

LAW ENFORCEMENT AGAINST PROPERTY CRIME IN THE PERSPECTIVE OF SETTLEMENT THROUGH RESTORATIVE JUSTICE

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A B S T R A C T

What is the urgency of resolving property crime through a restorative justice approach? What are the challenges in the application of restorative justice in the settlement of property crime? The objectives of this research are: To review and analyze the implementation of property crime settlement through a restorative justice approach. To analyze the challenges of restorative justice implementation in property crime settlement. The method used is the normative research method. The result of the research shows: The restorative justice approach in the settlement of property crimes has a high urgency because it provides an alternative solution that is more oriented towards restoring the condition of victims, perpetrators, and society compared to the retributive approach. By prioritizing mediation and deliberation, restorative justice can reduce the burden of criminal justice, avoid the negative effects of conventional punishment, and enable the restoration of social relations in the community. The application of restorative justice in property crimes faces several challenges, including the lack of understanding of law enforcement officials and the public about this concept, the absence of standard standards in its application, and the potential for abuse by perpetrators who are not truly responsible for their actions. In addition, the resistance factor from victims who prefer retributive justice is also an obstacle in the application of this approach.

INTRODUCTION

Introduction Property crime, such as theft, embezzlement, fraud, and property damage, is a problem that continues to haunt Indonesian society. (Abdurrifai, 2021) Conventional approaches in the criminal justice system that focus on retribution and imprisonment are often ineffective in addressing the root causes and providing justice for all parties involved. Prison overcrowding, the slow pace of the judicial process, and the lack of attention to victim recovery are some of the indicators of the need for reform in the handling of property crime. (Flora, 2023)

Amidst these challenges, the concept of restorative justice has emerged as a promising alternative. Restorative justice emphasizes the restoration of damaged relationships between perpetrators, victims, and the community and encourages the active participation of all parties in the case resolution process. (Satria, 2018) This approach is in line with the values of justice and conflict resolution that have taken root in many indigenous communities in Indonesia and is reflected in several existing laws and regulations, such as the Criminal Code (KUHP). Although oriented towards retaliation, there are several articles that can be interpreted in line with the principles of restorative justice, such as Article 1404 of the Criminal Code on peace. Police Regulation No. 8 of 2021 on Handling Criminal Offences Based on Restorative Justice, which regulates the application of restorative justice explicitly through several articles in it that define and regulate the requirements, stages, the role of investigators, the implementation of peace, and the authority of public

prosecutors, as well as containing other provisions that strengthen its application, with the aim of more effective implementation and providing optimal benefits for all parties. As well as Prosecutor's Regulation Number 15 of 2020, which specifically regulates the termination of prosecution based on restorative justice, which is reflected in articles such as Article 1, Number 1, which defines restorative justice; Article 5, which regulates the conditions for termination of prosecution; Article 8, which regulates the stages of termination of prosecution; Article 9, which regulates the role of facilitators; and Article 14, which confirms the authority of the Attorney General. With these regulations and articles, it is hoped that the application of restorative justice in Indonesia can be more focused and provide benefits for all parties involved, especially victims and perpetrators of criminal offenses. (Gultom, 2022) The concept of restorative justice has often been used by law enforcers, as happened in the case of cinnamon theft in Temanggung, which became a public spotlight because the application of restorative justice successfully resolved the case outside the conventional litigation path. Two perpetrators, threatened with imprisonment and significant fines, were involved in taking cinnamon in a protected forest area without realizing the legal consequences. The Attorney General's Office of Temanggung, taking into account the socio-economic background of the perpetrator, the minimal impact of the loss, and the goodwill of the perpetrator, decided not to continue the legal process. An amicable agreement was reached between the perpetrator and Perhutani, with the perpetrator providing compensation and committing not to repeat his actions. This case is an example of the implementation of restorative justice that is humane, prioritizes the restoration of relationships between perpetrators, victims, and the community, and avoids the negative impact of imprisonment, especially for perpetrators of minor crimes. Describes the application of restorative justice in a cinnamon theft case in Temanggung, showing how this approach is used to resolve cases out of court by considering the social context, harm, and intentions of the perpetrator.

The application of restorative justice in the settlement of property crimes has the potential to reduce the burden on the criminal justice system, accelerate case settlement, provide justice for victims, encourage offender accountability, and repair social relations disrupted by criminal acts. However, its implementation also faces a number of challenges, such as the lack of a clear legal basis, conventional legal perceptions and culture, and limited resources. Reflecting on the above rules and case examples, this research is written with the aim of analyzing in depth the urgency and challenges of implementing restorative justice in the settlement of property crimes in Indonesia. By identifying factors that influence the success or failure of its implementation, it is hoped that this research can contribute to the development of a more effective legal and policy framework in realizing restorative justice in Indonesia.

RESEARCH METHODS

This research method uses normative legal research methods, using a legal approach and data collection techniques, namely through library research on secondary data in the form of primary, secondary, and tertiary legal materials. Primary legal materials consist of laws and regulations, secondary legal materials consist of books and journals that are still related to the title of the thesis that the author studies, and tertiary legal materials are derived from scientific articles on internal pages of law. Research is an activity to provide appropriate solutions to issues or research problems.

RESULTS AND DISCUSSION

1. The Urgency of Settling Property Crime Through the Concept of Restorative Justice

Restorative justice is a legal approach that prioritizes the restoration of relationships between perpetrators, victims, families, and communities, with the aim of seeking a fair settlement rather than retaliation. One of the main principles in restorative justice is the existence of peace achieved through deliberation and agreement between the parties concerned. In the context of property crime, the application of restorative justice becomes very relevant and important. Unlike the retributive approach that only focuses on punishment to the perpetrator, restorative justice provides an opportunity for the perpetrator to take responsibility for his actions and provide compensation or recovery to the victim. Thus, the victim feels valued and their harm is repaired in a concrete way, while the offender is given the opportunity to improve themselves without having to face too severe a punishment. Through a process of dialogue and mediation, restorative justice provides space for victims to express their feelings and needs, as well as providing opportunities for offenders to understand the impact of their actions and try to make amends.

The implementation of restorative justice is closely related to apologies, providing restitution, admitting guilt, and other efforts aimed at restoring victims, including the meaning of the process of reintegrating the perpetrator in the social community, whether there is a sentence or not. In the Indonesian Police Regulation Number 8 of 2021, the definition of restorative justice is found in Article 1 point 3: restorative justice is the resolution of criminal acts involving perpetrators, victims, families of perpetrators, families of victims, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a fair settlement through peace by emphasizing restoration to the original state. Likewise, the definition of restorative justice in the Prosecutor's Regulation Number 15 of 2020 stated in Article 1, point 1, that restorative justice is the settlement of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state and not retaliation. In Law No. 11/2012 (SPPA Law), Article 1, point 6, states that restorative justice is the resolution of criminal cases by involving perpetrators, victims, and other related parties to jointly seek a fair solution by emphasizing restoration to the original state and not retaliation.

In the context of correctional institutions (LAPAS), the application of restorative justice offers various positive impacts that have the potential to reduce overcapacity and improve the quality of rehabilitation and reintegration of prisoners into society. (Silalahi et al., 2024) One of the main impacts of the application of restorative justice on overcapacity in prisons is the reduction in the number of prisoners who must serve prison sentences. (Abdurrifai, 2021) The impact of the application of restorative justice is to improve the quality of rehabilitation of prisoners. Restorative justice emphasizes recovery and reconciliation, which means inmates are encouraged to understand the impact of their actions, take responsibility, and make amends. (Gultom, 2022) This process helps inmates to develop awareness and empathy, which are important to prevent future reoffending. Prisoners who go through the restorative justice process tend to have a better understanding of the impact of their actions, both on the victim and society, so they are more motivated to change and not re-offend. As such, restorative justice contributes to a reduction in recidivism rates, which in turn helps to reduce overcapacity in prisons. In addition, the application of restorative justice also has an impact on increasing victim satisfaction. In the traditional justice system, victims often feel neglected and do not receive adequate remedies. Restorative justice provides a space for victims to actively participate in the crime resolution

process, express their feelings and needs, and obtain appropriate remedies. By giving victims the opportunity to participate and receive redress, restorative justice helps to reduce feelings of resentment and hatred that can lead to further conflict. Higher victim satisfaction also means that they are more likely to support the rehabilitation and reintegration process of prisoners, which is important for creating an environment conducive to positive change.

In terms of property crimes, such as theft, robbery and fraud, these are the types of crimes that have a wide and deep impact on victims. These impacts are not only limited to the obvious material losses, such as the loss of valuables or money, but also include significant emotional and psychological losses. Victims often experience fear, anxiety and a loss of security that can last long after the event. Furthermore, these crimes can also undermine victims' trust in others and in the legal system, which in turn can affect their overall quality of life. It is therefore important to understand and address the far-reaching impact of these property crimes with a comprehensive and empathetic approach.

When it comes to property offenses, such as theft, robbery, and fraud, these crimes have a far-reaching impact on the victim. Not only are there the obvious material losses, such as the loss of valuables or money, but also deep emotional losses, such as fear, anxiety, or insecurity, that can last long after the event. Victims of such crimes often feel that they have lost more than just property but also a sense of security and trust in others and in the legal system itself. Traditional criminal justice systems, which tend to focus on punishment through imprisonment, often fail to provide adequate redress for the harm experienced by victims. Incarceration of the perpetrator, while it may be considered a form of retribution for criminal behavior, does not necessarily restore lost property or address the psychological impact experienced by the victim. In fact, in many cases, prison sentences are not successful in preventing offenders from repeating similar criminal offenses in the future, especially if the offender does not receive effective guidance during his/her sentence. Therefore, the emergence of the concept of restorative justice as an alternative or complement in handling property crimes is very relevant. Restorative justice emphasizes the recovery of losses suffered by victims and the reintegration of offenders into society. In this context, legal certainty theory and law enforcement theory play an important role. (Sitepu & Piadi, 2019)

In line with this, legal certainty theory emphasizes the importance of clear and consistent rules in the legal system. Restorative justice must be supported by mechanisms that ensure that agreements between victims and offenders are adhered to and implemented fairly. This legal certainty provides a sense of security for victims that their rights will be protected and restored. Meanwhile, law enforcement theory emphasizes the importance of enforcing existing rules and laws. In restorative justice, effective law enforcement is needed to ensure that the perpetrator actually carries out the agreement that has been made. Without strong enforcement, restorative justice may lose its credibility and not provide the expected deterrent effect.

2. Challenges in the Application of the Restorative Justice Concept in the Settlement of Property Crime

The lack of a clear definition of restorative justice is one of the main challenges in implementing this concept. The absence of a firm definition and widely accepted consensus on what restorative justice entails has led to varying interpretations among law enforcers, academics, and practitioners. This creates uncertainty in the application of the concept, as each party may have a different understanding of the principles and objectives of restorative justice. (Pratiwi & Ardi, 2019)

The result of this lack of clarity in definition is that there are variations in the way restorative justice is applied in different cases and regions. For example, some law enforcers may place more emphasis on the reconciliation aspect between the

offender and victim, while others may focus more on the recovery of material losses or the rehabilitation of the offender. These differences in interpretation can result in inconsistencies in the handling of similar cases, hindering the achievement of equitable and consistent justice. In addition, the lack of clarity in definitions can also hinder the legal process, as the parties involved, including offenders, victims, and the community, may not have the same understanding of what is expected from the restorative justice process. This can lead to confusion and dissatisfaction between the parties and reduce the effectiveness of this approach in achieving its goals. To address this issue, efforts are needed to formulate a clear and comprehensive definition of restorative justice that is acceptable to all parties involved. This definition should include the basic principles and objectives of restorative justice, as well as practical guidance on how this concept can be applied in various contexts. With a clear definition, it is hoped that the application of restorative justice can be more consistent and fair and provide greater benefits for all parties involved in the legal process.

Restorative justice relies heavily on an agreement between the offender and the victim, which is at the heart of the approach. This agreement usually includes an admission of guilt by the offender, an apology, and an attempt to repair the harm experienced by the victim. (Setyowati, 2020) However, in many cases, reaching this agreement is not easy. Victims may not agree to reconcile for various reasons, such as deep trauma, distrust of the offender, or a desire to see the offender punished conventionally. In addition, the offender may not be able to fulfil the conditions set out in the agreement, such as providing financial compensation or attending a rehabilitation programme. (Pratiwi & Ardi, 2019)

This difficulty in reaching an agreement can hamper the restorative justice process as a whole. Without an agreement, the process cannot proceed, and the case must return to conventional criminal justice channels. This not only reduces the effectiveness of restorative justice as a more humane and rehabilitative alternative but can also add to the burden on an already overburdened justice system. In addition, the inability to reach an agreement can lead to frustration and dissatisfaction among the parties involved, both perpetrators and victims, as well as the wider community. (Yusriando, 2015).

Based on the challenges faced in implementing restorative justice above, to achieve more significant results, more coordinated and comprehensive efforts are needed in implementing restorative justice in Indonesia. (Mirza & Zen, 2022) This includes increasing the understanding and awareness of the public and law enforcement about the benefits and importance of restorative justice, developing policies that support alternatives to imprisonment, and providing adequate resources to implement restorative programs. In addition, it is also important to conduct further research to identify factors that support the successful implementation of restorative justice, as well as address the challenges and barriers that exist.

In addition to the immediate impact on reducing overcapacity, the implementation of restorative justice also has the potential to bring positive long-term changes to the criminal justice system in Indonesia. By strengthening restorative approaches, the justice system can move towards a model that is more inclusive and responsive to the needs of all parties involved. This will not only improve the effectiveness of the correctional system but also strengthen public confidence in the justice system and enhance the sense of justice in the community. By taking these factors into account, investigators or law enforcement can make a more informed and fair decision as to whether restorative justice can be applied, even if the material harm exceeds the limit set by the regulations. For example, in a case where the offender is a teenager from an underprivileged family who commits theft to fulfill basic needs, a restorative justice approach may be more appropriate than a prison sentence. This approach allows for flexibility in the

handling of the case and avoids overly rigid or disproportionate application of punishment.

In addition, a more holistic assessment of each case can help identify more effective and sustainable solutions. For example, in cases where the social impact of the crime is substantial, such as damaging relationships between people in a small community, restorative justice can help restore those relationships through mediation and dialogue. As such, this approach does not only focus on punishment for the offender but also on broader recovery and rehabilitation, which can provide long-term benefits for all parties involved.

This flexible and holistic approach can also increase community trust in the justice system, as it demonstrates that law enforcement considers the context and nuances of each case thoroughly. This can encourage active participation from the community in the restorative justice process and support more comprehensive recovery efforts. Thus, the implementation of this policy can help achieve more humane and effective justice in handling criminal offenses, especially the crime of theft. To support the widespread implementation of restorative justice, it is important for policymakers and practitioners to continue to learn from the experiences of other countries that have successfully implemented this approach. Sharing knowledge and best practices can help overcome local challenges and create a model of implementation that is appropriate to the Indonesian context. International cooperation and support from global organizations can also play an important role in accelerating the adoption and development of restorative justice in Indonesia. With coordinated efforts and adequate support, restorative justice has great potential to bring about significant positive changes in the Indonesian correctional system. As such, measures to integrate this approach into the legal and operational framework of prisons should be a priority in Indonesia's criminal justice reform agenda.

CONCLUSIONS

Restorative justice approaches in property offenses are important because they are more oriented towards the recovery of victims, offenders, and society than retributive approaches. Through mediation and deliberation, this approach can reduce the burden on the judiciary, avoid the negative impact of punishment, and restore social relations. However, its implementation faces challenges such as a lack of understanding by officials and the community, the absence of standardized standards, potential abuse by perpetrators, and resistance from victims who want retributive justice.

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