

COMPLETING THE APPLICATION RESTORATIVE JUSTICE CRIME OF THEFT LIGHT

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ABSTRACT

Restorative justice understanding the criminal act not only as a violation of the country but to violations that occur in society and social relations. The solution is not geared to punish the offender who has violated the law but rather to restore social relations and justice to the people who have been damaged due to a criminal act that occurred. Restorative justice is the settlement of minor criminal offenses committed by investigators at the stage of investigation or the judge since the beginning of the trial involving the perpetrator, the victim, the perpetrator's family / victim and community leaders concerned to work together to find a fair settlement with the emphasis on restoring back to its original state. In the resolution of the crime of theft the main focus of a legal settlement is not on punishment, but returns to its original state, correcting the public that stealing cannot be justified, correcting societies that preserve the injustice that makes a person has the choice to steal to survive is also an act that cannot be justified,

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Introduction

Restorative justice is a new movement in the field of victimology and criminology. Acknowledging that crime causes injury to people and society, it was confirmed that the court repair injury and that the parties are allowed to participate in the process. Restorative justice program allows the victim, the offender and affected members of the public to be directly involved in responding to crime.

Restorative justice is based on a logical understanding of the error. While it would be expressed differently in different cultures, this approach may be common to most traditional societies. Results of restorative justice is an agreement reached as a result of such a process of restorative justice. These results may include referrals to programs such as reparation restitution, and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of victims and perpetrators. It can also be combined with other measures in cases involving serious offenses.

The purpose and motivation of this paper is to determine the extent to which the implementation of restorative justice is often the case specifically in Indonesia, where in reality, many perpetrators of criminal acts that are classified as a criminal theft lightly in fact have to undergo the inspection process is convoluted, which of course it is may not constitute a judicial system that is easy, fast and inexpensive. Therefore, a key element of restorative justice that is the willingness and participation of victims, offenders and the community in the improvement of the criminal act occurred . So restorative justice is a process whereby all the parties with certain criminal act together to solve problems and how to handle the consequences in the future or the implications in the future.

An act that is regarded as a criminal offense would be convicted, but a criminal offense in case the object value of not more than Rp. 2,500,000 (two million five hundred thousand rupiah) should the perpetrators of such offenses do not apply a criminal conviction, but rather the application of restorative justice that should be put forward. Restorative justice movement originally began as an attempt to rethink the needs and implicit role in the crime. The restorative justice discourse concerned about the unmet needs in the judicial process. Those involved in this movement also worry that the participants understanding of the applicable legal or "stakeholder" in fairness it was too restrictive. Restorative justice expand the circle of stakeholders interest groups or standing in the incident or the case, not just governments and actors, but also included victims and community members.

With the breakthrough of criminal law in the form of restorative justice course this will be the solution for justice for perpetrators of criminal acts are still quite mild as categorized in the Supreme Court Regulation (Perma) No. 2 of 2012 on Adjustment Limitation light crime and the amount of fines in the draft OF Criminal Law (Penal Code) will reduce the problem of overcapacity in the Penitentiary (Prison) / State Prison (Rutan) which can deliver justice dimension of human rights. Therefore, a key element of restorative justice that is the willingness and participation of victims, offenders and the community in the improvement of the criminal act occurred, so a restorative justice is a process whereby all the parties with certain criminal act together to solve problems and how to handle due in the future or the implications in the future.

Theft is primarily a criminal offense who intentionally take partially or fully the property of others unlawfully. when later viewed from the division of a crime then there are various categories of crime of theft. One category is the theft of light, which in this

case when correlated explanation in accordance with the explanations given by the Supreme Court Regulation No. 2 of 2012 regarding the discussion of a misdemeanor is that when the value of the stolen objects is not more than Rp. 2.500.000, - (two million five hundred thousand rupiah).

Various factors cause someone stole've certainly not the same. Which originally began stealing is a job up to steal is a necessity due to the acute economic situation. When viewed from the value of the object stolen goods under Rp. 2.500.000, - (two million five hundred thousand rupiah) can be said that he stole was not to enrich himself, but merely to meet the needs of its economy, or in other words, he did it because of a compulsion.

However, in the Draft Book of the Criminal Law Act 2015 has been published on the settlement of minor criminal offenses are more geared towards the completion of the recovery, not more retaliation. Completion of the restoration is a good way to settle a problem, but still no aggrieved party. Completion of the restoration carried out by *kesepakatan* between parties berpekerja by promoting the principle of family and a strong consideration that there have been losses can be recovered by peaceful means.

Definition of Restorative Justice

Article 1, item 6 of Law No. 11 of 2012 on the Criminal Justice System Centre (UU SPPA) determines that restorative justice is the completion of the criminal case involving the perpetrator, the victim, the perpetrator's family / victim and other relevant parties to jointly seek a solution fair with emphasis on restoring back to its original state and not retaliation.

Under Article 1 (2) Memorandum of Understanding with the Chief Justice of the Republic of Indonesia, the Minister of Law and Human Rights, the Attorney General of the Republic of Indonesia, the Head of the Indonesian National Police on Implementation Adjustment Limits light crime and the amount of fines, Interrogation Quick and Application restorative justice (restorative justice) determines that: restorative justice is the settlement of minor criminal offenses committed by investigators at the stage of investigation or the judge since the beginning of the trial involving the perpetrator, the victim, the perpetrator's family / victim and community leaders concerned to work together to find solution fair with emphasis on restoring back to its original state.

The emergence of the concept of restorative justice is not intended to eliminate imprisonment, in cases which pose specific mass loss and associated circuitry worth someone's life then the criminal penara can still be used.

Values Restorative

Departing from the evaluation of the completion of the criminal case by using the principles contained in the restorative justice as a measure in assessing cases, there is little many key values that become a pillar in the settlement of the criminal case had to be completed despite a number of shortcomings that arise on understanding an approach yet comprehensive restorative justice such as the involvement of the perpetrator and victim on the presumption of innocence, the achievement of equality in the process of completion and achievement of settlement which refers to the needs of offenders, victims and the public in improving social relations between them.

Within the framework of restorative justice approach that roots values promoted by restorative justice is rooted in traditional values in traditional societies such as the value of balance, harmony and peace in society. Therefore in some countries noted that the traditional justice institutions is maintained as a means for people to resolve disputes or problems experienced including criminal cases.

Restorative justice contains the basic principles that include:

- a. Seek peace outside the court by the offender (family) to crime victims (families)
- b. Provide an opportunity for the offender (family) to be responsible to make amends in a way to compensate for the criminal act he was doing.
- c. Solving the problems of criminal law that took place between the perpetrator and the victim of the offense if the agreement is reached and agreement between the parties.

Restorative justice offers a response of justice that seeks to restore the individual, relationship repair, and promote the common good of justice.

Interest Restorative Justice

Restorative justice aims to foster a sense of justice, the victim felt that his suffering be considered and awarded compensation equal to the losses suffered. Performers do not have to suffer to be able to realize his mistake. In other words empowering victims, where the actors are encouraged to pay attention to recovery. Restorative justice seeks to rebuild relationships and responsibilities it together to respond constructively correcting errors in a relationship.

Often quite Family mediation offer section with violence and crime, despit the terminological resemblance, even more than to so-called victim-Offender-mediation approach. By definition of restorative justice is not a process that aims for punishment. By definition that restorative justice is not a process that aims to punishment.

Views on the sanctioning system of the interviewees Believed that a sanction is effective when the offenders:

1. Realize the consequences of Reviews their crimes for them, Actively take responsibility for Reviews their actions;
2. Feel the effect of Reviews their crimes Themselves;
3. Feel that society's reaction to Reviews their actions is swift;
4. Are encouraged to think about what they have done;
5. Feel shame and guilt

6. Geg feedback;
7. Get support;
8. Are given careful supervision;
9. Realise that the sanction may be imposed for longer periods;
10. Feel that the sanction is consistent in it self and with other sanctions as well;
11. Get a response that takes into account membuka circumstances and
12. Are prevented from re-offending.

Sentencing authority to forgive by not penalize / action, are offset by the principle of culpa in causa, which authorizes judges to remain accountable for the criminal punishment even though there is no reason eraser.

Restorative justice as well as guidance for law enforcement officials in resolving misdemeanor, fined streamline and solve the problems of excess capacity in prisons or detention centers as well as facilitate the judges in deciding the case misdemeanor.

Definition and Elements of Crime Theft of Light

The Crime of Theft Light can be said as an act that has a lot going on, from ancient times until now. But every act that occurs in a region there must be a causal element, and it is also not the same as one region to another.

Theft light in this case is the theft of light that can be dealt with proportionately and interrogation used is an event checks quickly, as written in Article 2 paragraph 2 PERMA No. 2 of 2012 which confirms, that if the value of the goods or the money is not worth more than Rp. 2.500.000, - (two million five hundred thousand rupiah) President of the Court immediately set a single judge to examine, hear and decide the case in a way to a quick examination stipulated in Article 205-210 Criminal Procedure Code.

Lightweight theft by Tongkat, is a theft that has the elements of theft in the form principal because coupled with other elements (mitigating), the criminal threat be commuted.

The criminal acts of theft regulated dalma Article 364 Penal Code confirms actions described Article 362 to Article 363 number 5 if not done in a house or yard covered in his house, if the price of the goods stolen no more than twenty-five rupiah, threatened with theft lightly with a minimum of three months or a fine of two hundred and fifty rupiah.

About the value of what was stolen was originally set no more than twenty-five rupiah, but with Government Regulation in lieu of Law No. 16 of 1960 on several changes in the Criminal Code has been amended two hundred fifty rupiah.

From the formulation of penal provisions set forth in Article 364 Criminal Code of the above can be seen that the laws called the theft of the light can be:

- a. The criminal act of theft in the form of principal
- b. The criminal act of theft is committed by two or more persons jointly
- c. The criminal act of theft is to commercialize the entrance to a crime or to reach the object to be taken, the person guilty of the demolition, destruction, climbing, or have been using false keys, false commands, or fake uniforms.

With the provision of :

- a. Not be in a residence
- b. Not done on an enclosed yard on which there is an abode and
- c. The value of the stolen objects were not more than two hundred fifty rupiah.

Application of Restorative Justice In Solving Crime Theft of Light

In light burglary and ordinary theft, which means that any small theft and theft of whatever remains is called theft. There are no distinctions misdemeanor and weight, because the job of the police is investigating the crime that occurred and that determines misdemeanor or a felony is a court decision. All types of crimes should be followed up and resolved to victims feel that their rights are met and actors also do not feel that their rights are violated. In the process of enforcement of a criminal act must necessarily be root causes of crime itself is influenced by unjust social structures.

The role of the police is a good investigator and the investigator in the Criminal Procedure Code and in the Law on Police of the Republic of Indonesia Number 2 Year 2002. As law enforcement officers, the police role and responsibility very large in accordance with the duties and responsibilities are very great. The main task and authority that is based on the Law on Police in Article 13 that: "Police of the Republic of Indonesia as one of the functions of state government in maintaining security and public order, law enforcement, protection, shelter, and service to the community."

Article 14 paragraph 1 in performing basic tasks police perform:

- a. Implement Global settings, guard, escort and patrol the community and government activities as needed
- b. Organizes all activities in ensuring security, public order and smooth traffic on the road
- c. Encourage people to increase public participation, public legal awareness and adherence to legal citizens and legislation
- d. Participate in the development of national law
- e. Maintaining order and ensuring public security
- f. To coordinate the supervision and technical guidance of the special police, investigators civil servants and other forms of spontaneous pengamaman
- g. Conduct inquiries and investigations against all criminal acts in accordance with the law of criminal procedure and other legislation.

- h. Holding a police identification, police medical, forensic laboratories and police psychology for the benefit of police duties
- i. Protect the safety of body and soul, property, people and the environment from disturbances and / or disasters, including providing aid and relief to uphold human rights
- j. Serve the interests of the community for a while before it is handled by agencies and / or authorities
- k. Provide similar service to the public in accordance with the interests of the environment as well as the police force
- l. Carry out other duties in accordance with the legislation which in practice will be regulated further by a government regulation.

The concept of restorative justice in the criminal law Indonesia began to be applied in juvenile criminal law. Child perpetrators of getting special treatment because in essence also victims of certain social conditions need to be improved with the joint role. This needs to be encouraged to apply to certain criminal cases that are currently of concern to the public. Such as theft light because of economic necessity should use restorative justice approach.

Theft as a crime that happened because of the structure and unjust social conditions is a disease or joint problems of society that can not be cured only by punishing perpetrators. Even the judgment is unfair because it does not see social conditions. Therefore the main focus of a legal settlement not on punishment, but returns to its original condition, correcting the public that stealing can not be justified, correcting societies that preserve the injustice that makes a person has the choice to steal to survive is also an act that can not be justified. When restorative justice has been accepted and implemented by itself will establish legal certainty that there is a criminal act with a certain character that should be upheld specifically anyway.

Completion of the restorative keadilan have a procedure, not all criminal offenses may be pursued peace. No advance peace efforts of the offender pleads to investigators in order to convey to the victims to come to terms. Then the investigator offered to victims willing or not if the matter settled amicably. If the victim agrees, the police entered his case. In his case investigator, naked, Kanit together to make a deliberation and after no agreement of results musyawarah written by the minutes of the so-called minutes of the results of his case.

If in his case reached an agreement that meets the criteria of restorative justice, among others, focused on the creation of conditions of fairness and balance to the offender and the victim herself, the environment and society with emphasis on coaching rather than retaliation. Case considered completed and the case terminated SP3 circuitry underlying the agreement and not on Article 109 of the Criminal Code, if not found an agreement and each party understands the case is the case proceed to trial. Each party shall respect the result of a joint decision and keep keamanan and order.

Restorative justice is one of the efforts for peace outside the court. In resolving a case or a misdemeanor in the police first to offer to the victims will there be peace or still want to continue. In this case there are two offenses that should be considered if there is a criminal act that ordinary offenses and crime on complaint

The usual offense case can be processed without the consent of the injured (victim), which means that even if the victim has revoked its report to the authorities the investigator is still obliged to process the case. While to a complaint, the complaint should only be done criminal proceedings with the consent of the victim. If the complaint is revoked, for a period of three months after pengadulan filed, then the legal process will be terminated.

In connection with the lack of distinction mild theft and larceny, in handling cases that are considered mild solved also by checking the event direction and policy guidance.

Learn Article 18 of Law Police define the public interest, officials of the Indonesian National Police and the duties and authority to act according to his own judgment.

From the results of research in several places in Indonesia that the crime of theft is often the case, there are many reasons everyone steals, needs urgent and unable to meet their needs, desires or the desire to have more and more as dilakuka by officials, and may also due to a psychological disorder or mental illness.

That the completion of a crime of great value also pursued through restorative justice, for the settlement through a focus on restorative justice and the creation of conditions for the balance of the offender and the victim herself. Event governance mechanisms and criminal justice that focuses on punishment transformed into a process of dialogue and mediation to create an agreement on the settlement of the criminal case that is more fair and equitable for the victim and the perpetrator. Restorative justice itself has meaning the restoration of justice, what is actually restored? in the criminal justice process conventionally known their restitution or compensation to the victim, while restoration has a broader meaning. Restoration includes the rapprochement between the victim and the perpetrator. Recovery of this relationship can be based on a mutual agreement between the victim and the perpetrator. The victim can pass on the losses suffered and the offender was given a chance for redemption, through the mechanism of compensation, peace, social work, as well as other agreements. This is important, because conventional sentencing process does not provide space for use within parties involved, in this case the victim and offender to participate actively in solving their problems. Any indication of a criminal offense, regardless of the escalation of actions will continue to be rolled into the realm of law enforcement that only came under the jurisdiction of law enforcement. The active participation of the community as not being important, everything just comes down to the decision of sentencing or punishment without seeing the essence.

In conventional criminal proceedings, for example if there has been a reconciliation between the offender and the victim, and the victim has forgiven the perpetrator, then it will not affect the authority of law enforcement to continue to carry forward the case to the criminal realm that will culminate the criminal punishment of the offender. Formal criminal process time consuming and does not provide certainty for offenders and victims would not necessarily meet or restore contact between victims and

perpetrators, the concept of restorative justice offers a recovery process involving perpetrators and victims directly in the resolution of the problem. The process of conventional criminal only make the victims later as a witness in the Trial Court did not have much influence the verdict of punishment, the task of the prosecution is still given to the prosecutor that only accepts files of investigation for further processed into basic demands of punishment, without knowing and understanding the condition of the problem in real terms, and the offender is in a chair ready to accept criminal prisoners who would be inflicted upon him.

Constraints Imposed In Solving Crime Theft of Light

Achieving something that is expected is very to be achieved by someone. Not all victims of crime perpetrator wants to make peace, it is only natural as the victim is not necessarily feel the rights that have been violated perpetrators be right tepenuhi if peace.

Concerns experienced by perpetrators if apologizing in advance will also be considered a threat to himself, namely the loss of self-esteem. Same with forgiveness, pleaded guilty before others also not the act that easy to do, because this decision will usually be followed by a feeling of prestige in front of others. So is the concern experienced by the victim forgives the perpetrator acts usually triggered by the possibility of a repeat offense in the future.

Not to forgive it can be understood as a form of punishment against the perpetrators in order to deter and menyalai actions, and not repeat them in the future. Another factor that makes difficult to apply justice is due to the receipt of justice that leads to retaliation. Which means that every crime committed should be met with the same crime.

Constraints experienced in completing the crime of theft of light through restorative justice, namely:

a. The absence of laws expressly commands and procedures or mechanisms to misdemeanor to be resolved peacefully. So far in the legislation there is no set completion misdemeanor peacefully. However, in the draft Penal Code Act in 2013 has been published on the settlement of minor criminal offenses are more geared towards the completion of the restoration is no longer vengeance Completion of the restoration is a good way to settle a problem, but still no aggrieved party. Completion of the restoration carried out by agreement between the parties litigant by promoting the principle of family and a strong consideration, so that the existing losses can be recovered by peaceful means. Sentencing guidelines stipulated in Article 55 of the Penal Code Bill 2013, which determines as follows:

1. In a criminal prosecution shall consider:

- a. Error maker criminal offense
- b. The motive and the purpose of committing a criminal offense
- c. Inner attitude maker criminal offense
- d. Criminal offenses committed whether planned or unplanned
- e. How to do a criminal act
- f. Attitudes and actions of after committing a crime
- g. Biography, the social and economic circumstances maker criminal offense
- h. Criminal influence on the future of criminal offenses maker
- i. The influence of criminal acts against the victim or his family
- j. Forgiveness from the victim and / or family and / or
- k. Public perceptions of the criminal offense committed.

2. The lightness of the act, maker of personal circumstances, or circumstances at the time of the act or that ensues, can be used as

a basis for consideration to not convict or apply measures taking into account the aspect of justice and humanity.

This provision provides a solid foundation to a judge in considering the severity of the punishment to be imposed. Article 55 paragraph (1) letter j Criminal Code draft was the basis for the completion of the restoration of this provision contains forgiveness from the victim and / or his family.

b. The absence of an agreement of the victim and the perpetrator is an inhibitor of a case can be solved by restorative justice. Because it is difficult to unite thinking between two people in conflict. The desire of the victim to the perpetrator not to repeat by letting the legal process is still running and is expected to be a deterrent to perpetrators in order not to repeat his actions again.

c. Taking advantage of a problem. Selfishness of the victim is also an obstacle in implementing restorative justice.

d. In any case there must be gainers and losers. Profit is also an obstacle in achieving justice. Restorative justice is justice actually want to make the perpetrator and the victim was not hurt each other. But other elements such as seeking opportunistic fashion in criminal acts frequently occur.

e. The absence of legal framework that governs which form the basis of legitimacy in taking decisions on the investigation process is based on the concept of restorative justice or other approaches that corresponds with the flow of social jurisprudence.

The fact that there is in Indonesian society regarding the functioning institutions of deliberation as part of the mechanism chosen to complete a criminal case. Deliberation organized by the offender and the victims themselves, or with the involvement of the police or the Public Prosecution or through traditional institutions show the mindset of the people in view of a problem arising. Problem solving including the offense by the mindset of consultation is summarized in restorative justice. Therefore without ignoring the mechanisms at work in the formal legal system settlement mechanism through deliberation agencies also work in the community. In various principles and models of restorative justice approach to the dialogue process between the perpetrator and the victim is the basic model and the most important part of the implementation of this restorative justice. Direct dialogue between the perpetrator and the victim made the victim can express what he felt towards justice, expressed hope for the fulfillment of the rights and desires of a settlement of the criminal case. through a process of dialogue also moved his actors are

expected to self-correct, realized his mistake and accepts responsibility as a consequence of the criminal act committed with full awareness. From this dialogue process are also the people to participate and take part in realizing the agreement and monitor its implementation.

Conclusion

The application of restorative justice in solving the crime of theft of light has the same goal with Perma No. 2 of 2012 which is to administer justice in a way bring / multi-stakeholder whether the perpetrator, the victim, the perpetrator's family / victim, and other relevant parties to work together seek a fair settlement with the emphasis on restoring back to its original state and not retaliation. The main aim of restorative justice is to empower the victim, where the actors are encouraged to pay attention to recovery. Restorative justice attach great importance to the fulfillment of material, emotional, and social victim. The success of restorative justice is measured by what amounted to a loss that has been restored offender, is not measured by how heavy sentence imposed judge, the bottom line as far as possible removed from the perpetrators of criminal proceedings and of prison.

When restorative justice has been accepted and implemented by itself will establish legal certainty that there is a criminal act with a certain character that should be upheld specifically anyway. Restorative justice is a way of solving it seeks a peaceful manner. The parties reconciled if there has been an agreement that begins with a word of apology and forgave. Forgiveness cannot be understood as a passive attitude just accept the fact that the victim's rights have been violated by the perpetrator. Some people interpret forgiveness as a defeat or loss of self-esteem, and some others interpret as intentional opens the opportunity for offenders to repeat his actions in the future. Implementation of restorative justice is not intended to disregard the law is positive but the circumstances and the situation on the ground so that the police take steps discretion of the police as stipulated in the Law on Police to keep the situation and conditions of the community and the sense of fairness by promoting justice. The application of restorative justice can be started from the investigation in which the police have the discretion to act or discretion in the public interest.

Restorative justice is a concept that responds development thinking of the criminal justice system with emphasis on the need for community involvement and victim were deemed excluded by mechanisms that work in the criminal justice system that existed at this time. In restorative justice approach over the main victims of criminal acts is not a state, as in the criminal justice system that now exists. Therefore, crime creates an obligation to fix the broken relationship due to the occurrence of a crime. while fairness is defined as the process of finding solutions that occur on a criminal case in which the involvement of the victim, the community and the offender becomes important in the repair business, reconciliation and the improvement of business continuity assurance.

The practice in many countries in the world, a trend which is also developing restorative justice pointed out that this is only limited to a specific criminal act, and the most widely adopted are the cases of criminal offenses committed by children and adolescents as well as misdemeanor. As in New Zealand, England and Wales, Philipina and Canada. This view may be different when looking at the case in post-apartheid South Africa. The South African government actually use restorative justice approach in resolving cases of violence ever committed by the apartheid regime. The application of restorative justice brings many advantages positive change on society and the state. A number of advantages, among others, first, that society has given space to handle their own legal problems perceived fairer, second, the burden of the state in some respects to be reduced for example loads to deal with criminal offenses-offenses can still be resolved independently by the community. Third administratively, the number of cases coming into the criminal justice system can be reduced so that the burden of the judiciary as disclosed can be reduced.

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