



Implementation concept of restorative justice by the prosecutor's for criminal act of violence in household

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Abstract

Restorative justice is a settlement process outside the criminal justice system by involving victims, perpetrators, victims' families, communities, and related parties to reach a mutual agreement. Handling domestic violence cases using the criminal justice system in practice does not always work as expected, because the rights of victims are not fulfilled. This study aims to explain the application of the concept of Restorative Justice by the prosecutor in solving crimes of domestic violence and to describe the obstacles in applying the concept of Restorative Justice in the settlement of crimes of domestic violence. The approach method in this study uses a normative juridical approach, in which data is obtained based on a literature review by looking at statutory regulations and other legal materials. The results of the study show that the application of the concept of Restorative Justice to crimes of domestic violence committed by the prosecutor's office is an order from the law through PERJA No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. The process of implementing Restorative Justice is carried out by the prosecutor's office by involving not only the perpetrators but also victims and other members of the public to take the path of peace through mediation. The existence of mediation aims to meet the demands of victims to achieve justice. Obstacles in the implementation of Restorative Justice for crimes of domestic violence are caused more by victims who do not want to forgive, because victims who experience domestic violence cases usually have their trauma, so victims want the perpetrators to be sentenced to prison so that the trauma does not recur. It is hoped that law enforcement officials in the implementation of Restorative Justice will have the same perception so that there will be no differences in exercising discretion. The application of Restorative Justice should be prioritized in handling cases of sexual violence, bearing in mind that many perpetrators are the backbone of the family so if you use the means of the criminal justice system it can have an impact on the economic factors of the family.

Keywords: application of the law; restorative justice, violence in household

Introduction

The crime of domestic violence (domestic violence) is included in the complaint offense. Perpetrators of domestic violence can only be legally processed if there is a complaint from the victim to the police. This requires the courage of victims to report to the authorities. Moreover, there is a psychological burden that must be borne by the victim. Even during the investigation process, the police were considered not to be responsive. There are still investigators who view domestic violence as a household problem that does not need to be resolved through the criminal justice system^[1]. One other alternative besides the court process, the settlement of the crime of persecution can be done outside the court, namely using Restorative Justice^[2].

Restorative Justice is defined in the Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, namely the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair settlement by emphasizing restoration to its original state, and not retaliation. The settlement of crimes with a peace mechanism can be referred to as Restorative Justice. Cases of domestic violence that have a criminal element are often resolved through deliberation or peace because it fulfills the interests of all parties and maintains the integrity of the household^[3].

Basically, the Restorative Justice Approach is understood as an approach to justice that focuses on the needs of victims and perpetrators, as well as those involved, not on the implementation of the principle of punishing perpetrators. The aims of the Restorative Justice approach are as follows:^[4]

1. Take responsibility for the consequences of actions and commit to improvement
2. The victim agrees to be involved in a process that can be carried out safely, to provide satisfaction to the victim and other people.
3. The agreement that has been agreed upon by the parties emphasizes repairing the damage.
4. Victims and perpetrators can understand the dynamics that lead to these actions and obtain the final result by reintegrating into society.

The Restorative Justice approach is specifically regulated in the Attorney General's Regulation No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. Article 3 Attorney Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice indicates that closing cases can be carried out in several ways, one of which is that complaints for criminal acts of the complaint are withdrawn or there has been a settlement of cases outside the court. Regarding the crime of domestic violence related to physical violence as

stated in Article 51 of Law 23 of 2004 it is classified as a crime of complaint so that if the complaint is withdrawn, the prosecutor's office cannot sue again. The settlement of cases outside the court is described in Article 3 paragraph (4) through the Restorative Justice approach.

The concept of Restorative Justice began to be applied in handling cases of criminal acts of violence in the household. In the case of number: B-341/L.1.21/Eoh.2/2/2022, there is a case of domestic violence involving the husband as the perpetrator and the wife as the victim. The Attorney General's Office with the authority granted in PERJA No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice terminates the prosecution of perpetrators due to an amicable agreement made by perpetrators and victims by providing medical expenses of 15 million rupiah to victims^[5]. Thus the Restorative Justice approach becomes an option in law enforcement that is more oriented toward restoring the rights of both victims and perpetrators.

Initially, the punishment was only oriented towards retaliation, whereas as time went on, the punishment was more directed at the guilt of the perpetrators of crimes. The existence of a Restorative Justice approach can present all forms of justice and fulfill the rights of both victims and perpetrators of crimes. Based on this description, it can be studied from several aspects of the problem, namely how the concept of Restorative Justice is carried out by the prosecutor in solving crimes of domestic violence and outlining the obstacles in applying the concept of Restorative Justice in solving crimes of domestic violence.

There are articles related to previous research, namely: (1) Andro Giovani Ginting, *et al* with the research title Restorative Justice as a Mechanism for the Settlement of Domestic Violence Crimes. This study discusses the model for solving domestic violence crimes through a special law and explains the model for solving cases of domestic violence through the Restorative Justice approach. (2) Ramiyanto, with the research title Handling Domestic Violence Cases Through the Concept of Restorative Justice (Domestic Violence Solving Through Restorative Justice). This study examines the concept of the Restorative Justice approach using penal mediation. Different from previous research, the author places more emphasis on the concept of Restorative Justice carried out by the Attorney General's Office and what obstacles are found in using the Restorative Justice approach.

Research methods

The research method used in this study uses normative juridical legal research. This approach is also known in general as a normative approach or legal research. A normative legal approach is an approach based on existing legal materials by examining theories, concepts, legal principles, and laws and regulations related to this research.

Discussion

1. The Concept of Restorative Justice Executed by the Prosecutor's Office in Settlement of Domestic Violence Crimes

Restorative justice is an alternative or other way of criminal justice (criminal justice: pen) by prioritizing the unification of perpetrators and victims or society as a unit to find solutions and return to a pattern of good relations between perpetrators of crimes. The pressure of restorative justice is

on improving the relationship between the perpetrator and the victim and the community that has been damaged by the crime committed by the perpetrator. Fundamentally, restorative justice changes the role of victims in the process of the criminal justice system (SPP), namely by allowing victims to have personal rights to participate in the process of resolving criminal cases^[6].

Hulsman expressed his criticism of the current criminal justice system, that the criminal justice system is a social problem. The reason is that the application of criminal sanctions given to perpetrators of crimes only leaves suffering, economic problems, family, and stigma in society^[7]. The current problem has become a common pattern that justice is retributive justice (retaliatory justice) giving rise to a view of crime as a violation committed against the State. Thus, almost all criminal acts committed in Indonesia using the criminal justice system end up in prison.

The application of restorative justice to crimes of domestic violence can guarantee that all the interests and losses experienced by the parties are fulfilled. The use of criminal means enforced by using Law no. 23 of 2004 concerning the Elimination of Domestic Violence Crimes has its background because the crime of domestic violence is a crime committed against human rights. As stated in Article 28 letter G paragraph (1) of the 1945 Constitution which states, "Every person has the right to receive protection for himself personally and protection for his family, dignity, honor, and property that he owns and has the right to feel comfortable and protected from various threats. fear to do or not do something that is a human right".

The reasons for human rights violations that occur in domestic violence form the basis for applying criminal means as part of the protection of victims. Along with the times, the implementation of the criminal justice system no longer reflects a sense of justice because there is no involvement of victims and the community. Even though victims of domestic violence greatly affect their position and the losses they experience to have the potential to become severe trauma due to the physical violence they experience. Three principles form the foundation for the implementation of restorative justice, including:^[8]

1. The justice demanded is an effort to restore the injured party.
2. Anyone who is involved in and affected by a crime must receive the opportunity to fully participate in following it up.
3. The government plays a role in creating public order while the community builds and maintains it

Based on the principles mentioned in the restorative justice approach, the government regulates special policies regarding the application of the concept of restorative justice to law enforcement officials. The Prosecutor's Office Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice is a form of discretion owned by the prosecutor's office in implementing laws that give birth to justice in society. Restorative Justice which is mentioned in Article 1 number 1 PERJA No.15 of 2020 is defined as the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration on all circumstances and not retaliation.

The concept of restorative justice carried out by the prosecutor's office as an effort to close cases for the sake of law is stated in Article 3 paragraph (2), namely:

- a. The accused has died
- b. Expiration of criminal prosecution
- c. There has been a court decision that has permanent legal force against someone for the same case (nebis in idem)
- d. Complaints for criminal offenses complaints are withdrawn or withdrawn
- e. There has been a settlement out of court

There are five reasons for closing cases have been mentioned, one of which is the settlement of cases outside the court. Settlement of cases outside the court can be carried out by looking at certain criminal acts, maximum criminal fines are paid voluntarily by statutory provisions and there has been the restoration of the original state by applying a restorative justice approach as stated in Article 3 paragraph (3) PERJA No. 15 of 2020.

The conditions that must be considered in implementing restorative justice are stated in Article 4 paragraph (1) PERJA No. 15 of 2020, namely:

- a. The interests of victims and other legal interests are protected
- b. Avoid negative stigma
- c. Avoidance of retaliation
- d. Community response and harmony
- e. Decency, decency, and public order

Not only these 5 (five) things that must be considered in the application of restorative justice but also must consider several conditions, namely subjects, objects, categories, and threats of crime; background of the occurrence/commitment of the crime; level of disgrace; losses or consequences arising from criminal acts; costs and benefits of case handling; restoration back to its original state; and there is peace between victims and victims.

Some of the considerations that have been described, it should be noted that the crime of domestic violence, the imposition of imprisonment is not the main solution. Objectively the point of issue in criminal law is not the severity of punishment as a form of revenge against the perpetrators of criminal acts. But to repair or restore losses or injuries suffered as a victim as a result of a crime^[9]. Considering that the parties involved in the dispute are families, where the perpetrators come from a husband and most victims of domestic violence occur to a wife, so this empowerment of victims becomes the philosophical foundation of the concept of restorative justice. By taking into account some of the considerations mentioned in Article 4 paragraph (2) PERJA No. 15 of 2020, the prosecutor in the restorative concept can just make a means of peace between the victim and the suspect as part of the recovery back to its original state in the form of compensation or the form of an agreement made by the suspect in writing so that if a violation occurs again it can only be used as a criminal means as a form of last resort in the prevention of criminal acts.

The mechanism for determining the termination of prosecution based on restorative justice cannot be implemented immediately. Article 3 paragraph (5) PERJA No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice must be submitted by the public prosecutor in a responsible and tiered manner to the head of the high prosecutor's office. In principle, in positive

law, criminal cases cannot be resolved out of court. This means that every criminal case must be resolved through the criminal justice route. However, in law enforcement practice in Indonesia, criminal cases are often resolved out of court through the discretion of law enforcement officials, peace mechanisms, customary institutions, and so on^[10]. These are some of the concepts of restorative justice carried out by the prosecutor's office through the Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

1. Obstacles to applying the concept of restorative justice in settlement of domestic violence crimes

The settlement of cases of criminal acts of domestic violence is resolved using Law no. 23 of 2004 concerning the Elimination of Domestic Violence. The regulation aims to provide guarantees to victims carried out by the state to prevent domestic violence, take action against perpetrators of domestic violence, and protect victims of domestic violence. Article 5 Law no. 23 of 2004 states that the prohibition for everyone to commit domestic violence is in the form of a ban on physical violence, psychological violence, sexual violence, and neglect of the household. The criminal threat is not arbitrary, for physical violence as mentioned in Article 44, namely "Any person who commits acts of physical violence within the scope of the household as referred to in Article 5 letter a shall be punished with imprisonment for a maximum of 5 (five) years or a fine of up to Rp. 15,000,000.00 (fifteen million rupiahs)".

Along with the times, the imposition of imprisonment or those related to deterrence has begun to be abandoned. the application of the concept with a restorative justice approach is prioritized because it can provide a sense of justice, both to victims, society, and perpetrators. According to Hulsman's perspective, the criminal justice system is seen as a social problem. This thinking is based on 4 (four) considerations as follows:^[11]

1. The criminal justice system provides suffering;
2. The criminal justice system cannot work according to the goals it aspires to;
3. The criminal justice system is out of control; And
4. The approach used in the criminal justice system is flawed fundamental.

Based on this description, it can be understood that the concept of restorative justice is an alternative that can be used in criminal justice to resolve criminal cases that occur in people's lives.

According to Mudzakir, there are several categorizations of the scope of cases that can be resolved without using the means of the formal criminal justice system, such as violations of the criminal law including the category of complaint offenses, both absolute and relative; the violation of the criminal law has a fine as a criminal threat and the violator has paid it (Article 80 of the Criminal Code); violations of criminal law are included in the category of "violations" not "crimes" which are only punishable by fines^[12]. Regarding the crime of domestic violence which is classified as a complaint offense, the application of the concept of restorative justice is more emphasized. Considering that victims in cases of domestic violence are usually experienced by a wife who is in her own family, a restorative justice approach using the path of peace is a solution to prevent wider damage.

The application of the concept of restorative justice in solving cases of crimes of domestic violence cannot be applied easily, there are many obstacles. For example, the concept of restorative justice regulated by PERJA No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, which states that a restorative approach can be applied if the following conditions are fulfilled, namely not being recidivism (repeat of a crime), criminal threats not exceeding 5 years, the value of the losses suffered not exceeding a total of 2,500 000 (two million five hundred rupiahs). The conditions that have been mentioned can lead to various understandings and determination of discretionary policies in using a restorative justice approach to crimes of domestic violence. Given that domestic violence involves physical violence, various criminal threats are regulated, namely:

- a. Physical violence that is experienced without causing serious injury is punishable by imprisonment for 5 years or a fine of up to 15,000,000 (fifteen million rupiahs)
- b. Physical violence that causes the victim to suffer serious injuries, is punishable by imprisonment for 10 years or a maximum fine of 30,000,000 (thirty million rupiahs)
- c. Physical violence which can result in the death of the victim, is punishable by imprisonment for a maximum of 15 years or a fine of up to 45,000,000 (forty-five million rupiahs)
- d. Physical violence which does not result in any disease shall be punished with imprisonment for a maximum of 4 (four) months or a fine of up to Rp. 5,000,000.00 (five million rupiahs).

Obstacles that occur between the prosecutor's party in adopting discretionary policies are determined by how the public prosecutor sees whether the crime of domestic violence can be resolved using a restorative justice approach. These obstacles originate from the internal factors of the public prosecutor, not to mention the obstacles that are found to originate from external factors, namely the disputing parties, who sometimes become victims and do not want peace between the disputing parties anymore. Victims of domestic violence usually want the perpetrators to be punished with imprisonment so that victims are safer from the trauma they experience and can keep victims away from perpetrators. One of the goals of imprisonment is Restraint, which means alienating offenders so that they are safer from physical violence^[13].

Conclusions

The application of the Restorative Justice concept to domestic violence crimes committed by the prosecutor's office is an order from the law through PERJA No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. The concept of the Restorative Justice approach is carried out by the prosecutor's office by involving not only the perpetrators but also victims and other members of the public to take the path of peace through mediation. The concept of peace through mediation is carried out by the prosecutor's office by involving victims, suspects, families of newspapers/suspects, and local community leaders. Internally through PERJA No. victims are also very large, and if the victim does not want to forgive, then the restorative justice approach cannot be applied. Usually, victims who experience domestic violence

cases have their trauma, so victims want the perpetrators to be sentenced to prison so that the trauma does not recur.

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