

**Recuperação de perdas das vítimas pelo perpetrador de ofensas menores através de
justiça restaurativa**

Victim's losses recovery by the minor offences' perpetrator through restorative justice

**Recuperación de las pérdidas de la víctima por el perpetrador de delitos menores a
través de la justicia restaurativa**

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Resumo

Esta pesquisa tem como objetivo explicar o processo de recuperação de perdas da vítima por parte do agressor menor usando a abordagem da justiça restaurativa. Justiça restaurativa aqui significa como o esforço de solução através da mediação penal. O método utilizado nesta pesquisa é normativo jurídico, voltado à pesquisa bibliotecária, com base na regulamentação e nas literaturas que tratam do problema discutido. Os resultados mostram que é necessário implementar a solução de ofensas menores por meio de justiça restaurativa para cumprir um senso de justiça, segurança jurídica e sua utilidade para a sociedade. Ao combinar a justiça restaurativa e a inspeção rápida, a justiça restaurativa pode ser executada sem envolver o perseguidor público e o processo de detenção.

Palavras-chave: Justiça restaurativa; Ofensas menores; Responsabilidade criminal.

Abstract

This research is aimed to explain the process of victim's losses recovery by the minor offences' perpetrator using restorative justice approach. Restorative justice here means as the settlement effort through penal mediation. The method used in this research is juridical normative focused on library research based on the regulation and literatures dealing with the problem discussed. The results shows that the settlement of minor offences through restorative justice is need to be implemented to fulfill a sense of justice, legal certainty, and its usefulness for the society. By combining the restorative justice and quick inspection, then the

restorative justice can be performed without involving public persecutor and detention process.

Keywords: Restorative justice; Minor offences; Criminal liability.

Resumen

El objetivo de esta investigación es explicar el proceso de recuperación de las pérdidas de la víctima por parte del perpetrador de los delitos menores utilizando un enfoque de justicia restaurativa. La justicia restaurativa aquí significa el esfuerzo de solución a través de la mediación penal. El método utilizado en esta investigación es la normativa jurídica centrada en la investigación bibliotecaria basada en la regulación y la literatura que aborda el problema discutido. Los resultados muestran que la solución de delitos menores a través de la justicia restaurativa debe implementarse para cumplir con un sentido de justicia, seguridad jurídica y su utilidad para la sociedad. Al combinar la justicia restaurativa y la inspección rápida, la justicia restaurativa se puede realizar sin involucrar al perseguidor público y el proceso de detención.

Palabras clave: Justicia restaurativa; Delitos menores; Responsabilidad penal.

1. Introduction

Minor offences are defined as criminal act which merely cause small losses and harm on the victims. The regulation regarding with the minor offences are rarely found in the Criminal Code (KUHP), and is only dealing with several provisions such as petty theft, petty embezzlement, petty fraud, and petty tampering.

The settlement of minor offences should be settled alternatively through restorative justice which is implemented though penal mediation by bridging the victim, perpetrator, and the involved parties in order to find the right solution for the sake of all parties. Beside to redeem the victim's losses, the restorative justice is also aimed to avoid the shame of the perpetrator due to his act since the settlement mechanism is performed kinship without disseminating to the public.

Restorative justice arises because the criminal justice system is not able to function as expected from the value of justice. The minor offences which are submitted to the court only give a little space on the victim and perpetrator concerns. In other words, the current conventional criminal justice system often creates dissatisfaction and disappointment.

Thus, it will lead to the need of restorative justice as the minor offences settlement in order to provide justice in the society especially for the victim and perpetrator. It is in line with (Strang, 2002) that the justice needs in a society cannot be met merely by punishment or merely by treatment of offenders, rather an integrated approach is required for achieving these multiple needs of sanctioning, offender accountability and reintegration, safety and victim restoration and that restorative justice recognizes these needs.

Based on facts, in several cases that are being processed through formal criminal justice is not implemented maximally and inaccurate. The penalties imposed are often not in accordance with the deeds committed. It can be found in some theft cases that the stolen things are only have little bit economical values, however it is still being processed in the court.

Those cases can be seen in Minah Grandma's case, who suspected stealing three cacaos, Aal, 15 years old Senior High School student who suspected stealing slippers, and the case of Asyani Grandma who suspect stealing woods in Situbondo region. The three cases have become public issues.

Minah Grandma from Darmakradenan village, Ajibarang, Banyumas has facing legal problem since she has been stolen three cacaos. The theft case was submitted to the Purwokerto District Attorney's Office and Minah Grandma is accused as taking three cacaos without permission from Sari Antan-4 Company. The loss is estimated about IDR 30.000, and is subjected to Article 362 of the Criminal Code, with the threat of six months in prison (Deviant, 2012).

The same case found in Aal's case. As 15 years old of Vocational High School 3, Palu, Sulawesi Tengah, he is accused to steal slippers belong to Briptu Ahmad Rusdi Harahap. This case is being submitted to the court, with the threat of six months in prison, and it was happened in November 2010 (A., 2012).

Besides, in the middle of March 2015, there is theft of wood was assumed to be committed by Asyani, a 63-year-old grandmother. As reported by Perhutani Company in Situbondo Departmental Police of the Republic of Indonesia (Polres), this case is happened on July, 2014. At the time, the officer of Perhutani Company doing routine patrol and found such a footprint of stealing in square No. 43. The effect of two teak logs' losing has made the Perhutani Company losing 4 million. Thus, Asyani Grandma is accused breaking up the law Article 12 jo. Article 83 Legislation Number 18 of 2013 about Prevention and Eradication of Forest Destruction (SURYA.co.id, 2015).

The two cases involving two Grandmas are still being processed in the Court. Media and society has assessed that the Police is inhuman and have no empathy since the two Grandmas are elderly, so the law process should not be processed. Thus, the Police are assumed unable to provide a sense of justice.

Regarding with the explanation above, this research is aimed to explain more about the recovery process of minor offences perpetrator using restorative justice approach.

2. Methodology

This research is using juridical normative approach, since the legal science has characteristics as prescriptive and applied science (Marzuki, 2005). According to Soekanto & Mamudji (2001), juridical normative approach is legal research conducted with library research on the regulation and literatures dealing with the problem discussed.

Hutchinson explain further that library based research is focusing on reading and analysis of the primary and secondary materials. The primary materials are the actual sources of the law-commentary on the law found in the textbooks and legal journals. Often, reference sources such as legal encyclopedias case digest and case citations are needs to index and access the primary sources (Hutchinson & Hutchinson, 2006). Ibrahim (2006) reveals that library research is conducted to produce new arguments, theories or concepts as a prescription in the problem at hand.

3. Discussion

In the law system, there is an adage which means that law should be strengthen by sanctions. One of the sanctions that can be used to strengthen the law norms is criminal sanctions. However, the criminal sanctions should be implemented as the last effort or *ultimum remedium* (Suarda, 2011).

The law enforcements principals that has been performed by the law officers show that the case settlement with providing compensation and made an apology statement does not eliminate criminal liability by the offender. For instance, in traffic accident while the offender has delivered an apology statement to the victim and the victim has forgiven, but in the law perspective, the offender is not free from criminal liability. The compensation given to the offender is merely about leniency. In accordance with the explanation, *the position of law enforcement officers is responsible to defend public law in order to represent the*

interests of the state and society. Also, if the law violation is happened, law enforcement officials will act to restore stability to the community in accordance with applicable regulations.

Restorative justice is a critical concept which responds the system development of criminal justice by focusing on the involvement of society and victim. In the restorative justice perspective, the meaning of criminal action is basically the same with other criminal law. Nevertheless, in the restorative justice approach, the main victim of a crime is not the state, as in the existing criminal justice system (Walgrave, 2012).

By the implementation of restorative justice model, the perpetrator does not need to be arrested if the interest and the victim losses has been restored, the victim has been forgiving, and the perpetrator has been showing its regret and willing to responsible .

Hence, restorative justice is assumed as a fair settlement which involving the perpetrator, victim, family, and another parties involved. In this concept, the conflict settlement is based on the society participation. The minor offences are not always legally processed, but only need to be settled through way of kinship. However, in this case, the dignity of the victim should be taking into account, and the perpetrator should being responsible and reintegrated in the communities (Weitekamp & Kerner, 2012).

In Indonesia, there are some cases categorized as minor offences, but it is processed as like another criminal action. It can be seen from several cases, Minah Grandma has been accused for 5 years prison just because stealing three cacaos which the amount is only IDR 15.000. Another case from Aal, 15 years old from Vocational High School 3 Palu which is accused for 5 years prison cause by stealing slippers.

Regarding to the cases above, the Supreme Court has issuing Supreme Court Regulation (Perma) Number 02 of 2012. In a general explanation, it was stated that in theft's cases where the loss was mild, it was not appropriate to be charged using Article 362 of the Criminal Code for which the maximum criminal threat was 5 (five) years. The theft case should be included into general criminal action and should be charged with Article 364 Criminal Code (KUHP) with 3 years prison and amercement maximally IDR 250. If the case is charged with Article 364 Criminal Code, the suspected cannot be imprisoned (Article 21 of Code of Criminal Procedure). For investigation in the court is only need quick investigation by the judge as regulated in Article 205-210 Code of Criminal Procedure. In addition, based on Article 45-A Supreme Court Constitution No. 14 of 1985 as amendment for two twice in Constitution No. 3 of 2009. These cases could not be appealed because of the threat of a sentence of less than 1 year in prison.

The Supreme Court know the reason why law enforcement officer is not applying the provision of petty theft case into Article 364 Criminal Code, rather applying the provision of Article 362 Criminal Code. It is due to the limitation of petty theft regulated in Article 364 of the Criminal Code is goods or money whose value is under IDR 250, meanwhile, the value is not appropriate anymore. Thus, the provision should be changed and adjusted with the current price of gold. By this condition, the Supreme Court is issuing the Supreme Court Regulation No 02 of 2012. (General explanation of Supreme Court Regulation Number 02 of 2012 states that to make adjustments to the value of the rupiah, the Supreme Court was guided by the price of gold in force around 1960. Based on information from the Museum of Bank Indonesia, in 1959 the price of pure gold per 1 kilogram = IDR 50,510.80 or equivalent to IDR. 50.51 per gram. Meanwhile, the price of gold as of February 3, 2012 is IDR 509,000 per gram. Based on that, then the ratio between the values of gold in 1960 with 2012 was 10,077 times. Therefore, the limitation on the value of goods regulated in the aforementioned minor criminal provisions needs to be adjusted accordingly).

Based on these explanation, the words “two hundred and fifty rupiahs” in articles 364, 373, 379, 384, 407 and Article 482 of the Criminal Code as stipulated in the provisions of Article 1 Supreme Court Regulation Number 02 of 2012, change into IDR 2,500,000 (two million and five hundred thousand rupiahs). Meanwhile, with the change in the value of money in these Article, it means that the criminal act as regulated in the articles which has a small value below IDR 2,500,000, the provisions of criminal acts can be applied in articles 364, 373, 379, 384, 407 and Article 482 of the Criminal Code which threaten a maximum imprisonment about 3 months. After the issuance of the Supreme Court Regulation, all law enforcement officers should adjust into that provision. However, if there are cases of theft or other criminal acts with a loss value below IDR 2,500,000, so the case is qualified as a felony (in accordance with Supreme Court Regulation Number 02 of 2012. In addition, if the court finds the defendant in a crime case that is subject to detention, the defendant is immediately released from detention.

The criteria for settling minor criminal cases through restorative justice are that the perpetrator does not need to go to jail if the victim’s losses have been restored, and the victim and the society have forgiven, while the perpetrator has expressed remorse. Afterwards, there has been an agreement relating to the payment of losses, which can be in the form of material or immaterial. This restorative justice model must be implemented before the investigation process with the police. The impact is the loss of the victim is replaced by the perpetrator to create a recovery condition as before the case. This is not only able to recover the losses

suffered by the victims, but is also expected to eliminate the shame of the perpetrators due to the violations committed, because the mechanism is carried out peacefully and without spreading the problem to the public. Therefore, according to Braithwaite (2002) and Strang (2002), the implementation of restorative justice should be guided by the principles of “healing and respectful dialogue forgiveness, responsibility, apology and making amends.”

Efforts to handle minor offenses’ cases through the completion of restorative justice need to be implemented, so that it can be used as a legal basis for law enforcement officers to fulfill their sense of justice, legal certainty, and its usefulness for the society. Thus, the regulation of the unclear and incomplete concept of minor criminal offenses, which is contained in the provisions of the Criminal Code, Criminal Procedure Code, and other laws, it is expected to be reconstructed based on the restorative justice approach through the mediation mechanism of the penal and in the form of a combination of victim offender mediation and police-led conferencing.

In addition, the application of restorative justice in Indonesia has been regulated in two criminal acts, namely criminal offenses committed by children and criminal acts of drug abuse. However, in Law Number 35 of 2009, the application of restorative justice is only in part of the process, namely the obligation of the rehabilitation process for narcotics addicts only. Children are the top priority in implementing restorative justice in Indonesia due to the unstable mental conditions of children.

The above provisions at least provide enlightenment that restorative justice in Indonesia can be applied and it would be good if a minor criminal offense was also carried out through the restorative justice. Considering that there is a quick examination program regulated in the Criminal Procedure Code on the completion of cases of minor criminal offenses, so that by combining the concept of restorative justice and a quick examination program, a model of resolving minor criminal cases can be found through the perspective of restorative justice, which can be carried out by investigators without having to involve the public prosecutor and the detention process.

4. Conclusion

Minor offences considered as criminal action which is not causing harm and the losses is relatively small. The research limit on the settlement of the minor offences can be obtained alternatively through restorative justice. The criteria of minor offences criminal’s settlement through social justice is performed that the perpetrator does not need to be

imprisoned if the victim's losses have been restored and has been forgiving the perpetrator. The importance of restorative justice to be implemented is that it is expected to eliminate the shame of the offender as a result of the violations committed. Some provision in Indonesian's constitution has showed that it is possible to implement restorative justice in Indonesia, and thus it may suit that minor offences can be resolved through restorative justice. Since there is also quick investigation regulated in Criminal Code for minor offences settlement, thus, it can be found new model settlement for minor offences without involving the public prosecutor and the detention process.

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