an agreement action on the perpetrators.

2. Restorative Justice

2.1. Completion of Criminal Matters with the Restorative Justice

Put simply defines restorative justice as a legal system that aims to restore the welfare of the victim, offender and community damaged by crime, and to prevent the violation or crime further.

As an alternative to a criminal problem resolution, restorative justice process must necessarily be better than the process and handling the usual pattern prevailing today. Therefore, it becomes important to find and recognize frame handling restorative approach, namely:

a. The involvement of the parties to the fullest and meaningful. In addition to the perpetrator and the victim, the perpetrator and the victim families and communities are the parties who have been harmed by the victim.

b. There is a chance the perpetrator to prove the capacity and quality in addition to overcoming the guilt constructively.

c. Focuses on losses incurred, to recover losses suffered by the victim and reduce losses in the future to help prevent crime.

d. Punishment for perpetrators who agreed it should take into account the welfare and proportionality.

Key restorative justice approach is to build a direct relationship between crime and the real with the response. In the technical language can be said that the measure is not punishment, but rather how the sentence was agreed upon by the parties and the process of monitoring of the sentence. Thus, the goal of this approach is not a deterrent actor for his actions, but the awakening of consciousness to take responsibility for his actions and the ability to control behavior in the future.

The basic principle of restorative justice as follows:

a. Prioritize support and healing of victims

b. Violators are responsible for what they do

c. Dialogue between the victim by the perpetrator to reach an understanding

d. There was an effort to lay correctly losses incurred

- e. Violators must be aware of how to avoid future crimes
- f. Society helped to integrate the two sides, both victims and perpetrators.

2.2. Stages of Restorative Justice

The process of restorative justice can be done by way of mediation between the offender and the victim, reparations (actor fix back all the things that undermined), victim-offender conferences (involving families from both sides and prominent leaders in the community).

In restorative justice, there are several phases of settling disputes, namely:

a. Victim Offender Mediation, in this stage is a stage where the meeting between the victim with the perpetrator in a safe place and have been arranged so that the assistance by the parties as a mediator. At this stage the victim argued about what he felt and what he wanted. The objectives of the phase or stage of this is to bring the victim to the perpetrator voluntarily so that it can make the offender to learn about the impact of actions and will the consequences had to face over his actions, and it also aims to provide an opportunity for victims and perpetrators to discuss the consequences that must be faced by the offender for his actions.

b. Family or Community Group Conferencing, this process bring together victims, offenders, families of victims and perpetrators, friends and relatives of both parties to decide on the way out that will be taken to resolve cases that took place between the victim with the perpetrator. The purpose of this is to give victims an opportunity to be directly involved in responding to the crime that happened to him, increasing the sensitivity of the perpetrators of the impact of his actions and have the opportunity to take responsibility for his actions, as well as an opportunity for the offender and the victim to be able to re-connect with society good.

c. Peacemaking or Sentencing Circle, is a process created to develop a consensus among the public, victims, relatives of victims, perpetrators, perpetrator relatives, judges, prosecutors, police and other criminal justice officials working in sentencing based on mutual agreement of all parties. The purpose of holding this thing is to give victims a chance to pay for his mistakes, provide an opportunity for victims, offenders, family members of both parties to voice their opinions regarding solutions to their problems, and that is no less important is to build a sense of togetherness in public life

All types of mechanisms for settling disputes over the ways that can be done to resolve a case while providing protection to the interests and rights owned by the victim. All the mechanisms for doing restorative justice, taking into account the rights possessed by not only the victim but also the perpetrator. In restorative justice that no party is in a position higher to settle a case, there is an advance of the talks the parties concerned to seek agreement on a way out of problem solving.

2.3. Criminalization Philosophy vs. Restorative Justice

When examined more in sentencing philosophy dwells basic ideas of punishment that clarify understanding of the nature of punishment as the subject of legal responsibility against crime and public authorities to the state based on law to conduct criminal prosecution. While the theories of punishment are in the process of organizing scientific, explain and predict the objective of sentencing for the state, society and legal subjects convict. According to M. Sholehuddin, sentencing philosophy has two functions, namely:

First, the fundamental function is as the foundation and normative principles or rules that provide guidelines, criteria or paradigm to the problem of crime and punishment. This function is formally and intrinsically primary and teachings contained in any philosophical system. That is, every principle set forth as a principle or rule that is recognized as truth or norms that must be upheld, developed and applied.

Second, function theory, in this case as meta theory. That is, the philosophy of punishment serves as the underlying theory and background of each theory of punishment.

Based on the above two functions in the implementation process, the establishment of criminal sanctions and the action is a legislative program activities and / or yudikasi for normative types and forms of sanctions (punishment) as the foundation of the legitimacy of law enforcement through sanctions.

The issue of sanctions in criminal law be related closely with philosophical convictions. The link between philosophy and conviction, in category appeared two approaches that seem to contradict the philosophy of mind on the one hand, and the mind of law on the other. On the one hand, the philosophers focused on the question why we convict. While on the other hand, legal experts and experts in penology concentrate on the issue of whether the punishment iru successfully, efficiently, prevent or rehabilitate. The issue of efficiency is a concern lawyers and penology, can only be answered from the point of interest that concern philosophers. Interest in turn shows an attitude towards moral stance with regard to justice and injustice in the criminal prosecution of certain individuals on certain acts and in a certain way. Thus, the arguments formulated in various schools of philosophy, can undoubtedly be used by legal experts and Penology as hypothetical empirical research about the sentencing, as well as useful in determining a sanction (criminal law). The imposition of criminal sanctions against the criminal purpose. Interest imposition of criminal sanctions is strongly influenced by the philosophy that formed the basis intimidate and criminal punishment. Philosophy of punishment is closely related to the justification (retaliation, the benefit / utility and retaliation aiming) any criminal sanctions. Philosophy of punishment is a philosophical foundation for formulating the size / basic justice in case of violation of criminal law. Philosophy of justice in criminal law the strongest influence there are two kinds of justice based on the philosophy of retaliation (retributive justice) and justice based on the philosophy of restoration or recovery (restorative Justice), and the Criminal Code adheres to the philosophy of justice is more inclined to retributive justice.

Restorative justice puts a higher value on the direct involvement of the parties. Victims were able to restore control elements, while offenders are encouraged to take responsibility as a step in correcting errors caused by crime and in building social value system.

Community involvement actively strengthen the community itself and bind a community of values for mutual respect and love between people. Community actively strengthen the community itself and bind a community of values for mutual respect and love between people. The government's role is substantially reduced in monopolizing the judicial process today. Restorative justice requires the cooperative efforts of the community and the government to create an environment where victims and perpetrators can reconcile their conflicts and improve their old wounds. In addition, it is also seeking to restore the victim's safety, personal respect, dignity, and more important is the sense of control.

Characteristics of Restorative Justice by Muladi, it can be argued characteristics:

1. Crime is formulated as a violation of a person against another person.
2. The focus on solving the problem of accountability and liability in the future.
3. The nature of normative built on the basis of dialogue and negotiation.
4. Restitution as a means of improving the parties, reconciliation and restoration as a primary goal.
5. Justice formulated as relations rights, judged on the basis of results.
6. Crime is recognized as a conflict.
7. Goals attention to the improvement of social deprivation.
8. People are facilitators in the process restorative.
9. Promote mutual assistance.
10. The role of the victim and the offender are recognized in both the problem and the completion of the rights and needs of victims are recognized; perpetrators of criminal acts are encouraged to take responsibility.
11. Accountability of the doer is formulated as an understanding of the impact of actions and to help decide which is best.
12. The criminal act is understood within the overall context of moral, social and economic.
13. Sin or debts and accountability to victims recognized.
14. Reactions and responses focused on the consequences of the criminal act.
15. Stigma can be removed through restorative action.
16. There is a possibility (the urge to repent and forgive), which is helpful.
17. Attention is paid to accountability for the result of actions (compare with retributive justice, attention is directed to the debate between free will (free will) and social psychological determinism in the causes of crime).

When speaking perpetrators of criminal acts, it is actually based on the philosophy of punishment and restorative justice mentioned above, the application straf or punishment for children, is not in accordance with the spirit of restorative justice, as it can lead to stigma or stamp malicious, criminal / straf itself contains an element of anguish, damaging future. Because the essence of restorative justice requires the cooperative efforts of the community and the government to create an environment where victims and perpetrators can reconcile their conflicts and improve their old wounds. If this essence more deeply understood the criminal provision to the offender needs to be done very carefully and if necessary sanction in the form straf (criminal) sanctions switched into a form of action (maatregel or treatment).

3. Conclusion

1. The existence of Restorative Justice in the Criminal Justice System in Indonesia based on the law of progressive legal thought that the concept of "best law" should be put in the context of integration that is integral (holistic) in understanding human problems. The law is for man and not vice versa. Based on it, the birth of the law is not for himself, but for something more spacious, namely; for human dignity, happiness, prosperity and glory of man, when there is a problem in the law, then it is the law that should be reviewed and improved, not man pushed to be included in the legal scheme. not the purpose of human law, but the law is just a tool. So that substantive justice will take precedence than procedural justice, it is merely in order to show the law is a solution for human problems.
2. In connection with the "crime prevention" includes steps as follows: a. Settling coaching and Law Enforcement Apparatus that includes organizational structure, personnel, and equipment, which are aligned with the development pattern of criminality, which is influenced by the development of the communities and technologies; b. Utilizing the procedures and mechanisms of criminal justice, which is aligned with the image of crime prevention, such as the judiciary is fast, inexpensive, accurate and indiscriminate; c. The renewal legislation, in tune with the demands of social and technological developments; d. Coordination among law enforcement agencies, between government officials whose duties relate to the prevention of crime by law enforcement officials. Coordination is integral / integrated for the purpose of law enforcement; e. Community participation in crime prevention, through fostering a sense of security and sense of responsibility for the security and peace of the region.
3. In order for law enforcement and application of the law, particularly regarding the provision of future criminal can run well and effectively then it should be the provision of criminal (ballast and venial) not only for the reasons set out in the Criminal Code and the provisions of the criminal but also need reasons outside of the criminal Code and other penal provisions. Scientific equipment such as state police, prosecutors and the judiciary also know and understand about the basic concepts of punishment. In the criminal provision should need to also consider the benefits, ballast and venial criminal and do not just look and emphasizes punishment for mistakes and also his human side.

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