

Research Article

Restitution as a Requirement for the Implementation of Restorative Justice Against General Crimes Related to Property

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Restitution is a monetary remedy paid by a perpetrator or a third party to a victim or their family. It can be implemented by returning property, payment for losses or suffering, or reimbursement of costs. However, restitution is not applicable to all types of crimes; thus, not all victims have access to it. The issue of legal protection for victims is still an ongoing discourse, and many parties believe that its implementation is still far from perfect and in need of legal reform due to the inability of the perpetrators to pay restitution to the victims. This study uses qualitative methods by examining secondary data such as documents, laws and regulations, scientific findings, and books. This study finds that the application of restorative justice in criminal cases, especially property crimes provides certain flexibility for the community to search for a settlement. The perpetrator paying for restitution is an absolute requirement for restorative justice in settlement of property-related crime as an alternative to the conventional court proceeding. Moreover, the perpetrators, victims, and the community can all be involved in a discussion process to reach a consensus regarding a solution to a conflict avoiding harming any parties, for instance, a settlement without punishment.

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1. Introduction

It is a common occurrence for property-related crimes to happen in society. Book II of the Criminal Code regulates what constitutes property-related crimes, which consists of theft (CHAPTER XXII), extortion and threats (CHAPTER XXIII), embezzlement (CHAPTER XXIV), fraud (CHAPTER XXV), Harming people who are in debt and those who are entitled (CHAPTER XXVI), destruction of property (CHAPTER XVII), Possession of stolen goods (CHAPTER XXX). Fraud in the Agreement, Bankruptcy Crimes (Articles 396 to 403, 405, 520), Crimes Against Publishing and Printing (Articles 483 to 485), and Violations of Land Ownership (Articles 548/551).

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Property-related crimes are recurring crimes in society and experts in Indonesia label them as "*kejahatan warungan/conventional crime*". Based on the data from the Central Statistics Agency of the Republic of Indonesia regarding Village Potential, shows that in 2018 theft is the most common crime to happen in villages/urban villages in Indonesia. The data indicate that theft constitutes 45.01 percent of crimes that occur in villages/urban villages of Indonesia. This number is significantly higher compared to other crimes that are generally below 16 percent.[1] Similarly, data on crime victims shows that most are victims of theft. To illustrate, the victims of theft in 2019 constitute 85.35 percent of all crime victims and in 2020 it is 86.51 percent.[1]

Wirjono Prodjodikoro argues that the act of breaking the law would result in an abnormality in society which is an absence of a balanced society (*evenwichtsverstoring*). The disruption to a balanced society naturally would create a desire and a sense of necessity to repair, to wit restore the balance in society. In the context of providing protection to the victims of criminal acts, Muladi believes that the first issue to consider is the loss of the victim. It constitutes not only material or physical suffering but also psychological. For instance, the trauma of losing trust in society and public order. It can induce anxiety, paranoia, cynicism, depression, loneliness, and other isolating behaviors.[2]

In Indonesia's criminal justice system, the interests of victims, such as their losses and suffering are often neglected. Victims of crime are placed only as part of the evidence, namely as witnesses. It means that the possibility for victims to gain freedom in fighting for their rights is minuscule. The interests of victims have been represented by the Public Prosecutor by prosecuting the perpetrators of criminal acts, creating a belief that legal protection for victims and the community has been fulfilled. Yet in reality, the losses suffered by the victims are neglected.[3]

For the prosecutor's office, the restorative justice approach is an alternative to processing criminal acts from the current mechanism of procedural law at the prosecution level. So far, every settlement of criminal acts always ends in court leading to judges imposing criminal sanctions on the perpetrators, regardless of the punishment. In the context of sociological philosophy, this solution does not always satisfy all parties involved. Therefore, it is necessary to consider another means to process criminal acts, for instance, Alternative Dispute Resolution (ADR) which prioritizes the restorative justice approach. This solution aims to resolve conflicts between the perpetrators and the victims, for example in an embezzlement case peacefully at every process of justice, especially at the prosecution level.

In the conventional criminal justice process, there is a measure of restitution and compensation for victims. Restitution is indemnity paid to the victim or his family by the perpetrator or a third party, whether by returning property, paying monetary remedy for loss or suffering, or reimbursement of costs for certain measures. While compensation is indemnity provided by the State due to the perpetrator's inability to pay for losses they are responsible for. However, restitution and compensation are not applicable to restore the victim's damage from all criminal acts.[4] There are many cases of property-related crimes, in which victims do not get the right of restitution to restore their losses, whether physical or psychological. The issue of legal protection for victims is still an ongoing discourse, many parties believe that its implementation is still far from perfect and in need of legal reform due to the inability of the perpetrators to pay restitution to the victims. Based on the background, this paper will analyze the ideal arrangement and formulation of compensation that enable justice for the victim.

Previous research, among others: first, research conducted by Masahiro Suzuki (2020) found that the restorative justice process has the potential to alter participants' attitudes and behaviours. The concept of readiness can be used to examine the possibility of how the restorative justice process including preparation and follow-up does so. It can be used to investigate whether and how the 'good' interaction between participants in restorative justice processes can help participants with low readiness move towards restorative outcomes.[5] Secondly, research conducted by Sahuri Lasmadi (2020) shows that the criminal justice system component consists of elements of the Police, Attorney General's Office, Court, and Correctional Institution as law enforcement officers. In applying the criminal justice system there are weaknesses and strengths. In criminal policy to eradicate crime effectively and efficiently by using non-penal measures can be done based on a restorative justice approach. However, until now the implementation of the concept of restorative justice in the criminal justice system has not been implemented in an integrated manner.[6]

Based on the above description, the author proposes the problem that will be discussed in this paper as follows: (1) How to implement Restorative Justice in the Indonesian Criminal Justice System? (2) How is the implementation of restorative justice through the fulfillment of restitution for victims of property-related crime?

2. Method

This study uses qualitative methods and is descriptive in nature. According to Bogdan and Taylor, a qualitative approach is a research procedure that generates descriptive

data whether in written or spoken words directly from people or through behavior observation.[7] Descriptive nature is a problem integrated into research to explore or display social situations that will be studied thoroughly, broadly, and deeply. The data used are secondary data from documents, laws and regulations, scientific findings, and books.

3. Results and Discussion

3.1. Implementation of Restorative Justice in the Criminal Justice System

Restorative Justice is a new approach to resolving criminal cases. Contrary to the current system, it focuses on the direct participation of perpetrators, victims, and the community during the process of resolving criminal cases. It is generally referred to as a non-state justice system because the State has a minimal or even non-existent role during the process of resolving criminal cases. However, its emergence is faced with various debates, theoretically and practically.[8]

Tonny Marshal argues that Restorative Justice is “a process in which the parties involved come together to search for a solution that best deals with post-crime problems and consequences in the future”.[9] Therefore, it is also a process of resolving criminal cases without involving a criminal court, commonly known as penal mediation (an Alternative Dispute Resolution; or as some also call it “Appropriate Dispute Resolution). Penal mediation mainly brings together the perpetrators of criminal acts and their victims, so it is also often called Victim-Offender Mediation (VOM).

Similarly Howard Zehra argues: “Restorative justice is a process to involve to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible”.[9]

Restorative justice aims to empower victims’ right to be heard and their role in criminal court proceedings. It also means that victims would have more opportunities to define their own needs and how and when those needs should be met.

The implementation of restorative justice is inseparable from the authority of the Public Prosecutor to dismiss prosecution in case of the death of a defendant; expired prosecution; double jeopardy (*nebis in idem*); criminal complaint withdrawal; or out-of-court settlement (*afdoening buiten process*).

Article 3 paragraph (2) letter e of Republic of Indonesia Prosecutor's Regulations Number 15 of 2020 gave Prosecutor the authority to dismiss prosecution due to out-of-court settlement/*afdoening buiten process*. While Article 3 paragraph (3) set requirements for an offense allowed to be settled out of court if the maximum fine is voluntarily paid or restoring those impacted by the crime to the original situation through restorative justices.

According to its legal consideration, the Prosecutor's Regulations Number 15 of 2020 on the Termination of Prosecution based on Restorative Justice is one of the steps to reform the Indonesian Criminal Justice System. It means that the implementation of restorative justice is a necessity for the community, especially for minor crimes.

Restorative justice which mainly concerns restoring the loss of the victims to its original state is deemed to be a more appropriate solution than retaliating against the actions of the perpetrators which is prone to lead to the need for revenge. Crime is used as an *ultimum remedium* in the process of resolving criminal cases.

Several rules that regulate the process of terminating prosecution based on restorative justice in Prosecutor's Regulations Number 15 of 2020 are considerations for terminating prosecution (Article 4), conditions for terminating prosecution (Article 5), and peaceful measures that can be done by the Public Prosecutor (Article 7 to Article 15).

In the perspective of restorative justice, the interests of the victim become the main focus because it encourages the perpetrator to realize his mistake and the consequences of his actions. Perpetrators are also encouraged to take responsibility for the crimes that they have committed and to repair the damages that have been caused. It also gave the perpetrators the opportunity to be accepted by the victims and the community.

3.2. Regulations on Restitution in Indonesia

In the criminal justice system, the legal protection given to the victims of criminal acts tends to be less than the rights of the defendant or suspect. Meanwhile, one of the most important rights of the victims of crime is the right to restitution or compensation due to losses caused by a crime. However, the regulation on restitution is deemed unable to provide certainty, especially for victims of property-related crimes.

Several laws that regulate restitution are Law No. 8 of 1981 on the Criminal Procedural Law; the Criminal Code; Law No. 8 of 1999 on Consumer Protection; Law No. 26 of 2000 on the Human Rights Court; Government Regulation No. 3 of 2002 on

Compensation and Rehabilitation of Victims of Serious Human Rights Violations; Law No. 30 of 2002 on the Corruption Eradication Commission; Law No. 15 of 2003; Law no. 15 of 2003 in lieu of Law no. 1 of 2002 on the Eradication of Criminal Acts of Terrorism; Law no. 21 of 2007 on the Eradication of Crime Acts of Human Trafficking; Law No. 31 of 2014 amendments to Law No. 13 years old 2006 on Witness and Victims Protection, Government Regulation No. 44 of 2008 on the Provision of Compensation, Restitution and Assistance to Witnesses and Victims, and Law no. 32 of 2009 on Protection and Management of the Environment.

3.3. The Implementation of Restorative Justice through the Fulfillment of Restitution for Victims of Property-Related Crime

The concept of criminal sanctions in restorative justice is not retribution, but rather leaning toward the concept of Post-Conflict Recovery between the victim and the perpetrator. One of the concepts of criminal sanctions of restorative justice is Restitution (indemnity), which is a process of compensating for the loss by the perpetrator to the victim for losses due to a crime. Quoting Weitekamp, Rufinus Hutahuruk believes that restitution proactively involves both the perpetrator and the victims in repairing the damage or loss the victim suffers.[10]

Referring to Prosecutor's Regulations Number 15 of 2020, the definition of 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 that emphasizes restoring damages or loss to its original state rather than retribution. Termination of prosecution based on restorative justice is carried out in the interest of justice; public interest; proportionality; punishment as a last resort; and fast, simple, and inexpensive.

In addition, the public prosecutor has the authority to dismiss prosecution in case of the death of a defendant; expired prosecution; double jeopardy (*nebis in idem*); criminal complaint withdrawal; or out-of-court settlement (*afdoening buiten process*).

An out-of-court settlement should only be implemented for criminal acts; if maximum fines have been paid voluntarily in accordance with regulations; if damages or losses have been restored to their original condition using a restorative justice approach. Then, an out-of-court settlement with a restorative justice approach can justify termination of prosecution.

To dismiss prosecution based on restorative justice, prosecutors need to consider a number of things, namely subject, object, category, possible sanctions; crime background; degree of crime; losses or damages caused by criminal acts; costs and benefits

of handling cases; restoring damages/loss to its original condition; peace between the victim and the suspect.

A case can be settled or termination of prosecution based on restorative justice if: First, first time offender; Second, the acts are only punishable by fines or no more than 5 years imprisonment; Third, the object of crimes or damages caused by the crime is not more than Rp. 2.5 million.

However, Article 5 paragraph (8) of Prosecutor's Regulations No. 15 of 2020, the termination of prosecution based on restorative justice is excluded for certain types of criminal acts wit: First, crimes regarding national security, the dignity of the President and Vice President, friendly countries, heads of friendly countries and their representatives, public order and morality; Second, there are minimum sanctions for the criminal acts. Third, crime regarding narcotics. Fourth, environmental crimes. Fifth, criminal acts committed by corporations.

Next, Article 6 of Prosecutor's Regulations No. 15 of 2020 states that those conditions of termination of prosecution based on restorative justice if fulfilled can be used as a consideration for the Public Prosecutor to determine whether or not the case file would be taken to the court.

4. Conclusion

The implementation of restorative justice in property-related crimes certain flexibility for the community to search for a settlement. Settlement through restorative justice is often used to settle embezzlement, which is a crime but private in nature between individuals (*naturlijkepersonen*) and/or legal entities (*Recht Personen*), thus restorative justice is a form of community response to resolve conflict.

Restitution is paid by the perpetrator and is an unconditional requirement for an out-of-court settlement of property-related crimes, as part of restorative justice in which perpetrators, victims, and the community can all be involved in a discussion process to reach a consensus regarding a solution to a conflict avoiding harming any parties, for instance, a settlement without punishment.

Conflict of Interest

The author states that there is no conflict of interest related to the writing or publication of this article I created.

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