

COMPARISON OF RESTORATIVE JUSTICE APPROACHES IN HANDLING CRIMINAL CASES BETWEEN POLICE AND PROSECUTORE (A CASE STUDY IN MAGETAN REGENCY)

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ABSTRACT

The purpose of this study was to determine the differences and similarities between the authority of the police and the prosecutor's office in handling criminal cases with a restorative justice approach. Currently, both institutions have the same authority in restorative justice but the methods used are different because they have their respective legal umbrellas in implementing the restorative justice approach. While the method used in this research is using the normative juridical method in which the regulations of the Indonesian National Police are compared with the regulations of the Prosecutor's Office of the Republic of Indonesia to find common ground for differences and similarities in handling criminal cases with a restorative justice approach, then verification is carried out in concluding. The scope of this research is within the juridical area of law enforcement of the police agency and the juridical scope of law enforcement of the prosecutor's office. The results of this study. They have similarities and differences ranging from the equal authority in the approach to criminal cases using restorative justice, but they have differences in terms of investigation and investigation. While the Prosecutor's Office has the authority to carry out prosecutions, the Prosecutor's Office has new ideas in handling the restorative justice approach with the prosecutor's authority to carry out investigations and investigations of certain criminal acts are used using restorative justice. The conclusion that can be drawn from this research is a comparison between the similarities and differences in handling criminal cases in the police and the Prosecutor's Office with a restorative justice approach. Both institutions have the same authority in restorative justice so there is often overlap in law enforcement because their legal position or umbrella has the same position hierarchically. there are both the police and the prosecutor's office that have a strong legal umbrella and provide legal objectives, namely the certainty of justice and benefits.

Keywords: Comparison; Restorative Justice; Police; attorney

INTRODUCTION

Talking about the law that lives in society, of course, we know about law enforcement. The law will not be able to be applied or implemented in society if there are no institutions that carry out law enforcement (Kusumohamidjojo, 2019). In Indonesia, law enforcement is carried out by authorized parties such as the police, prosecutors, and courts. This authority is indeed regulated by law so that government institutions that have the authority to handle legal cases have a legal basis and have the right to regulate society (Sodiq, 2016). The law becomes a rule, of course, enforcement is needed. This is given to the government to carry out law enforcement which has the goal of justice.

In Indonesia, we know about criminal cases and civil cases (Tutik, 2006). In addition, we also know about state administration and so on. Talking about crime or crime, we know that in Indonesia it is a problem that often arises in society because people's lives are so far apart that there are levels of crime in society (Mertokusumo, 2007). Crime problems are already regulated by laws and regulations, but laws and regulations cannot stand alone if they are not implemented by law enforcement (Smith, 2008). The authority to handle criminal cases carried out is regulated by law so that the authority has the right to regulate, namely conducting investigations and investigations related to criminal cases in achieving justice in society and fostering a comfortable and dignified life in social life (Rahardjo, 2000).

Law enforcement aims to include the values of justice contained in existing legal norms or positive laws which then have justice values that are applied in the life of the nation and state or social life (Irwansyah, 2020). Law enforcement can also be interpreted as a form of enforcement related to written norms (Pound, 2010). In English itself, law enforcement is often referred to as law enforcement, which can be interpreted as the enforcement of applicable regulations. It can be concluded that law enforcement is an action aimed at regulating society towards justice based on norms or rules that have been in effect so that these norms can be implemented into social life which aims as a form of certainty of justice and benefits (Syamsudin et al., 2013).

In Indonesia, law enforcement is carried out by institutions or agencies that have the authority to enforce the law (Fauzi, 2016). Concerning law enforcement, if we associate it with criminal cases or crimes, it is a series of investigations and investigations carried out by law enforcement officers as regulated in laws and regulations to determine or look for evidence to make it clear that it is not criminal to find the suspect of a criminal act that has been committed (Huijbers, 2008). The handling of these crimes is often carried out by the police and the prosecutor's office, in this case, the two agencies have the authority to carry out investigations and investigations to find bright spots for the crimes committed. The two agencies, both the police and the prosecutor's office, have their legal basis for carrying out law enforcement actions. If we look at Indonesia, there are institutions or agencies of the police and institutions or agencies of the Prosecutor's Office that have the authority to enforce the law. Both institutions are regulated by law and are given the authority to enforce the law. The purpose of law enforcement is to uphold the rule of law so that the law can or can change the condition of society for the better (Kansil, 1989).

In handling criminal cases themselves, the police and the Prosecutor's Office have their respective authorities to carry out investigations and investigations (Panjaitan, 2020). This has been regulated in the existing laws and regulations so that what the two agencies do has a strong legal basis (Jurdi, 2018). Law enforcers in Indonesia such as the police have the authority to conduct investigations and investigations of criminal cases, both special crimes, and general crimes, while the Prosecutor's Office also has authority in terms of investigations and investigations that have been regulated by laws and regulations (Dimiyati, 2014). This is an interesting thing to study because the two agencies have the same authority in enforcing the law, although in the laws and regulations or the rule of law as the basis for the two agencies in carrying out law enforcement, there are differences. There are some interesting similarities to research so that in this paper it has a goal, namely to find concepts or models of similarities and differences in law enforcement authorities carried out by the police and the prosecutor's office in terms of law enforcement in Indonesia.

Authority between the police and the Prosecutor's Office related to the handling of cases using restorative justice, there are many polemics because the two institutions have their legal basis for exercising or exercising their rights in resolving cases with a restorative justice approach (Galingging, Zulyadi, & Trisna, 2020). The police agency itself also has regulations issued by the state police of the Republic of Indonesia while the prosecutor's office itself also has regulations that are used as the basis for law enforcement in restorative justice. This paper is certainly interesting to do because it tries to compare the authority of the two institutions in handling criminal cases with a restorative justice approach, where the position of the criminal justice system between the two institutions is certainly different in terms of handling criminal cases, but the authority to carry out restorative justice is owned by both institutions (Lubis, Kalo, Marlina, & Ikhsan, 2019).

In addition, the legal basis they use has the same position, but the substance of the legal norms or legal basis possessed by the two institutions is certainly different. This difference is interesting for research to find common ground in handling criminal cases using a restorative justice approach (Aribowo, Syahrin, Sunarmi, & Marlina, 2019). Restorative Justice itself aims to minimize the perpetrators of crimes which will later make the Correctional Institution full of existing prisoners. Therefore, a restorative justice approach carried out by law enforcement agencies is needed. However, if the authority has a problem, namely the overlapping of the authorities with their respective legal bases, this will be a new problem so it is necessary to analyze the legal rules or legal basis used by the two institutions in carrying out a restorative justice approach (Hafrida, 2019).

This research is expected to be able to find new legal reforms or new legal regulations as a basis for law enforcement in carrying out a restorative justice approach so that the restorative justice approach carried out by law enforcers is right on target and beneficial to the community and will bring about the restorative justice coveted by the community. . Legal problems that exist in society should indeed be resolved with a restorative justice approach so that these problems do not develop to cause new problems in the future. The restorative justice approach is the right approach to resolve legal issues before going to court. The restorative justice approach has the aim that people get restorative justice and provide many benefits for the nation and state in law enforcement, but if law enforcement is carried out there are gaps that will later cause new problems, then a new solution is needed to solve the problem, especially problems in law enforcement.

In terms of the authority to use a restorative justice approach, in the analysis of this research, it will be interesting to examine the gaps that exist in law enforcement. This gap can be resolved properly so that the authority is right on target and provides many benefits for the community and is by the objectives of the restorative justice approach to creating restorative justice.

METHODOLOGY

The method used in this research is using the normative juridical method, which is a form of research related to positive law that focuses on the analysis of statutory regulations (Irianto, 2017). As for what is studied in normative legal research, it refers to existing legal norms contained in legislation, court decisions, and norms of life that develop in society. While the scope of this research includes a legal approach to find comparisons between differences and similarities, namely using the comparative method using a law enforcement approach (Efendi & Ibrahim, 2018). Because this legal research uses empirical juridical methods, the scope of this research focuses on comparisons related to law enforcement carried out by the police and prosecutors.

RESULTS AND DISCUSSION

Comparison of the Implementation of Restorative Justice in Handling Criminal Cases

A comparison is a form of comparison, where the comparison analyses the similarities and differences as material for concluding. In this study, we prioritize comparisons in handling criminal cases using a restorative justice approach. The restorative justice approach is owned by law enforcement agencies, both the police and the prosecutor's office. Both institutions have their respective legal umbrellas in carrying out law enforcement with a restorative justice approach. Before carrying out an understanding of the comparative authority of the two institutions, both the police and the prosecutor's office, of course, it is necessary to know the models of authority to settle criminal cases with the restorative justice approach of the two institutions by referring to the applicable laws and regulations.

Implementation of Restorative Justice in the Police

The handling of criminal cases at the police level related to the application of restorative justice has indeed been carried out based on the regulation of the State Police of the Republic of Indonesia Number 8 of 2021 concerning the handling of criminal acts based on restorative justice. In the criminal justice process at the level of investigation and investigation, to determine a person or

perpetrator of a crime as a suspect, this is the authority of the police. The police is a law enforcement agency authorized to conduct investigations. In addition, based on police regulations related to handling criminal acts based on restorative justice, the police are also entitled to determine in terms of handling criminal acts with a restorative justice approach. In the law, namely the Regulation of the Indonesian National Police Number 8 of 2021, namely the handling of criminal acts based on restorative justice, it has been stated that the restorative justice approach itself is part of the settlement of criminal acts involving perpetrators, victims, families of perpetrators, community leaders, religious leaders, traditional leaders or stakeholders (Regulation of the Indonesian Police, 2021).

To seek a just settlement through peace by restoring to its original state, in the general provisions of Article 1 paragraph 3 it has been stated that the settlement of the case is carried out for the sake of emphasizing the restoration to its original state. So it can be concluded that punishment is not prioritized in matters of resolving criminal cases with restorative justice, prioritizing recovery in its original state.

The Indonesian National Police Agency has the right to carry out investigations and investigations, which include, among others, the act of seeking to find a certain event that is suspected of being a criminal act, while the investigation itself is an action carried out by investigators by the laws and regulations to seek and find evidence to find that it is clear that no crime has been committed. Secondly, the investigation and investigation authority is owned by the police agency, the police institution based on the regulations of the Republic of Indonesia police has the right to handle criminal cases with a restorative justice approach. The Indonesian National Police Regulation has become the legal basis for the police to take a restorative justice approach.

The general requirements as referred to in the regulations of the Indonesian National Police include material and formal requirements. The requirements related to the handling of restorative justice as referred to in article 4 letter a materially have several requirements that must be fulfilled, namely that it is a part that does not cause unrest in the community and there is no social conflict that will occur in the future, there is no possibility of the possibility to divide the Unitary State of the Republic of Indonesia, not radicalism, not recidivist, not a criminal act of terrorism or a crime against other state security. These are material requirements. Meanwhile, the formal requirements include peace between the two parties, except for drug crimes, and the fulfilment of the rights of victims and the responsibilities of the perpetrators, except for drug crimes.

Handling criminal acts with a restorative justice approach cannot be used for drug crimes. This has been explained in Article 6 paragraph 1 of the Regulation of the Indonesian National Police Number 8 of 2021 regarding the handling of criminal acts based on restorative justice. The authority of the police agency in the restorative justice approach can also be exercised to resolve minor crimes. In addition, the restorative justice approach as regulated in the Indonesian National Police Regulation Number 8 of 2021 relating to the termination of an investigation or investigation, a restorative justice approach can be applied.

In order not to proceed with the case to the prosecution area, it can be resolved by deliberation, the agreement, and the purpose of restorative justice is to restore it to its original state. The police regulations of the Republic of Indonesia also regulate the supervision of the settlement of minor crimes based on restorative justice. The supervision is carried out by the police agency which functions as community development which is carried out through supervision or existence. In addition, supervision of investigations and investigations is also carried out by police institutions based on restorative justice in handling criminal acts committed by investigators.

The Regulation of the Indonesian National Police Number 8 of 2021 concerning the handling of criminal acts based on restorative justice is a new form of regulation so implementation is needed by these rules or the legal basis that has been mentioned for the sake of restorative justice. The restorative justice approach carried out by the police agency is a good approach to finding restorative justice, for the sake of community justice to be carried out by applicable laws that function for recovery in its original state.

Implementation of Restorative Justice in the Prosecutor

The Prosecutor's Office is a law enforcement agency that has the authority to prosecute which is regulated by laws and regulations. The Prosecutor's Office also has the authority to carry out a restorative justice approach, namely a restorative justice approach by resolving cases so that there is no conviction. The restorative justice approach carried out by the Attorney General's Office today is indeed very often done because the restorative justice approach is an alternative approach that provides a form of justice for the community as a means of restoring the community's condition to its original state. The handling of cases with a restorative justice approach at the Prosecutor's Office certainly has its legal basis in carrying out law enforcement as stated in the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the termination of prosecution based on restorative justice. This has been done by the Prosecutor's Office to prioritize restorative justice and exclude punishment so that perpetrators, victims, and their families and communities can get restorative justice.

In the prosecutor's regulation of the Republic of Indonesia Number 15 of 2020 concerning the termination of prosecution based on restorative justice, it has been explained in the general provisions of article 1 paragraph 1 that restorative justice is the settlement of criminal cases involving the perpetrator, victim, family of the perpetrator, family of the victim and other parties involved to jointly seek a just settlement by emphasizing restoration to its original state and not retaliation. Restorative justice with a restorative justice approach is an approach that has an element of justice for the people involved and is not criminal retaliation in return for the actions of the perpetrators (Indonesian Police Regulation, 2021).

In the Criminal Justice System, the prosecutor's office has the authority to prosecute so the prosecutor's office has the authority to terminate prosecutions based on restorative justice as regulated in the prosecutor's regulations of the Republic of Indonesia that restorative justice carried out or implemented must be based on the principles of justice, public interest, proportionality, criminal as a last resort and quick simple and low cost. In article 2 it has been stated that restorative justice in the termination of prosecution carried out by the Prosecutor's Office has a strong legal basis based on the principles mentioned above. In addition, there are several closures of cases in the public interest. Public prosecutors such as prosecutors have special authority to close cases related to the public interest. Prosecutors have the authority to settle cases out of court but must refer to the regulations of the Prosecutor's Office of the Republic of Indonesia which have regulated and regulated the settlement of cases outside the court. Settlement of cases out of court is of course on the authority of the Prosecutor's Office, namely the termination of prosecution, several requirements must be met in carrying out prosecution actions.

It is stated in Article 4 paragraph 1 that the termination of case prosecution and restorative justice is carried out by taking into account the interests of the victims and other protected legal interests, negative stigma, avoidance of retaliation, public response and carbohydrates, and adherence to decency and public order. In the termination of prosecution based on restorative justice, the Prosecutor must remember or see the points mentioned in Article 4 paragraph 1. In the authority to terminate prosecution as stated in the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2020, it is stated in chapter 4 of the peace procedure.

Peace to bring about restorative justice, of course, cannot be done arbitrarily, but it is necessary to put forward the rule of law which is the legal umbrella for the implementation of the restorative justice approach carried out by the Prosecutor's Office. There have been several efforts made starting from peaceful efforts made, offered by the public prosecutor to offer to victims and suspects in resolving cases. This approach cannot be carried out by coercion, pressure, or intimidation of the perpetrators or victims. The restorative justice approach certainly must have an agreement between the two parties to make peace, so that restorative justice can be completed out of court and not the punishment obtained by the perpetrators of the crime because the agreements have been made at the beginning of the process before going to court.

Many peace processes are carried out based on the legal basis of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020, namely processes that are carried out voluntarily by way of deliberation without coercion or intimidation to the perpetrators and victims. In this case, the Prosecutor as the public prosecutor acts as a facilitator for both parties to reconcile the two parties in criminal cases to bring about restorative justice. The peace process itself is carried out at the Prosecutor's Office unless there are conditions that do not allow it to be carried out at the government office or other agreed places. This has been stated in the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning the definition of prosecution based on restorative justice.

In the Prosecutor's Regulations of the Republic of Indonesia, it has been stated that in optimizing the handling of the implementation of the Prosecutor's Regulations to promote restorative justice, technical guidance is also held as well as education and training. This is stated in Article 16 of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning the termination of prosecution based on restorative justice. The regulation is the legal basis for the Prosecutor's Office in promoting restorative justice for the sake of restoring the situation to its original state to minimize the crimes committed by the perpetrators so that criminal cases are sufficiently resolved at the stage outside the court with a restorative justice approach based on the legal basis that has been owned by the prosecutor's agency.

Similarities and Differences in the Implementation of Restorative Justice in the Police and Prosecutors

Similarities, of course, the two institutions, both the police and the prosecutor's office, have differences in handling criminal cases with a restorative justice approach. The two institutions have their respective basic rules in carrying out a restorative justice approach. The goal is the same, namely restorative justice, but the differences that arise are based on the authority of each institution, both the police and the prosecutor's office. The police agency has the authority in terms of investigation and investigation, while the Prosecutor's Office has the authority to prosecute. This difference is something that underlies the authority of the two institutions. The two institutions in the restorative justice approach have prominent differences between the authority of the police and the prosecutor's office, namely several issues of legal basis or legal umbrella. The rights possessed by the Prosecutor in the investigation and investigation stages related to criminal acts of corruption, the Prosecutor's Office has a new formula for handling corruption cases with a restorative justice approach. Of course, with a strong legal basis to implement this approach to achieve restorative justice (Mustofa, 2017).

Meanwhile, the police institution also has a strong basis for resolving criminal cases with a restorative justice approach (Sitinjak, 2021). Police institutions have the right to stop investigations and investigations as a means of negotiation between the two parties in certain criminal acts to find restorative justice involving victims, perpetrators, and the community in resolving legal issues in the community. The legal umbrella owned by the two institutions, both the police and the prosecutor's office, is the regulation of the Indonesian National Police Number 8 of 2021 concerning the handling of criminal acts based on restorative justice and the regulation of the prosecutor's office of the Republic of Indonesia Number 15 of 2020 concerning the termination of prosecution based on restorative justice. The two legal bases have the same position in the hierarchy of legislation, but the implementation carried out by the two institutions, both the police and the prosecutor's office, have their respective authorities (Polri Public Relations, 2020). The police agency has the authority in terms of investigation and investigation to be stopped with a restorative justice approach, while the prosecutor's agency has the prosecution authority to stop it to prioritize a restorative justice approach (Nadeem, 2021).

This will be a problem for the police agency in conducting investigations and investigations to find sufficient evidence that functions to establish a person as a suspect and then delegate it to the prosecutor's office. The Prosecutor's Office uses the authority to stop prosecution with a restorative justice approach. This will be a new problem of the gap in handling in Indonesia (Hazrati & Heffron, 2021). Related to the use of the restorative justice approach, there is a need for synergy regarding the regulations of the prosecutors of the Republic of Indonesia with the regulations of the Indonesian National Police so that the legal position does not overlap in carrying out law enforcement using the restorative justice approach (Maglione, 2021). In this regard, the limits of the authority of the two institutions must be made as well as the advantages and disadvantages of the two institutions in law enforcement, especially law enforcement in handling criminal cases with a restorative justice approach. The restorative justice approach is the best for resolving criminal cases, but if the existing legal umbrellas overlap, it is necessary to change the legal rules to provide an umbrella for law enforcement in Indonesia, so that there is no gap between law enforcement agencies, both the police and the attorney general's office in handling criminal cases using a restorative justice approach.

CONCLUSION

A restorative justice approach is an approach used to resolve criminal cases and return them to their original position by minimizing punishment. This authority belongs to the police and the prosecutor's office in dealing with certain criminal cases. Both institutions, both the police and the prosecutor's office, have their respective legal frameworks in terms of the restorative justice approach. Seeing that the position of the criminal justice system between the two institutions is different, this is the gap between the two institutions in handling cases with a restorative justice approach. This is a new problem that requires legal reform as the basis for law enforcement in Indonesia. The existing police regulations and prosecutors' regulations require synergy in the formation of laws with certainty, justice, and benefits.

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