

RESTORATIVE JUSTICE HOUSE AS A VEHICLE OF NATIONAL CULTURE ACTUALIZATION IN CRIMINAL CASES SETTLEMENT

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Abstract

The Restorative Justice House which is a follow-up to the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, where the establishment of this house aims to become a meeting place for victims, perpetrators in resolving criminal cases which also involve traditional leaders, the community and religion in exploring local wisdom values in order to complement the application of positive law in the implementation of termination of prosecution based on Perja Number 15 of 2020. This research is a socio legal research which has descriptive and analytical research characteristics. The urgency of establishing Rumah RJ is to explore local wisdom values contained in the community. Restorative justice is in harmony with the legal values that live in Indonesian society (living law) which is essentially based on the three main goals of life, namely the creation of peace in society, the realization of harmony in life and the maintenance of cosmic balance between people's lives and is an effort to preserve the legal culture of the Indonesian people. which prioritizes deliberation and consensus and the implementation of local wisdom values in resolving cases at Rumah RJ is currently only based on the settlement method, namely by using deliberation to reach consensus, but in this study the prosecution in Toba Samosir and Kajang has accommodated the values and local customary law, so that in this case the law and local wisdom values can be used as a complement in the implementation of positive law enforcement.

Keywords- Restorative Justice House, Restorative Justice, Restorative Justice

INTRODUCTION

Law as a social rule cannot be separated from the values that apply in a society, it can even be said that law is a reflection of the values that live in society. Good law is law that is in accordance with living law in society, of course, is a reflection of the values that live in society. Indonesia is a country consisting of diverse ethnic groups, so that in this case local wisdom that grows and develops in society is closely related to customary law in regulating daily life and is used in solving problems that occur in society. The diversity of ethnic groups in Indonesia has an impact on their respective customary law systems to regulate diverse social life, most of which are not in the form of written rules. Constitutionally the existence of indigenous peoples is regulated in the 1945 Constitution 4th Amendment Article 18B paragraph (2), which states "The state recognizes and respects the units of indigenous peoples and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia." Indonesia which is regulated by law."

The existence of local wisdom values itself is essentially still embedded in society, but this seems to be sinking and increasingly marginalized, especially in the criminal system in Indonesia. This is a logical consequence where the criminal law system currently still uses the legacy of the Dutch East Indies colonial legal system known as *Wetboek van Straftrecht* which emphasizes punitive characteristics more, this is because in legal politics the effectiveness of law enforcement, so that the creation of this criminal system was motivated by on the thought of individualism-liberalism and heavily influenced by classical and neoclassical schools on the theory of criminal law and punishment from the Dutch colonial interests in their colonies [1]. Therefore, the direction of enforcing criminal law is actually *primium remedium*, not placing criminal law as *ultimum remedium*.

The implementation of the criminal justice system in Indonesia in general is still dominantly retributive, namely focusing on punishing the perpetrators. Over time, an alternative to the



retributive punishment method has developed, namely the idea that emphasizes the importance of solutions to improve the situation, reconcile the parties and restore harmony to society while still holding the perpetrators accountable. This theory is known as restorative justice or restorative justice [2]. The concept of restorative justice emphasizes the integration of actors on the one hand and victims or society on the other as a unit to find solutions and return to patterns of good relations in society [3].

Talking about restorative justice, the Prosecutor as the holder of the principle of *dominus litis* in the criminal law system has made a legal breakthrough, namely by issuing the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (Perja Keadilan Restoratif), while the starting point for the birth of this regulation is a form of discretionary prosecution (prosecutorial discretion) by the public prosecutor which is at the same time an embodiment of the principle of *dominus litis*. As for the form of efforts to further optimize this policy by forming a Restorative Justice House, the formation of this forum is aimed at restoring peace and harmony in society, so that Prosecutors in the context of carrying out law enforcement and justice duties prioritize peace and restoration to their original state in accordance with the values the culture of the Indonesian nation which prioritizes peace, harmony and cosmic balance, no longer focuses on imposing criminal sanctions in the form of deprivation of one's freedom.

Community enthusiasm for the establishment of Restorative Justice Houses (RJ Houses) is very high, where up to now there have been 410 RJ Houses spread across 33 High Court areas [4], RJ's house in this case is a place for local wisdom values to be absorbed, although in some areas it is also only used as an institution to revive the role of community leaders, religious leaders and traditional leaders to work together with law enforcers, especially prosecutors in the enforcement process. Laws that are oriented towards substantive justice and to balance the applicable rules (*rechtmatigheid*) with interpretations that are based on the objective or principle of expediency (*doelmatigheid*) so that they can resolve law enforcement problems. Based on the description above, the author intends to raise it in a paper writing entitled "Restorative Justice House as a Place for Actualization of National Culture in Settlement of Criminal Cases"

Throughout the author's search, to date there has not been a single article or research that specifically discusses restorative justice houses, this is because the existence of the RJ house is a new institution which was only implemented in March 2022 by the Attorney General's Office of the Republic of Indonesia. The urgency of this paper is to comprehensively discuss what is meant by Rumah RJ, the function and mechanism of the Termination of Prosecution based on the Principles of Restorative Justice as stipulated in the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

PROBLEM FORMULATION

Based on the description contained in the background mentioned above, several problem formulations can be drawn, namely; (1) Why is the Restorative Justice House needed in the context of implementing the Policy to stop prosecution based on restorative justice by the Attorney General's Office of the Republic of Indonesia? (2) How is the use of local wisdom values in solving criminal cases through the concept of restorative justice in the Restorative Justice House?

METHODS

The method used in this research is socio legal which has the nature of descriptive and analytical research, this research is not only limited to the text, but also includes a deepening of the context which includes all processes such as from the formation of law (law making) to the operation of law (implementation of law) [5]. Socio legal research is an attempt to explore and at the same time deepen a problem by not only covering studies of legal norms or doctrines, but in full how a norm is implemented. As a legal research, this research is planned to use interactional with qualitative analysis in order to analyze systematically logically, qualitative method as a research procedure that produces descriptive data in the form of written or spoken words from people and observed behavior

[6]. The types of data used are primary data obtained directly from the Deputy Attorney General for General Crimes and secondary data through literature and documents.

RESULTS AND DISCUSSION

The Urgency of Rumah RJ in the Implementation of the Policy on Stopping Prosecution Based on Restorative Justice

Restorative Justice is the antithesis of penal policies in Indonesia, where there are several examples of law enforcement related to criminal acts that hurt people's sense of justice, this is because law enforcement in Indonesia cannot be separated from Law Number 8 of 1981 concerning Criminal Procedure Law where only refers to the implementation of formal law, then in other words law enforcement has a form of embodiment by way of criminal imposition or sanctions. In this regard, Sauer stated that there are three basic meanings in criminal law, namely unlawful nature, guilt and punishment[7]. The concept of restorative justice is also an answer in that current law enforcement does not accommodate the interests of victims, so in this case Bagir Manan argues that Indonesian law enforcement can be said to be *communis opinio doctorum*, which means that current law enforcement is considered to have failed in achieving the goals set. required by law [8].

The politics of criminal law which prioritizes *primum remedium* is currently considered a failure to fulfill a sense of justice in society, this is because there are several influencing factors, namely that even though the law has been enforced but has not been able to restore the interests of the victim, the political direction of Indonesian law today has shifted towards Restorative Justice, this can be reflected in the National Medium-Term Development Plan (RPJMN) 2020-2024, Chapter VIII Strengthening the Political Stability of Defense and Security Law and Transformation of Public Services, related to the Policy Directions and Strategy of the National Law Enforcement Section, one of the directions and policies reads; (1) Improving the criminal and civil law system whose strategy is specifically related to the implementation of restorative justice, namely optimizing the use of regulations available in laws and regulations that support Restorative Justice; (2) Optimizing the role of traditional institutions and institutions related to alternative dispute resolution, prioritizing efforts to provide rehabilitation, compensation and restitution for victims, including victims of human rights violations.

The Attorney General's Office of the Republic of Indonesia in this case as a law enforcement institution in carrying out its duties and authorities always refers to the political direction of national law, therefore the embodiment in carrying out the legal political direction as in the 2020-2024 RPJMN has issued a case settlement policy using the Restorative Justice method with issuance of a Restorative Justice Act. This policy basically regulates the termination of the prosecution of certain criminal offenses, this is based on the existence of several legal enforcements which are formally in accordance with positive law but by carrying out these law enforcement it actually hurts the sense of justice that grows and develops in society itself. The Restorative Justice Act itself can be implemented to resolve certain cases. The conditions for the implementation of this policy have been regulated in a limitative manner in the provisions of Article 5 Paragraph (1) of the Restorative Justice Act which states; (1) The suspect was a first time offender; (2) Criminal acts are only punishable by fines or punishable by imprisonment of not more than 5 years; (3) The crime is committed with the value of evidence or the value of the loss incurred as a result of the crime of not more than Rp. 2,500,000.00.

Apart from that, in carrying out his authority regarding the termination of prosecution based on Restorative Justice, the public prosecutor must pay attention to the provisions of Article 4 of the Restorative Justice Perja, namely; (1) The interests of victims and other legal interests that protect; (2) Avoidance of negative stigma; (3) Avoidance of retaliation; ;(4) Community response and harmony; And; (5) Decency, decency and public order.

In addition, in implementing this policy, the public prosecutor in carrying out the termination of prosecution based on this Restorative Justice Perja must also consider the following matters:

- a. Subject, object, category and threat of crime;
- b. The background of the crime committed;
- c. Disgrace level;



- d. Losses or consequences arising from criminal acts;
- e. Costs and benefits of case handling;
- f. Restoration back to its original state; And
- g. There is peace between the victim and the perpetrator.

Based on the description as described above, the implementation of this policy is not only oriented towards victim recovery and peace between victims and perpetrators, there is also a role for the community to respond positively which is based on the community's assessment of the values of decency, decency and public order in order to maintain harmony. in society itself. Judging from this, in order to optimize the implementation of the Restorative Justice Perja, the RJ House was formed. The reason for the formation of the RJ House is to become a forum for solving problems in society, especially minor crimes as stipulated in the provisions in the Restorative Justice Perja, this is a legal breakthrough to resolve criminal cases outside the court with an emphasis on recovering the victim's losses.

Related to the enforcement of the Restorative Justice Perja law, it will be correlated with legal culture, in this regard Lawrence M. Friedman emphasized that law consists of 3 (three) components, namely legal norms (legal substance), law enforcement officials (legal structure) and legal culture [9]. Legal culture is a subsystem that greatly determines the success of law in achieving its goals, especially in placing the concept of restorative justice, this is because a good legal substance and a capable legal structure will not be able to achieve legal goals if the legal culture does not support it. The legal culture itself can be seen from the culture of a nation, where in this case the source of Indonesian law is Pancasila as the state ideology, Pancasila is positioned as the basic state norm (staats fundamental norm), so that every legal norm that becomes its derivative must make Pancasila a source philosophical basis. The Pancasila-based legal system is a reflection of the nation's soul which prioritizes moral values, kinship, harmony, balance, deliberation, and social justice, in this regard, the Indonesian legal system should be based on Pancasila values. The initial purpose of law being created was to organize people's lives to make it better, this is the idealism behind the birth of law in human communities from the start, the source of creating *das sollen* is nothing but what is called ideology. Ideology here means everything that concerns the most central and essential values, so that on that basis we can evaluate and make improvements to everything else in our lives [10].

The correlation between the goals and the implementation of the Perja for restorative justice is also in harmony with the values of Pancasila in law reflecting a justice, order and prosperity desired by the people of Indonesia, as stated in the 2nd Precepts of Pancasila, namely a just and civilized humanity, *Sila It* contains human values that must be upheld, especially in treating someone who is in conflict with the law, namely the right to be treated equally before the law in the judicial system. Apart from that, the values of Pancasila contained in the concept of restorative justice are also reflected through the legal settlement process through deliberations, this is in line with the true noble values of the nation, namely Pancasila. Deliberation and consensus are the main ideas of the Indonesian cultural system, as emphasized in the 4th precept of Pancasila which reads "Populist led by wisdom in deliberation/representation".

Restorative justice is based on justice that is created between all parties involved, both perpetrators, victims, and the state represented by law enforcers. Basically, the concept of restorative justice is in line with the concept of the 5th precept of Pancasila, Social Justice for All Indonesian People. The main value contained in Pancasila is based on the concept that there is a goal to provide equal opportunities for all citizens in developing their personal economy and to be given equality. in the law [11]. Regarding further explanation, Purwanto in explaining the meaning of Social Justice in the Preamble to the 1945 Constitution of the Republic of Indonesia, which has explicitly stated that there must be a manifestation of the principle of equality and be held in the same degree in living life together in a natural way. in the form of willingness to be useful for others. Related to the value of social justice associated with the value of deliberation, according to Sudjito Atmoredjo explained that deliberation is an embodiment of the Pancasila philosophy, especially the value of social justice that must be created between all parties involved [13].



With the establishment of the Restorative Justice house, community leaders, both religious and traditional leaders, will have a sense of responsibility in maintaining cosmic peace and balance in their respective areas, so that harmony in society will be maintained in accordance with the noble values that live in Indonesian society. Some of the benefits of establishing a Restorative Justice House are; (1) The purpose of the law to uphold justice that provides benefits to society will be achieved while still guaranteeing legal certainty; (2) Community leaders consisting of religious leaders and/or traditional leaders will have more sense of responsibility to maintain cosmic balance and maintain harmony in society; (3) Every policy in resolving cases taken by the prosecutor's office will immediately benefit the community, because the policy is decided by the prosecutor as dominus litis together with the community represented by religious leaders and traditional leaders as well as the conflicting parties (perpetrators and victims) by taking into account the values the value of justice that grows and develops in a society that is aligned with positive law; (4) Any problems that occur will be resolved quickly, simply and at low cost, thereby facilitating law enforcement performance. Law Enforcement Officials (police, prosecutors and judges) can focus more on dealing with large-scale crimes in the field of security and public order, narcotics, the economy and major cases other. Moving on from the purpose of establishing the RJ House, in this case victims of criminal acts no longer need to go to law enforcement to report criminal acts that harm themselves and no longer need to spend time in the trial process to ask for justice, because the Prosecutor as dominus litis is in the middle them, together with community leaders to help resolve the problems that occur. This restorative justice is one of the agendas in reforming the criminal law system in Indonesia, this is in line with integrative legal theory, this is because the concept of restorative justice is based on the purpose of law for human dignity, happiness, welfare and dignity [14]. Integrative Law Theory in this case forms the basis that bureaucratic engineering and social engineering must be based on Pancasila as the ideology of the Indonesian nation, which as we know Pancasila is the source of law in Indonesia [14]. This integrative legal theory emphasizes that law essentially consists of norms, actors, and values as can be referred to as the tripartite character of Indonesia's social engineering [14].

So that in this case the urgency with the establishment of the RJ House is to align legal values that live in Indonesian society (living law) which essentially rests on the three main goals of life, namely the creation of peace in society, the realization of life harmony and the maintenance of a cosmic balance between people's lives and universe with applicable positive law, in this case criminal law and criminal procedural law itself. Alignment of harmony in people's lives cannot be carried out only by the perpetrators with the victims, but harmonization of harmony can only be done by involving the community around the events represented by community leaders, both religious leaders and existing figures as the mechanism for the concept of restorative justice as stipulated in the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

The Use of Local Wisdom Values in Settlement of Criminal Cases Through the Concept of Restorative Justice at Home Restorative Justice

Regarding the implementation of restorative justice, moving from an empirical level in customary law the concept of restorative justice is actually known, for example in Javanese custom there is an institution called Rembug Desa, this institution aims to resolve offenses against violations of customary norms that occur in In society, at the conceptual level, the perpetrators, victims and the community, which in this case are represented by traditional leaders, hold deliberations to find solutions for the best settlement of violations of these customary offenses. The concept of settlement in decision-making also pays attention to the impact of the violation on the victim and the ability of the perpetrator to make reparations to the victim. An institution of this kind also exists in Minang Kabau, West Sumatra, which is known as the Kerapatan Adat Nagari Institute [15].

Based on several examples of the embodiment of the concept of restorative justice as exemplified above, in essence the dispute resolution process at the customary level still prioritizes recovery from the victim for what he suffered as a result of the occurrence and involvement of the figures, this is also in line with the method of settling criminal cases with certain characteristics as as set forth in the Restorative Justice Act, where in the process of stopping a case based on restorative justice



starting with restoring it back to its original state, this begins with an apology from the perpetrator (and the perpetrator's family) to the victim (and the victim's family) witnessed by local community leaders, both religious and traditional leaders.

This method is known as the *Afdoening buiten* process, in this case it is defined as the settlement of cases outside the court in this case which are the objects of criminal acts that can be resolved through the Restorative Justice Perja itself regulated in the provisions of Article 5 paragraph (1) of the Restorative Justice Perja, which states; (a) The suspect was a first time offender; (b) Criminal acts are only punishable by fines or punishable by imprisonment of not more than 5 years; (c) The crime is committed with the value of evidence or the value of the loss incurred as a result of the crime of not more than Rp. 2,500,000.00.

In addition, the Restorative Justice Act also regulates the exclusion of types of criminal acts that can be resolved through this policy as stipulated in the provisions of Article 5 Paragraph (8), which states: Termination of prosecution based on Restorative Justice is excluded for cases; (a) criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly countries and their representatives, public order and decency; (b) criminal acts that are punishable by minimum criminal penalties; (c) narcotic crime; (d) environmental crime; And (e) criminal acts committed by corporations.

In this regard, Barda Nawawi Arief stated that out of court settlements have practically been carried out in various criminal cases through the discretion of law enforcement, deliberations on victims and various other methods [16]. Settlement outside the court is needed in helping the state reduce unnecessary costs (unnecessary costs) in the judicial process, to achieve the principle of a fast, simple and low-cost trial, settlement outside the court. On the basis of this apology, the prosecutor initiated deliberation between the perpetrator and the victim, including his family, witnessed by community leaders.

The implementation of local wisdom values in the implementation of this Restorative Justice Perja can be reflected in its implementation, which in its implementation uses the deliberation method for consensus, which in the forum consists of victims, perpetrators, and elements of society which in this case consist of religious leaders, traditional leaders and community leaders and facilitated by the Attorney. As for the form of accommodating local wisdom in this implementation, this is reflected in the provisions of Article 8 paragraph (2) of the Restorative Justice Perja which states "if it is deemed necessary, peace efforts can involve the families of the victims/suspects, community leaders or representatives, and other related parties". The phrase in this provision means that in carrying out prosecutions based on the Restorative Justice Perja, figures or community representatives are involved in resolving cases as stipulated in the Perja.

In its development, in order to optimize the implementation of community involvement, the Attorney General's Office of the Republic of Indonesia issued a policy to establish RJ Houses. RJ's house was formed with the reason to become a forum for solving problems in society, especially minor crimes as stipulated in the provisions in the Restorative Justice Perja, this is a legal breakthrough to resolve criminal cases out of court with an emphasis on recovering victims' losses. Regarding the existence of this space, in this case the Prosecutor as the facilitator can explore the values of justice and local wisdom in the settlement of criminal cases which, as can be resolved through the Restorative Justice Perja instrument.

As for the example in implementing the method of actualizing local wisdom values in settling cases referred to as the institution of the RJ House which uses local wisdom as practiced at the RJ House in the Toba Samosir Prosecutor's office area, where in the settlement of cases of damage to goods on behalf of the defendant Dompok Sitorus, where in the case of In this settlement, the customary group used the Martonggo Raja instrument where the Batak people are the King and with the Batak proverb "Met met bulung ni jior, um met-metan bulung ni bane bane. Denggan marhata tigor, um denggan do marhata dame (better to say the truth, it's better to say peace), in which this forum indigenous peoples give consideration to the Prosecutor to make peaceful efforts regarding the case, because in this case the people consider peace to be more beneficial in settlement In this case, apart



from that there was an element of forgiveness from the victim and also the recovery received by the victim [17].

In addition, an example of the actualization of local wisdom mechanisms in resolving cases at RJ's house in the implementation of the Restorative Justice Perja was also applied in the South Sulawesi region, where in the abuse case at the Bulukuma District Attorney's Office in Kajang, on behalf of Saleh Bin Bukka, where the deliberations held there were traditional leaders who provided advice and input based on the Tana Toa Kajang Criminal Law, where in the law it was distinguished based on the severity and severity of the acts of persecution, so that in this case because the level of abuse committed was still in the light category, the traditional leaders suggested It is better to just settle this case, even this is in line with the Tana Toa Kajang legal system which makes the customary criminal law system the final step or ultimum remedium [18].

Moving on from the 2 (two) case examples raised in this writing, the method of implementing local wisdom values in the implementation of the Restorative Justice Perja is accommodated in a deliberation process facilitated by the Prosecutor, so that in this case the involvement and reactivation of both traditional leaders, religious leaders and community leaders can be realized in the forum while still being oriented towards the principle of equality and being placed in the same degree in the process of resolving the case. This can also revive the existence of local wisdom values and substantial justice that live and grow in society, which so far has been marginalized by the formality and rigidity of positive law.

CONCLUSION

The urgency of establishing the RJ House is to provide a good space for Law Enforcement Officials in this case the Prosecutor together with traditional leaders, religious leaders and community leaders to explore local wisdom values contained in society, in which case value considerations This value is also used in considering whether a criminal law problem that occurs can be resolved using the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, where in this case the forum is a reflection of the legal culture of the Indonesian people in resolving the problem is using the deliberation method to reach a consensus while still paying attention to and being oriented towards fulfilling the rights of the victims themselves and placing the perpetrators equally before the law. The use of local wisdom values in the settlement of criminal cases through the concept of restorative justice at Rumah RJ currently relies more on the settlement method, namely by using deliberation to reach a consensus between victims, perpetrators and community leaders, but in this case the prosecution in Toba Samosir and Kajang have accommodated local customary values and laws, so that in this case local wisdom laws and values can be used as complements in the implementation of positive law enforcement.

SUGGESTION

Restorative justice is a necessity in the renewal of the criminal law system, so as to avoid overlapping regulations regarding restorative justice it is deemed necessary to arrange regulations, at the law level in order to renew the substance of the criminal law system in Indonesia.

The Restorative Justice House is a place for prosecutors to explore the values of justice that grow and develop in society which are aligned with positive law in order to resolve a legal issue, so that they can make decisions based on substantive justice so that with law enforcement the community can benefit from the process law enforcement itself, so that it is hoped that the implementation of local customary values can be applied throughout RJ's House as a consideration for decision making to stop prosecution based on restorative justice.

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