

The Nature of Termination of Criminal Criminal Attendance Based On Restorative Justice

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Abstract- In Indonesia the development of the concept of Restorative Justice is something new, Restorative Justice is a form of justice that emphasizes the involvement of all parties involved in a particular crime, both the victim, the perpetrator and the community to jointly solve the problem in dealing with the consequences of the crime, with orientation to improve, create reconciliation and satisfy all parties. As diversified, Restorative Justice is carried out outside the formal process through the court to demonstrate law enforcement and a sense of justice properly. Every investigation of a criminal case is not impossible to find a dead end so that it is no longer possible to continue the investigation. In such situations, the investigator is given the authority to terminate the investigation. The Criminal Procedure Code specifies a limited reason used to stop the investigation. Based on the above background description, the authors formulate the problems that become the topic of discussion in this dissertation are as follows: What is the nature of stopping investigations for the sake of law? What is the concept of terminating investigations for the sake of law based on restorative justice? .Research Objectives To analyze and find the nature of the termination of investigation by law. To analyze and find the concept of terminating the investigation by law based on restorative justice. To answer the problems that have been formulated in this study, research methods are used, namely normative legal research (Normative juridical). Normative Legal Research (normative juridical) is a legal research method conducted by examining mere library materials or secondary data. This research was conducted to identify the concepts and principles and principles of sharia that are used to regulate police authority with restorative justice in stopping criminal case investigations. The method of thinking used is the method of deductive thinking (a way of thinking in drawing conclusions drawn from something of a general nature that has been proven that he is right and the conclusion is intended for something of a special nature). The origin of the research is the relationship between the nature and the concept in restorative justice. It is found that there is a lack of clarity between the reality and the rules. hesitant in taking the decision, even though there have been reasons for the abolition of the right to sue and loss of the right to carry out the crime, that is because nebis in idem, the suspect died, or because the criminal case has expired, and there is not enough evidence. A cessation of investigations carried out by investigators must be truly accountable, in the sense that the cessation of such investigations is based on the facts that occur which by law must stop the investigation. Substantially Restorative Justice as a guideline in the implementation of Restorative Justice established

based on the principles of the formation of the National legal system, is declared to be able to integrate criminal justice mechanisms with police discretion

Index Terms- Restoration Justice, No Criminal Case Light, No Violation of the Law

I. INTRODUCTION

In Indonesia the development of the concept of *Restorative Justice* is something new, Restorative Justice is a form of justice that emphasizes the involvement of all parties involved in a particular crime, both the victim, the perpetrator and the community to jointly solve the problem in dealing with the consequences of the crime, with orientation to improve, create reconciliation and satisfy all parties. As diversified, *Restorative Justice* is carried out outside the formal process through the courts to demonstrate the rule of law and a sense of justice properly.

Knowing the pillars of state administration in Indonesia in an essential state law one of which is: concerning the justice system. However, until now the justice system in Indonesia is still faced with a number of problems even though various improvements and / or repairs have often been done. System improvements that have been made have not provided satisfactory answers for justice seekers.

Legal issues seem to be one of the phenomena that never subsides in social, national and state life. As the phenomenon of legal problems increases, so does the study of law which aims to explore various problems from the perspective of existing laws and regulations. Criminal offense is not solely as a revenge but rather as a goal to influence human behavior in accordance with the rule of law. The most important thing is the provision of guidance and protection, especially for cases of bad children. The handling of criminal cases with the *Restorative Justice* approach offers a different perspective and approach in understanding and handling a crime. In the view of *Restorative Justice*, the meaning of a criminal act is basically the same as the view of criminal law in general, namely: attacks on individuals and society and social relations. This incident was caused because he took 3 pieces of cocoa belonging to PT RSA 4, and this action was discovered by the foreman. The act was also reported to the police. Counting since October 19, 2009 the case of cocoa theft that involved Minah's grandmother had been handled by the Purwokerto District Attorney's Office. He was charged with taking other people's belongings without permission. Namely picking three cocoa weighing 3 kg from the plantation owned by PT Rumpun Sari

Antan 4. How much is the loss for the theft of Rp 30,000 according to prosecutors. Or Rp 2,000 in the market .. As a result of his actions Grandma Minah was charged under article 362 of the Penal Code. With the threat of a sentence of six months in prison.

II. DISCUSSION

Police In Handling Criminal Cases Through *Alternative Dispute Resolution* (ADR)

ADR (*Alternative Dispute Resolution*) is relatively new in Indonesia, but actually consensus dispute resolutions have long been carried out by the community, which in essence emphasizes the deliberation of consensus agreements, kinship, peace and so on. Choice of Dispute Resolution or also referred to as Alternative Dispute Resolution, which in foreign terms is called Alternative Dispute Resolution, hereinafter abbreviated as ADR, is a concept that covers various forms of dispute resolution other than the judicial process through lawful ways, both based on consensus approach, such as negotiation, mediation and conciliation or not based on a consensus approach, such as arbitration. Arbitration takes place on the basis of an *adversarial* approach (dispute) that resembles a judicial process so as to produce a winning and losing party.

Observers and practitioners discussing *Restorative Justice* so far victims are essentially excluded from the traditional criminal justice process. Victims are only needed as witnesses if needed, but in their decision-making policy they are not involved at all. Decision making is only done by a judge based on examination during the court process. "For the perpetrators of their involvement in the court is only passive, most of their participation and participation are represented and voiced by their lawyers.

To realize the ideals of justice aspired so that a view of *Restorative Justice* emerges. The idea of *Restorative Justice* first appeared among criminal law experts as a reaction to the negative impact of applying criminal law (sanctions).

Restructuring with the presence of *Restorative Justice* implies restructuring of *Restorative Justice*. In relation to rearranging the building of the Indonesian criminal law system, the term restructuring is very close to the meaning of reconstruction, namely: rebuilding the national criminal law system. So the two terms are very closely related to the problem of *law reform* and *law development*, specifically relating to reform or development of the criminal law system (*penal system reform / development* or often referred to briefly with the term *penal reform*).

III. LAW AS THE BEHAVIOR OF POLICE INVESTIGATORS IN REALIZING LAW ENFORCEMENT

Law enforcement is a series of processes to describe values, ideas and ideas that are quite abstract which are the objectives of law. The purpose of the law or the ideals of the law contains moral values such as justice and truth, these values must be able to be surprised in real reality. Law enforcement as a means to achieve legal objectives, then all personnel should be mobilized so that the law is able to work to realize moral values in the law, failure of the law to realize the legal value is a dangerous threat to the weakness of the existing law.

Laws that are poor / weak in their implementation of moral values will be distant and isolated from their communities. And the success of law enforcement will determine and become a barometer of the legality of law in the midst of social reality. The law is made to be implemented, therefore the law cannot be separated from the community as the basis for the operation of the law.

The main objective of *Restorative Justice* is to empower victims, where perpetrators are encouraged to pay attention to recovery. *Restorative justice* places great importance on meeting the victims' material, emotional and social needs. "The success of *Restorative Justice* is measured by how much the loss has been recovered by the perpetrators, not measured by how heavy the criminal dropped by the judge. In essence, as far as possible the perpetrators were expelled from criminal proceedings and from prison.

In reality the law cannot strictly be applied to anyone or under any conditions as stated in the legislation. Things like this in criminal law are not only not in accordance with the purpose of criminal law, but will bring the consequences of people's lives to be heavy, difficult and unpleasant. Caused because all movements of community activities are regulated or sanctioned by regulations. To overcome this, it is left to the law enforcement officials themselves to test and screen each case that is entered for processing, this is called discretion.

IV. THE PURPOSE OF IMPLEMENTING RESTORATIVE JUSTICE IN LIGHTLY CRIMINAL CASES

The purpose of *restorative justice* is an effort or a new model approach in Indonesia that is very close to the principle of deliberation which is the soul of the nation (*volksgeist*) Indonesia itself. to provide the best solution in resolving private crime cases between people (*natuurlijkpersonen*) or legal entities (*recht personen*) by giving priority to the core problems of a crime.

Important Settlement Objectives to pay attention to is the improvement of the social order of people who are disturbed due to crime. *Restorative justice* focuses on the process of criminal responsibility directly from the perpetrator to the victim and the community, if the perpetrators and victims and the community violated their rights feel they have achieved a justice through joint deliberation efforts then punishment (*ultimum remedium*) can be avoided.

The application of restorative justice in criminal offense cases gives a freedom to the public in solving problems in the community in this case the resolution of minor criminal cases. The mediation may be used in the process of settling cases outside the conventional court, as part of restorative justice

V. CASE RELIEF INSTITUTIONS FOR THE PUBLIC INTEREST

Currently in the legal system in Indonesia, it has begun to lead to the adoption of the *Restorative Justice* concept. But for the time being, it is still partially enforced and sees a very basic level of urgency, which can be found in Act Number 11 of 2012 concerning the Juvenile Justice System.

As affirmed in Article 1 number 6 of the Law on the Juvenile Justice System, which confirms as follows: *Restorative*

Justice is the settlement of criminal cases involving the perpetrators, victims, the perpetrators / victims' families, and other related parties to jointly seek a solution fair by emphasizing restoration back to its original state, and not retaliation.

VI. CONCLUSION

The relationship between nature and concepts in restorative justice is found to be unclear between reality and rules. Findings in the legal problems of this dissertation, there are obscurity of norms and it is not easy to cease investigations by law. Doubt in taking the decision, even though there have been reasons for the abolition of the right to sue and loss of the right to carry out the crime, which is due to the fact that *nebis in idem*, the suspect died, or because the criminal case has expired, and there is not enough evidence. A cessation of an investigation carried out by an investigator must be truly accountable, in the sense that the cessation of the investigation is based on the facts that occur which by law must stop the investigation.

Substantially *Restorative Justice* as a guideline in the implementation of *Restorative Justice* formed based on the principles of the formation of the National legal system, it is stated that *Restorative Justice* and criminal case investigations can be carried out combining criminal justice mechanisms with police discretion in a mediation deliberation to obtain an agreement between victims, perpetrators, the victim's family, the perpetrator's family, as well as parties related to criminal cases. It is recommended according to the findings so that in the process of police investigations in handling criminal cases and *Restorative Justice* the Indonesian National Police instinct will reform the criminal law system and be able to contribute through the role of the policy to be built in the upcoming Criminal Procedure Code. Commitments from very mild criminal investigators can begin with termination and compensation, as well as the realization of restorative justice from all criminal law enforcement cases.

It is hoped that the Indonesian National Police will be able to apply law enforcement based on *Restorative Justice* as a form of commitment to the Indonesian National Police's performance to meet legal certainty and a sense of justice in society.

REFERENCES

- [1] Abidin, A.Z. dan AndiHamzah, *Hukum Pidana Indonesia*, Jakarta: Yarsif Watampone, 2010.
- [2] Achmad Ali, *Teori Hukum Dan Teori Peradilan*, Prenada media group, cet-5, Jakarta, 2009.
- [3] Bazemore, Gordon dan Lode Walgrave, *Restorative Juvenile Justice: Repairing the Harm of Youth Crime*, New York: Criminal Justice Press, 1999.
- [4] Braithwaite John and Heather Strang, *Restorative Justice and Civil Society*, 2001.
- [5] Fitriasih, Surastini, et. all., *AkseskePeradilan*, Jakarta, Sentra Ham-KHN, 2002.
- [6] Gatot Supramono, *Hukum Acara Pengadilan Anak*, Jakarta, Djambatan, 2000.
- [7] Hartono, *Penyidikan & Penegakan Hukum Pidana Melalui Pendekatan Hukum Progresif*, Sinar Grafika, Jakarta, 2010.
- [8] Harun M. Husein, *Penyidik dan Penuntut dalam Proses Pidana*, Rineka Cipta, Jakarta, 2014.
- [9] John Braithwaite, *Restorative Justice & Responsive Regulation*, England, Oxford University Press, 2002.
- [10] Mardjono Reksodiputro, *Sistem Peradilan Pidana Indonesia (Melihat Kepada Kejahatan Dan Penegakan Hukum Dalam Batas-Batas Toleransi)*, Fakultas Hukum Universitas Indonesia, 1993.
- [11] Mulyana W. Kusumah, *Tegaknya Supremasi Hukum Terjebak antara memilih hukum dan Demokrasi*, Remaja Rosdakarya, Bandung, 2001.
- [12] Singgih Benedictus, *Keadilan Restoratif Menurut Perspektif Viktimologi*, (Online), (<http://benedictussinggih.blogspot.com/2012/12/keadilan-restoratif-menurut-perspektif.html>), diakses pada 15 Februari 2018.
- [13] Teguh Prasetyo, *Keadilan Bermartabat Perspektif teori Hukum*, Nusa Media, Bandung, 2015.
- [14] UNODC, *Handbook on Restorative Justice Programmes*. Criminal Justice Handbook Series, (Vienna, UN New York, 2006).
- [15] Utomo Setyo, *Sistem Pemidanaan Dalam Hukum Pidana Yang Berbasis Restorative Justice*, (Makalah Disampaikan Dalam Kegiatan Focus Group Discussion (Fgd) Tentang "Politik Perumusan Ancaman Pidana Dalam Undang-Undang Diluar KUHP", Diselenggarakan Oleh Pusat Perencanaan Pembangunan Hukum Nasional Badan Pembinaan Hukum Nasional (Bphn) Departement Hukum Dan Ham) Jakarta, 2010.

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