



The Role of Victims in Resolving Criminal Cases through a Restorative Justice Approach

Tomy Haryono^{1*}, Hedwig Adianto Mau², Basuki³

Universitas Jayabaya, Jakarta Timur, Indonesia^{1,2,3}

Email: tomyharyono71@gmail.com, hedwigadiantomau@pascajayabaya.ac.id,
bsoeky@gmail.com

ABSTRACT

This article examines the role of victims in restorative justice, a process that involves perpetrators, victims, their families, and other stakeholders in jointly resolving criminal acts and their implications, with a focus on restoring the original state. The research specifically aims to explore the role of victims in resolving criminal cases through a restorative justice approach and to examine the legal certainty surrounding this role. Utilizing a normative juridical approach focused on literature research, the study incorporates legislative, conceptual, comparative, case, and historical methods. The findings highlight that restorative justice places the victim as a central figure in the resolution process, acknowledging the importance of justice from multiple perspectives. Legal certainty in this context is achieved through the active participation of both victims and perpetrators in resolving criminal cases, reflecting the community's need for a more inclusive and participatory mechanism. The restorative justice approach, by emphasizing the direct involvement of victims and perpetrators, provides a meaningful response to criminal justice challenges.

Keywords: victims, restorative justice, legal certainty

INTRODUCTION

The concept of the restorative justice approach is an approach that emphasizes the creation of fair and balanced conditions for the perpetrators of crimes and the victims themselves (Garbett, 2016a). The procedural and criminal justice mechanisms that previously focused on criminalization have been transformed into a dialogue and mediation process to reach an agreement on a fairer and more balanced settlement of criminal cases for victims and perpetrators.

Restorative justice in criminal case resolution emphasizes restorative actions for victims, perpetrators, and the community with their active participation as well as citizens as voluntary mediators (Umbreit, 2023). Restorative justice increases victim involvement in criminal justice processes in Indonesia, focusing on mutually beneficial solutions between victims and perpetrators, where a guilty plea is necessary to implement restorative justice (Hasibuan, 2022).

One of the weaknesses of the criminal justice system that is currently running is the lack of direct participation of victims and perpetrators in resolving cases (Kaplan, Weisberg, & Binder, 2021). The criminal justice system is often considered insufficient to represent the aspirations of victims, and the criminal sanctions imposed are also considered not to provide benefits that can be directly felt by the victim or the perpetrator. This problem then causes dissatisfaction from victims and

perpetrators with the performance of the criminal justice system. The restorative justice approach, which prioritizes the direct involvement of victims and perpetrators, is present as an answer to this problem (Van Camp & Wemmers, 2016).

As mentioned earlier, the characteristics of criminal law as public law as seen from the dominance of the state's role through its instruments of power in the criminal justice system have an impact on the non-recognition of the existence of victims and perpetrators as decisive parties in the settlement of criminal cases. In the criminal justice system, the fulfillment of a sense of justice for victims depends heavily on the empathy of the Public Prosecutor (Wettergren & Bergman Blix, 2016). The victim's testimony, which is one of the evidence, is asked to support or in other words provide justification for the prosecutor's charges and demands. In addition, the punishment for the perpetrator is also limited by the type of sanction that is expressly determined by law, which in fact does not provide any benefit to the victim because the criminal sanction is indeed intended as a means to provide suffering for the perpetrator.

In addition to the victim, the perpetrator also turns out to be in a situation that is not quite favorable because, basically, the criminal justice system emphasizes more on proving the perpetrator's guilt, not on restoring the condition before the crime occurred. The form of responsibility of the perpetrator (criminal sanction) imposed is also very limited by the law, so the perpetrator cannot realize other forms of responsibility that are not regulated in the law (Johnston, Runyan, Silva, & Maldonado Fuentes, 2023). Several laws that regulate provisions regarding the provision of restitution and compensation to victims can in principle be a supporting instrument for the application of the restorative justice approach. However, the application of this restorative justice approach is still very limited because the space for victims and perpetrators to determine the desired form of accountability has not yet found an adequate place (Marder, 2022).

According to B. Muslim stated that the settlement of cases through the judicial system that leads to court decisions is law enforcement in a slow way. This is because law enforcement must go through a long process, going through various levels ranging from the Police, Prosecutor's Office, District Court, High Court, to the Supreme Court.

At the Police level, there is National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, then at the Prosecutor's level, there is Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice (Restorative justice), and at the court level the Supreme Court has its own instrument through guidelines and policies on the implementation of restorative justice namely the latest through the Decree of the Director General of the General Judiciary of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice (Restorative justice).

However, keep in mind that law enforcement must be adjusted to the legal ideals of the nation concerned (Wolfe, Rojek, Manjarrez, & Rojek, 2018). This means that law enforcement must be in accordance with the philosophy of Pancasila, the outlook on life, rules, and principles

embraced by the relevant community so that it is in line with their legal awareness. The role of restorative justice, which emphasizes dialogue and agreement to achieve justice in the handling of criminal acts, is increasingly a growing topic in the criminal justice system in Indonesia, especially after the passage of Law Number 1 of 2023 concerning the Criminal Code, which is considered an important moment in criminal law reform in Indonesia. More specifically, the settlement of cases through restorative justice is regulated in Article 132 paragraph (1) letter g of Law Number 1 of 2023 concerning the Criminal Code.

Looking at the existing reality, this problem is very interesting to study. How are laws and regulations in Indonesia able to provide a forum for law enforcers to realize justice in society? So this paper will discuss it in the form of research entitled "The Role Of Victims In Resolving Criminal Cases Through A Restorative Justice Approach" with the hope that restorative justice can be a solution in the settlement of criminal law cases to realize justice for victims.

In accordance with the description of the background of the problem above, several problems can be formulated as follows, the role of victims in resolving criminal cases through a restorative justice approach is crucial (Kirkwood, 2022). This approach emphasizes the active involvement of victims in the justice process, allowing them to participate in determining the resolution of the offense. The consideration of their needs and perspectives is central to achieving a more holistic and healing outcome. Additionally, it is important to explore the extent of legal certainty surrounding the role of victims in this approach. Ensuring that their participation is protected and clearly defined within the legal framework is essential for the effectiveness and fairness of restorative justice practices.

RESEARCH METHODS

The type of research used is normative legal research. According to Sugiarto and Sri Mamuji, normative legal research includes an inventory of legal principles, legal systematization, research on law enforcement both in terms of the process of legal interpretation in practice, and then research is carried out on the level of vertical and horizontal synchronization, legal comparison and legal history.

In relation to the type of research used is normative juridical law research; in this study, the researcher uses three approaches, namely the statute approach, the conceptual approach, and the case approach). The legal materials used in this study are adjusted to the study conducted by the researcher on the role of the prosecutor's office in prosecuting criminal acts through a restorative, justifiable approach (Indarsih, 2021). The legal materials are primary, secondary, and tertiary. Analysis The legal materials used are qualitative.

RESULTS AND DISCUSSION

The Role of Victims in Resolving Criminal Cases through a Restorative Justice Approach

The problem of crime victims is certainly inseparable from crime itself, which is indeed part of human life (Davies & Wyatt, 2020). The perpetrator and the victim are like 2 (two) sides of the

coin because, in general, people cannot think of a crime there, so the victim appears. When a criminal act occurs, the party who directly experiences suffering is the victim. The criminal act that occurs can create situations and conditions that make it difficult for the victim to live as a citizen of the community as before (Seear & Fraser, 2014).

The loss or damage of the victim's property or disability will obviously reduce the victim's ability to achieve his or her life goals, as well as the psychological trauma and negative stigma experienced by the victim (Spalek, 2017). Even when the judicial process to hold accountable is carried out, victims who are faced as witnesses are often still faced with other difficulties in preparing mentally, physically, time, and financially to come to court.

Protection of crime victims is preventive and repressive efforts carried out both by the community and the government (through law enforcement officials), such as providing protection/supervision from various threats that can endanger the victim's life, providing adequate medical assistance, and the law, as well as the amount of compensation given to victims of crime due to the crime that occurred, a fair examination and judicial process for the perpetrators crime, which is basically one of the manifestations of human rights protection and a balancing instrument.

Laws are made by the rulers to be enforced and aim to maintain order, security, and peace in society so that society becomes safe and tranquil (Detter, 2016). So the purpose of the law is to something to be achieved and increase happiness by prohibiting actions that cause misery. An act that can be punished if the act is really considered detrimental to a certain individual or group.

The function of the government is to increase the happiness of the community by punishing anyone who commits acts that violate the principle of utility (Hirsh, Lu, & Galinsky, 2018). The principle of utility in determining what acts are prohibited, many acts regulated by law during his life should be seen as acts within the scope of social association if the act is seen as wrong, it is enough to be sanctioned with a reprimand or other public reaction that is not a legal sanction.

Legal protection for victims has been based on the Criminal Code as a source of material law; by using the Criminal Code as a procedural law, the Criminal Code is more regulated about the suspect than about the victim. The position of the victim in the Criminal Code does not seem to be optimal compared to the position of the perpetrator (M. Muslim & Nasution, 2024). This can be explained as follows: First, the Criminal Code has not expressly formulated provisions that concretely or directly provide legal protection for victims. Second, the Criminal Code adheres to the neoclassical school, which, among other things, accepts the enactment of mitigating circumstances for perpetrators of criminal acts that concern physical, environmental, and mental.

The formulation of articles in the Criminal Code tends to dwell on the formulation of criminal acts, liability, and criminal threats. Similarly, it is possible to mitigate aspects of criminal offenses for criminal offenders with partial liability in special matters (disabled souls, insane, minors, and so on).

Even though the victim is one of the aspects that really suffers due to the perpetrator's actions, legal protection for the victim should be explicitly regulated in the Criminal Code, as well as in the Criminal Code, the regulation of the victim is completely excluded. The Criminal Code

regulates more protection for suspects, while the protection of victims is not fully formulated (Nugroho, 2023). The definition of crime for restorative justice is important considering that in the Criminal Code and the Criminal Code, the crime orientation is formulated as a prohibited act regulated in the law and criminally threatened for those who violate the prohibition (Article 1 paragraph (1) of the Criminal Code).

The investigation process is formulated as a series of actions of the investigator in terms and in accordance with the manner regulated in the law to search for and collect evidence with which to shed light on the criminal act that occurred and to find the suspect (Article 1 number (2) of the Criminal Code). A court decision, as a judge's statement pronounced in a court session, can be in the form of a criminal, free, or free from all lawsuits (Article 1 number (11) of the Criminal Code).

In line with that, it is also necessary for Indonesia's criminal justice policy to take responsive, synergistic, and combinatorial steps; namely in addition to methods based on the Criminal Procedure Code, restorative justice is also taken.

This restorative justice must emphasize efforts for recovery, compensation, and rehabilitation whose solution can follow/choose a third party who is competent in handling the problem faced and has no interest in the problem. So that the mechanism of restorative justice between the victim, the perpetrator, and the parties appointed by the court (as the 3rd party), sit face to face and deliberate in terms of finding a solution to the problem, the amount of compensation paid to the victim if it results in disability or even death, this must be a thought, whether it is still charged to the perpetrator or whether the state pays the compensation to the victim of the crime.

The humane relationship between the victim and the offender and its focus on the impact that crime has on all parties, not only on the victim but also on the victim and the offender himself (Umbreit, 2022). Restorative justice is aligned with the roles of crime victims, society, the state, and violators. Crime and Punishment are part of conflict resolution and emphasize improving the consequences of crime (Simon, 2020). Conflict resolution through mediation between victims and perpetrators gives birth to a creative attitude, namely asking the perpetrator to personally take responsibility for his actions by facing the victim and making an agreement to promote the active involvement of the community and victims in the judicial process and enhance the quality of justice and what is felt by both the victim and the perpetrator .

As Mudzakir said, restorative justice is characterized by several prepositions :

- a. Crime is a conflict between individuals that results in losses to the victim, the community, and the perpetrator himself.
- b. The goal that must be achieved from the criminal justice process is to reconcile the parties while repairing the losses caused by the crime.
- c. The criminal justice process must be able to facilitate the active participation of victims, offenders, and the community

The shift in the concept of crime and the orientation of criminal law has brought bright hopes for the legal protection of victims and has had a positive impact on the prevention and control of crime, aiming to reduce crime and rehabilitate crime victims and parties involved in it.

Forms of Legal Certainty on the Role of Victims in the Restorative Justice Approach

According to Imam, Rachmad, & Budi, in his theory of legal certainty, said that legal certainty is a product of laws that are able to regulate the interests of every human being and must always be obeyed. Legal certainty can be interpreted as a law and regulation that is made and promulgated so that it can be regulated clearly and logically and does not cause doubt if there are multiple interpretations (Abduh & Hanifah, 2020). Referring to this theory, Police Regulation Number 8 of 2021, concerning Case Handling Based on Restorative Justice, is a regulation for the implementation of the duties of the National Police of the Republic of Indonesia to ensure legal certainty in the handling of criminal cases with a restorative justice approach. Perja Number 15 of 2020 concerning the Termination of Prosecution Based on Restoring Justice is a legal product of the Indonesian Prosecutor's Office.

The essence of the principle of restoration justice is to respect the dignity and dignity of human beings as social beings who are not free from mistakes and mistakes (Hicks, 2021). If the essence of case settlement with this restorative justice principle approach is explored more deeply, then this principle has actually existed in the pattern of resolving customary criminal cases that have been around for centuries.

The principle of restorative justice is the result of exploration and comparison between the welfare approach and justice shaming because this model shifts the philosophical value of handling children: (a) from punishment to reconciliation, (b) from retaliation there are perpetrators to healing victims, (c) from exile and violence to community participation, and (d) from negative destructive to improvement, forgiveness that is full of love.

O.C. Kaligis formulated three important principles of restorative justice that underlie the use of this approach in the criminal justice system in Canada and are relevant to Indonesia if it is to develop a restorative justice approach in Indonesia's criminal justice system, including that crime is a violation between the victim, the perpetrator, and the community, not a violation against the State, that the restoration process involves the victim, the perpetrator, and the community, and a consensus approach to justice.

The restorative justice approach in resolving criminal cases is considered a new method, although the patterns used are largely rooted in the values of Indigenous peoples' local wisdom (Murambadoro, Wielenga, & Batley, 2020). The principle of restorative justice is an approach that focuses more on the conditions for creating justice and balance for victims of crimes, perpetrators, and society in general. Criminal justice mechanisms and procedures that focus on criminalization are transformed into a dialogue and mediation process to create an agreement on a fairer and more balanced settlement of criminal cases for victims and perpetrators.

Handling criminal cases by Judging from the aspect of legal structure, the criminal law structure in Indonesia is known as the concept of the Criminal Justice System (CJS), which consists

of the police (as investigators), prosecutors (as prosecutors), judges (adjudicating), and correctional institutions (inmate development). The concept of criminalization through CJS is essentially focused on the actions of criminals, namely efforts to return perpetrators who commit evil to human beings who do good or at least not evil anymore. The criminal law enforcement process is very formal and prioritizes certainty in the process.

The institution of the elements of the criminal justice system is formally designed to carry out legal processes oriented to the concept of retributive justice (Pakes, 2019). Likewise, the substance of criminal procedure law is constructed as a formalistic criminal law enforcement procedure so that there is no room for law enforcement to apply the principle of restorative justice in the settlement of criminal cases, especially pure criminal acts (not complaint offenses).

The principle of restorative justice is reviewed from the perspective of the criminal law system, which, in essence, is a case settlement paradigm that deviates from the paradigm currently applied, namely the concept of restorative justice (Fernandes, 2024). The principle of restorative justice changes the orientation of the criminal justice process from the orientation of criminalization and improvement of the behavior of criminals to the orientation of recovering victims' losses and recovering damage in society caused by crime, as well as reintegration between victims, perpetrators, and society.

In the concept of retributive justice, the restoration of the victim's sense of justice is carried out by punishing the perpetrator who harms the victim whose determination and implementation are represented by the state, in this case, law enforcement officials, but the benefits cannot be felt directly by the victim. Meanwhile, the principle of restorative justice involves the victim directly determining what responsibilities must be carried out by the perpetrator to fulfill a sense of legal certainty and justice.

The essence of the application of the principle of restorative justice must be built on honesty, sincerity, sincerity, and willingness. The concept of utilization is the key to the realization of the goal of the principle of restorative justice; therefore, as long as humans still have interests, different points of view, needs, and desires, then as long as legal certainty is needed to harmonize these differences.

The application of the concept of restorative justice really returns to the philosophical value of the concept, namely the balance of justice of the parties, harmonization, and reconciliation whose problem-solving orientation is focused on restoring the victim's sense of justice. This is the opposite of the concept of retributive justice, which is perpetrator-oriented (efforts to punish the perpetrator, improve the perpetrator, and take responsibility for the perpetrator). Thus, it will be oriented towards achieving the essential justice of a criminal event that occurs, namely the realization of a cosmos balance that is disturbed due to the occurrence of a criminal event.

The concept of the restorative justice approach is one that focuses more on the conditions for creating justice and balance for the perpetrators of crimes and the victims themselves (Garbett, 2016b). The procedural and criminal justice mechanism that focuses on criminalization has been transformed into a dialogue and mediation process to create an agreement on a fairer and more

balanced settlement of criminal cases for victims and perpetrators. Regarding law enforcement in Indonesia, it will not be separated from Law Number 8 of 1981 concerning the Criminal Procedure Law because, based on the words alone, the term refers to the implementation of formal law. You can say that what is meant by law enforcement is the form of concretization, which is the imposition of criminal penalties or sanctions. In this regard, according to Sauer, there are three basic meanings in criminal law, namely unlawfulness, wrongdoing, and criminality (Efendi, 2024). In addition to being identical to formal law, enforcement must also be based on the regulations it makes. Regarding the making of these regulations, there is one school and one theory, namely the School of Utilitarianism with its figure Jeremy Bentham, who, in his case, states that every regulation made must have a useful value for society .

It is said in the description according to Bagir Manan, that Indonesian law enforcement can be said to be "communis opinio doctorum", which means that law enforcement is now considered to have failed in achieving the goals indicated by the Law. Therefore, an alternative to law enforcement, namely the Restorative Justice System, is allowed, where the approach used is a socio-cultural approach and not a normative approach.

Restorative Justice aims to empower victims, perpetrators, families, and the community to correct an unlawful act by using awareness and awareness as a basis for improving community life. Restorative Justice is a theory of justice that emphasizes the recovery of losses caused by criminal acts. The Restorative justice approach focuses on the needs of both victims and perpetrators. In addition, the Restorative Justice approach helps the perpetrators of crimes to avoid other crimes in the future. It is based on a theory of justice that considers crimes and offenses, in principle, offenses against individuals or society and not against the state. Restorative Justice fosters dialogue between victims and perpetrators that will demonstrate the highest level of victim satisfaction and accountability of perpetrators.

With this restorative justice approach, this approach focuses on the direct participation of perpetrators, victims and the community in the process of resolving criminal cases. Indeed, this approach in practice is still being debated in theory, but this view has developed and has an impact on legal policy and law enforcement practices in several countries. Restorative justice is considered a new form of thinking that can be used to respond to various problems and answer the dissatisfaction of the current performance of the criminal justice system.

CONCLUSION

The Role of Victims in Resolving Criminal Cases Through the Restorative Justice Approach the restorative justice approach shows that the settlement of criminal cases based on restorative justice is one of the efforts to resolve criminal cases that are expected to reduce the accumulation of cases at the law enforcement level. In addition to the faster settlement process than through litigation, case settlement through restorative justice is considered more capable of realizing certainty, justice, and benefits as desired by the parties (perpetrators, victims, and the community).

The Form of Legal Certainty on the Role of Victims in the Restorative Justice Approach

involves the direct participation of victims and perpetrators (in this case resolved by individuals) in the settlement of criminal cases on the basis of the state's thinking through its tools of power taking over the case settlement process to prevent the occurrence of "vigilantes" that turn out to lead to the dissatisfaction of victims and perpetrators with the criminal justice system. This thinking is now faced with the reality of the community's need for a mechanism for resolving criminal cases that is considered to be more accommodating to the participation and aspirations of victims and perpetrators.

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