

RESTORATIVE JUSTICE IN SETTLEMENT OF MINOR CRIMES

Ilmuwani Lubis¹, Firman Halawa²

Master of Law Students at Universitas Pembangunan Panca Budi, Medan¹

Lecturer at Master of Laws, Universitas Pembangunan Panca Budi, Medan²

*Correspondence: Email lilmuwani@gmail.com

Abstract

According to the proponents of the value of justice, the law has been moving quickly and more sharply if legal cases are related to small people and question the interests of big people, including those with power. However, if there is a case that involves or is suspected of being the perpetrator, big people and powerful people, then the law seems to be paralyzed and dull. Apart from requiring legal certainty and justice, legal solutions must also have beneficial value, which is the current problem and challenge. namely, how to realize a law enforcement process that is able to fulfill legal objectives, namely achieving legal certainty that is just and useful. The method used in this research is a descriptive analytical method with a normative juridical main approach. Reforming criminal law must be carried out with a policy approach, because it is essentially part of a policy step or policy (i.e. part of legal politics/law enforcement, criminal law politics, criminal politics and social politics). Criminal justice is not just seen as a crime prevention system. , but is seen as a social problem that is the same as crime itself. The implementation of criminal sanctions needs to be linked to human development policies that want to form complete Indonesian people. The use of criminal sanctions imposed on violators must be in accordance with civilized human values. Apart from that, punishment is used to raise awareness among offenders of human values and social values. Prioritizing peace through deliberation to reach consensus is an integral mechanism in the life of society in Indonesia. Legal reform in Indonesia cannot be separated from conditions. The objective of Indonesian society is to uphold the values of religious law in addition to traditional law, so it is necessary to explore legal products that are sourced and rooted in cultural, moral and religious values. Settlement of ordinary criminal acts with minor motives can be achieved through penal mediation, called the restorative justice approach, which focuses on there is direct participation of perpetrators, victims and the community in interpreting criminal acts. Restorative justice is also a new framework of thinking that can be used in responding to criminal acts for law enforcers and workers in Indonesia.

Keywords: Restorative Justice, Minor Crimes, Settlement.

INTRODUCTION

The absence of guidelines or standards on how to calculate a fair punishment burden in imposing criminal sanctions, especially imprisonment, in deciding criminal cases in Indonesia makes the sense of justice and legal certainty immeasurable or uncertain. There are only minimum or maximum guidelines for imposing prison sentences and fines. However, this is still far from the hope of justice and certainty because apart from the minimum and maximum distance, it is still very wide so that judges can differ from each other and are also not yet detailed. Some of them provide direction for understanding, concepts, or criteria for minor crimes, namely:

1. Simanjutak T., that a minor criminal offense is a criminal offense that is punishable by imprisonment or imprisonment for a maximum of three months and/or a fine of up to IDR 7,500 (seven thousand five hundred rupiah) and minor insults, except for certain violations of statutory regulations. -road traffic laws, as a guide in handling

minor criminal cases as regulated in Articles of the Criminal Code and other statutory regulations.

2. Hidayatullah, that in criminal procedural law practice it is known as "Tipiring" (Minor Crimes) which is an abbreviation of the term contained in CHAPTER , Criminal Procedure Code (KUHAP). Based on Article 205 paragraph (1) of the Criminal Procedure Code, the criteria for minor crimes are cases which are punishable by imprisonment or imprisonment for a maximum of three months or a fine of up to Rp. 7,500 (seven thousand five hundred rupiah) and minor insults except as specified in paragraph these 2 parts. Meanwhile, based on Supreme Court Regulation (PERMA) Number 2 of 2012 concerning Adjustments to Limits for Minor Crimes and Amounts of Fines in the Criminal Procedure Code, "The amount of loss stated in the law above is no longer in accordance with the current currency exchange rate". Based on Article 2 paragraph (2), this PERMA sets the loss value at IDR 2,500,000 (two million five hundred thousand rupiah). With the issuance of PERMA No. 2 of 2012, it is hoped that there will be proportional handling with quick examination of cases of minor crimes regulated in the Criminal Code, such as: (i) petty theft (Article 364); (ii) light embezzlement (Article 373); (iii) minor fraud by the seller (Article 384); (iv) light damage (Article 407 paragraph (1)) and light obstruction (Article 484).

In the law enforcement process, including in administrative legal disputes at the Administrative Court, law enforcers are often faced with the dilemma of achieving legal objectives. In the case of completing a Palm Oil Seed Business License, for example. The government suddenly refused to extend the permit of a company which in fact had prepared millions of palm oil seeds and employed hundreds of local workers. However, due to administrative procedures that the Company did not comply with, in the name of legal certainty, the permit was not extended. When filing a lawsuit with the PTUN, for example, the company's lawsuit was declared inadmissible because the deadline for filing a lawsuit had passed. In the name of the principle of legality, the Panel of Judges cannot violate the principles of procedural law. But on the other hand, the context of millions of seeds and thousands of employees is a problem in itself. This phenomenon can occur in administrative law disputes.

In reviewing criminal law, conflict over the aims of the law, between certainty, justice and the usefulness of the law also occurs. When Mbok Minah, an old woman was found guilty of stealing 3 cocoa beans from her employer's garden and at the same time a mayor was sentenced to 6 months for corruption of billions of rupiah, for a moment we asked, is this the essence of justice carried out by the law? Several years ago there was a case in the city of Palu, Central Sulawesi when AAL, a vocational school student, was arrested, accused and tried for stealing flip-flops belonging to a police officer. Single judge Rommel F Tampubolon decided in a trial at the Palu District Court (PN), Central Sulawesi, who deemed AAL guilty and handed over his guidance to his parents. AAL was accused of stealing Eiger brand number 43 flip-flops belonging to Brigadier Ahmad Rusdi Harahap, a member of the Central Sulawesi Police Mobile Brigade. However, at trial, what was used as evidence were Ando brand sandals number 9.5. The judge's decision also did not

mention that the sandals belonged to Ahmad. Judge Rommel's decision may not be legally problematic. However, considering that so far the treatment and sentences for perpetrators of corruption have been low, this decision does not fulfill the people's sense of justice.

Some of the cases above and other cases are common sights in our law enforcement process. Responding to such law enforcement conditions, the author recorded three opinions. First, the view that whoever is guilty must legally go through a legal settlement process as regulated in the provisions of the legislation. The second view is that apart from enforcing the rules, in cases like AAL's, law enforcers should pay attention to legal justice for a small child who "only" stole sandals. The third view is that apart from wanting legal certainty and justice, legal settlements must also have beneficial value. The benefit value must be an important indicator in law enforcement and settlement, namely the benefits for the perpetrators and more importantly the benefits for society in general. So far, the focus of law enforcement has emphasized legal certainty, but has forgotten the other aims of law, namely justice and benefit. Law enforcement that forgets the values of usefulness results in a lack of legal values in society. The weak legal culture and legal awareness in society today is due to the absence of the value of legal benefits in law enforcement. The will and these three choices have so far colored the debate in the process of achieving legal objectives in every law enforcement. According to Mahfud MD, theoretically, there are three objectives of law, namely justice, certainty and benefit. Justice can be said to be the main goal that is universal.

LITERATURE REVIEW

Based on the problems above, a problem formulation can be given, namely:

1. How to create a law enforcement process that is able to fulfill legal objectives?
2. What is the form of use of restorative justice in resolving minor crimes?

METHOD

The method used in this research is a descriptive analytical method with a primarily normative juridical approach. Analytical descriptive means critically describing and describing something that is the object of research through qualitative analysis. Because what we want to study is within the scope of legal science, the normative approach includes: legal principles, synchronization of statutory regulations, including inconcreto legal discovery efforts.

In normative juridical research, the use of a statutory approach is a definite thing. It is said to be certain, because according to legal logic, normative legal research is based on research conducted on existing legal materials. Even though, for example, research was carried out because it saw a legal vacuum, this legal vacuum can be identified because there are already legal norms that require further regulation in positive law.

RESULTS AND DISCUSSION

A. Legal Regulations Regarding Ordinary Crimes with Minor Motives and Forms of Using Restorative Justice in Resolving Minor Crimes

The law works by showing its function, namely:

1. creating norms, both those that provide designations and those that determine relationships between one person and another
2. dispute resolution and
3. ensure the continuity of community life, if changes occur. This means that law positions itself as a means of social control and social engineering. 7 Social control includes all the forces that create and maintain social ties.

EA Ross with imperative theory links it to criminal law. In line with the changes and development of civilization, human life patterns and demands which are translated into the need and desire to reflect on themselves are increasingly becoming real and open. Dahlan Alwi stated that human civilization cannot be separated from the development and progress of science and technology, and that science will provide scientific, social and cultural insights that can shape human civilization. One of the functions of criminal law is to limit and announce prohibited acts. These are referred to as rules of conduct, which have previously been established and addressed to members of the community as actions that must be avoided under threat of criminal sanctions. In addition, law maintains a constant state (status quo) while flexibly guarding change. Law, especially criminal law, is designed to maintain order, as well as protect public and private interests. The community determines that several very important interests need to be safeguarded with a formal control system. Therefore, the law must legally give the state the power to enforce it. Law is a system of official social control, which may be applied when other forms of social control are ineffective.

Roscoe Pound's view, which defines law as a very special form of social control, carried out according to the views of authorized institutions, in the judiciary and administrative processes (a highly specialized form of social control, carried on in accordance with a body of authoritative precepts, applied in a judicial and an administrative process). Social control is a vision of individuals pursuing various interests. Conflict is inevitable, individual demands increase regarding the stability and order of society. It is necessary to maintain a balance, or a status quo in society. This is no exception in handling ordinary crimes with minor motives. Handling of all forms of serious, light, serious or non-serious crimes must still prioritize the law, taking into account the rights of a suspect, accused or convict by applying the principles of "rule of law", as well as prioritizing the principle of "priority" as stated by Gustav Radbruch, with his combined theory, namely "justice" is always the priority, "benefit" is the priority, and finally "certainty".

Barda Nawawi Arief discusses this criminal policy in the book *Anthology of Criminal Law Policy*. The discussion begins with the definition of criminal politics, its relationship with social politics, integral policies in overcoming crime, as well as a description of the results of the Congress. The explanation began by stating Sudarto's definition of criminal policy, namely:

1. In a narrow sense, it is the totality of principles and methods that form the basis of reactions to legal violations in the form of criminal penalties.
2. In a broad sense, it is the entire function of the law enforcement apparatus, including the workings of the courts and the police.
3. In its broadest sense it is the totality of policies, carried out through legislation and official bodies, aimed at enforcing the central norms of society.

B. Stages of Crime Control Policy with Criminal Law

Criminal law policy or crime prevention policy with criminal law is a process consisting of three stages, namely the formulation or legislative stage, the implementation or judicial stage, and the implementation or executive/administrative stage.

The legislative policy stage, which is operationally part of the planning and crime prevention mechanism at an early stage, is also a statutory policy. Here it is relevant if we pay attention to the considerations of the 1990 VIII UN Congress, including Newly formulated policies and legislation should be as dynamic as the made of criminal behavior and should remain abreast of the changers in the forms and dimensions of crime. Therefore, criminal law policy (formulation stage) should be able to respond to developments and changes in crime in line with changes and developments in society. In this stage the focus is on the central problem of determining:

- a. What actions should be considered a criminal offense?
- b. What sanctions should be used or imposed on the violators?

Regarding the first central problem related to criminalization, namely the process of determining a person's actions as criminal acts. This process ends with the formation of a law which determines that this act is threatened with a sanction in the form of a criminal offense. This problem is related to the development and development of society which gives rise to social change. Including changes in values, attitudes and behavior patterns. This is the action of community members. There are acts that were previously considered not to be criminal acts, but are then determined to be crimes that need to be punished (criminalization). On the other hand, there are acts that were previously classified as acts that are punishable by crime, becoming acts that are not seen as criminal acts (decriminalization). Apart from that, various acts which are not fully recognized have become criminal acts or new offenses. In the process of criminalization as a central problem, it is necessary to pay attention to the standards in determining an act as a criminal act. These benchmarks are basically as follows:

- a. National development which aims to create a just, prosperous, spiritual and material society based on Pancasila must be considered in the context of using criminal law to overcome crime and ultimately to achieve welfare and protection of society.
- b. Prevention and control of crime with criminal law is aimed at acts that are truly undesirable acts, namely acts that cause both material and spiritual harm to members of the community.
- c. The principle of costs and results (cost benefit principle) in the use of criminal law must be considered.

- d. The capacity and working capacity of law enforcement agencies also need to be considered in the use of criminal law, the aim of which is to avoid excessive workload.

The policy of determining an act as a criminal act is also known as a criminalization policy, included in statutory policies which always receive attention. This is due to the fact that criminal acts are determined by law, so it can be said that the law creates crime. The law provides the authority and basis of legitimacy for the law to state whether a person's actions constitute a crime or not. This does not mean that the law is criminogenic, but only labels the act as a crime. However, legislation can be a criminogenic factor if it is inconsistent with stating, apart from the feelings and values of society, an attitude of distrust regarding the effectiveness of the system arises. The formulation of a crime in law needs to be carefully considered with regard to the aim of effectiveness or ease of implementation properly. In the literature it is known that there are types of formulation of criminal acts. First, the formulation of criminal acts in the law which focuses on prohibited acts. By committing the act as stated in the formulation, it is deemed that the criminal act has been completed, which is referred to as a formal formulation (formal offense). Second, the formulation of the criminal act focuses on the prohibited consequences, if the prohibited consequences actually occur. Only then is it considered that the criminal act has been completed, which is referred to as material formulation (material offense).

CLOSING

Conclusion

The regulation of ordinary criminal acts with minor motives is criminal acts which are regulated in the Criminal Law (KUHP) and in other laws and regulations, but the distinction must be seen from the background of the perpetrator, the motive and the consequences of the criminal act so that it does not cause significant harm. disturbing in society, but the practice of law enforcement disturbs the sense of justice, because it is resolved through a court trial process which is not actually necessary or can be achieved by a process outside of court, by prioritizing peace through deliberation to reach consensus which is an integral mechanism in the life of society in Indonesia. Settlement of actions Ordinary crimes with light motives can be pursued through penal mediation, called a restorative justice approach, which emphasizes the direct participation of the perpetrator, victim and society by interpreting criminal acts as basically attacks on individuals and society as well as social relations, so justice is interpreted as a process of finding solutions to problems that occurs in an ordinary criminal case with a light motive and the involvement of the victim, community and perpetrator is important in efforts to repair, reconcile and ensure the sustainability of the repair effort. Indonesian society upholds religious legal values in addition to traditional law, so it is necessary to explore legal products that are sourced and rooted in cultural, moral and religious values. In connection with this research, there is also nothing wrong with putting forward the concept of restorative justice as a concept of thought that responds to development of the criminal justice system by focusing on the need for involvement of the community and victims who

feel marginalized by the mechanisms that work in the current criminal justice system. On the other hand, restorative justice is also a new framework of thinking that can be used in responding to criminal acts for law enforcers and workers.

Restorative justice, which adheres to different principles from court examinations, is the clearest problem at this level. In the context of the Indonesian criminal justice system, provisions regarding openness are very firmly and clearly regulated in the Criminal Procedure Code, which is derived from the principle of open court hearings to the public. Meanwhile, the meeting model (conference, meeting) of restorative justice is usually arranged in a private setting, so the question is how the judge and legal advisor assess that the interests of each party are respected. Legal reform in Indonesia cannot be separated from the objective condition of Indonesian society which upholds religious legal values in addition to traditional law, so it is necessary to explore legal products that are sourced and rooted in cultural, moral and religious values. In relation to this research, there is also no It is wrong to put forward the concept of restorative justice as a concept of thought that responds to the development of the criminal justice system by focusing on the need for community involvement and victims who feel marginalized by the mechanisms that work in the current criminal justice system. On the other hand, restorative justice is also a new framework of thinking that can be used in responding to criminal acts for law enforcers and workers.

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