

THE ROLE OF THE NOTARY IN SETTLEMENT OF CRIMINAL CASES BASED ON RESTORATIVE JUSTICE

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Submission date: 25-May-2025 08:36PM (UTC+0700)

Submission ID: 2684310613

File name: IN_SETTLEMENT_OF_CRIMINAL_CASES_BASED_ON_RESTORATIVE_JUSTICE.pdf (176.86K)

Word count: 4930

Character count: 26013

THE ROLE OF THE NOTARY IN SETTLEMENT OF CRIMINAL CASES BASED ON RESTORATIVE JUSTICE

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Received 25 March 2024 • Revised 24 April 2024 • Accepted 30 May 2024

Abstract

Restorative Justice is an effort to find a peaceful process for resolving cases outside of court. This research uses normative legal research methods. The urgency of resolving criminal cases based on restorative justice is essentially the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to the original condition, and not retaliation. The main point of resolving criminal cases based on restorative justice is the existence of a peace agreement between the victim and the perpetrator of the crime. Peace agreement and fulfillment of the rights of victims of criminal acts. To prepare a peace agreement signed by the parties, of course it must be formulated in writing and can be drafted and signed in the presence of an authorized official. If necessary, this is where the role of a Notary can be used in drafting a peace agreement through a peace deed made and signed before a Notary. To strengthen the validity of the peace agreement letter and the need for legal protection, guarantees in fulfilling the rights of the victim, to avoid acts of default on the peace agreement between the criminal perpetrator and the victim, it can be formulated through an authentic deed, namely a peace deed made and signed before a Notary.

Keywords: Notary, Restorative Justice, Criminal

INTRODUCTION

In national and state life, Indonesia is a legal state where every activity and life activity carried out by each group is regulated by applicable laws and standards. Because law is a rule that regulates human behavior, it cannot be separated from human life.

About law enforcement in Indonesia, it cannot be separated from Law Number 8 of 1981 concerning Criminal Procedure Law because based on the terminology alone, this term refers to the implementation of formal law. So it can be said that what is meant by law enforcement, the form of its concreteness is the imposition of crimes or sanctions. According to Sauer, there are three basic meanings in criminal law: the nature of being against the law, error and crime. And apart from being identical to formal law, enforcement must also be based on the regulations that are made. Law enforcement is the process of enforcing or functioning real legal norms as guidelines for behavior in traffic or legal relations in social and state life.

In the modern state structure, law enforcement is carried out by the executive component and implemented by the executive bureaucracy, so it is also called the law enforcement bureaucracy. In connection with law enforcement practices in Indonesia, there is the term Restorative Justice, or Restorative Justice, which in the Indonesian translation is called restorative justice.

Restorative justice or Restorative Justice is one of the efforts to find a peaceful process for resolving cases outside of court. Settlement of criminal cases through Restorative Justice involves the victim, the perpetrator, the victim's family and the perpetrator's family and other parties in resolving the problem so that the perpetrator of the criminal act is responsible for repairing the losses incurred as a result of his actions, while the victims emphasize recovery of asset losses, physical suffering, security, dignity and satisfaction or a sense of justice for the perpetrator and society, the aim is to provide shame so that the perpetrator does not repeat his actions again, and society accepts it.

The concept of a restorative justice approach is an approach that focuses more on conditions for creating justice and balance for perpetrators of criminal acts and the victims themselves. Criminal procedural and justice mechanisms that focus on punishment are transformed into a dialogue and mediation process to create an agreement on the resolution of criminal cases that is fairer and more balanced for the victim and perpetrator.

Restorative justice or what is better known in Indonesia as penal mediation, is regulated in writing, including in several laws and regulations in Indonesia, namely Article 82 of the Criminal Code, Law Number 1 of 1946 (Afdoening buiten process) on criminal acts of the type of violation and in the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which stipulates diversion in the resolution of juvenile criminal cases. The idea of diversion is a form of diversion or aside from the handling of juvenile criminal cases from the conventional juvenile justice process, towards handling children with a more community service nature. Juvenile criminal justice is often a process that is only oriented towards formal law enforcement and is not oriented towards the interests of the child.

In its development, restorative justice has been widely applied in criminal cases, especially minor crimes. Several legal instruments that regulate restorative justice include:

1. Republic of Indonesia State Police Regulation Number 08 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice;
2. Circular Letter of the Chief of the National Police of the Republic of Indonesia Number SE/8/VII/2018 of 2018 concerning the Implementation of Restorative Justice in Resolving Criminal Cases.
3. Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.
4. Decree of the Director General of the Supreme Court of the Republic of Indonesia No. 1691/DJU/SK/PS.00/12/2020 concerning Implementation of Guidelines for Implementing Restorative Justice.

Restorative justice referred to in the provisions above is the resolution of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration back to the original condition, and not retaliation.

Restorative justice has a perspective related to fulfilling the losses experienced by the victim, and restoring religious magic in the perpetrator's community, so that peace becomes the goal in the concept of restorative justice. Apart from that, restorative justice is carried out in order to accelerate the acceleration of the criminal justice system process by simplifying procedures in the criminal justice system. This can take the form of restitution, which must be done while still paying attention to the principles of the rule of law and basic standards of a fair and just criminal process.

The principle of restorative justice cannot be interpreted as a method of ending cases peacefully, but more broadly as fulfilling a sense of justice for all parties involved in criminal cases through efforts involving victims, perpetrators and local communities as well as

investigators/investigators as mediators, while resolving One of the cases is in the form of a peace agreement and revocation of the victim's right to sue. It is necessary to ask for a judge's decision through the public prosecutor to revoke the authority to sue the victim and the public prosecutor.

In criminal cases, restorative justice will be more effective as a tool for resolving conflicts. In enforcing criminal law, justice must be obtained through the stages of the criminal justice system so that it does not rule out the possibility of implementing restorative justice in all stages of the criminal justice system.

The goals of restorative justice are as follows:

- a. supporting victims, giving them a voice, encouraging them to express their needs, enabling them to participate in the resolution process and providing them with assistance;
- b. repair relationships damaged by crime by seeking a consensus on how best to respond;
- c. denounce criminal behavior as unacceptable and reaffirm societal values;
- d. encourage accountability of all parties involved, especially perpetrators;
- e. identify restorative and future-oriented outcomes;
- f. reducing recidivism by encouraging change in individual offenders and facilitating their reintegration into society;
- g. identify factors that cause crime and
- h. inform the authorities responsible for implementing crime reduction strategies.

In resolving criminal cases based on restorative justice, there is a peace agreement between the victim and the perpetrator. This peace agreement is of course an "agreement agreement" between the two parties (victim and perpetrator of a crime) which must be obeyed and implemented by the victim and perpetrator themselves. Regarding the preparation of a peace agreement between the victim and the perpetrator in the implementation of resolving criminal cases based on restorative justice, this can be implemented in various ways, namely drawing up a peace agreement letter. To obtain the legality of the peace agreement between the victim and the perpetrator, it can be formulated in the form of an authentic letter or deed made and prepared by an authorized official, in this case a Notary.

In relation to the preparation of peace agreement letters in resolving criminal cases based on restorative justice, there is a role of the Notary as a public official who has the authority to prepare authentic deeds, namely peace deeds which can be used in drafting peace agreements between victims and perpetrators. Therefore, it is interesting to discuss "The Role of Notaries in Resolving Criminal Cases Based on Restorative Justice (An Idea and Idea)".

The problem formulation in this research is as follows:

1. What is the urgency of restorative justice in resolving criminal cases?
2. What is the role of a Notary in resolving criminal cases based on restorative justice?

RESEARCH METHOD

The research method used is normative juridical which can be interpreted as library legal research which is carried out by researching various library sources. Legal research is carried out by researching materials and literature or secondary data which is used as basic material in research by tracing various rules and literature that are closely related to the research problem.

The approach used for analysis is a statutory approach, namely by examining all statutory regulations related to the legal issues being studied, which relate to implementing criminal case resolution based on restorative justice. In writing the article, research specifications are used in the form of descriptive analysis. Soerjono Soekanto defines it as research whose aim is to provide the most detailed data on humans, conditions, various other symptoms as well as providing an explanation of the condition of the object of the problem without the aim of establishing general conclusions.

RESULTS AND DISCUSSION

The Urgency of Restorative Justice in Resolving Criminal Cases

One of the goals of law is to achieve justice. In resolving criminal cases, there is now resolution of criminal cases based on restorative justice.

Restorative justiceIn Indonesia there are actually several approaches, the oldest of which are victim, defender, and mediation for any crime, whoever the perpetrator is, including the victim. The second is a special approach, whether the perpetrator or victim is a child or both or one of them is a child. This can be done on the initiative of the police or the perpetrator's family and then look for a win-win solution with the victim's family. There is even a resolution with a kind of local community panel.

Restorative justice or what is better known in Indonesia as penal mediation, is regulated in writing, including in several laws and regulations in Indonesia, namely Article 82 of the Criminal Code, Law Number 1 of 1946 (Afdoening buiten process) on criminal acts of the type of violation and in the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which stipulates diversion in the resolution of juvenile criminal cases. The idea of diversion is a form of diversion or aside from the handling of juvenile criminal cases from the conventional juvenile justice process, towards handling children with a more community service nature. Juvenile criminal justice is often a process that is only oriented towards formal law enforcement and is not oriented towards the interests of the child.

In its development, restorative justice has been widely applied in criminal cases, especially minor crimes. Several legal instruments that regulate restorative justice include:

1. Circular Letter from the Head of the National Police of the Republic of Indonesia Number SE/8/VII/2018 of 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases which was then followed up with Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Investigation of Criminal Acts.

According to Article 1 Number 27 of the Republic of Indonesia Chief of Police Regulation Number 6 of 2019 concerning Criminal Investigation, restorative justice must involve the perpetrator, victim and/or their family as well as related parties. This aims to achieve justice for all parties.

The implementation in the Indonesian criminal justice system is not yet optimal. There are several conditions for resolving cases using this restorative justice approach. This requirement is regulated in Article 12 letters A and B of the Republic of Indonesia Chief of Police Regulation Number 6 of 2019 concerning Criminal Investigation, including the following:

- a. The criminal acts that are resolved are minor criminal acts or criminal acts that constitute a complaint offense, whether absolute/relative in nature.
 - b. There is a desire from the parties involved in the case (perpetrator and victim) to make peace and the consequences of this problem will not have a widespread/negative impact on people's lives.
 - c. Reconciliatory activities must be carried out by bringing together the litigants and involving social institutions such as local community leaders.
 - d. When resolving a case, it is necessary to pay attention to the factors of intention, age, socio-economic conditions, level of loss caused, family/kinship relationships and whether it is a repeat act (recidivism).
 - e. If the action begins with an agreement/engagement (leading to civil action).
 - f. The victim must withdraw the report/complaint.
 - g. If there is dissatisfaction between the parties to the case after it is carried out outside the court mechanism, a settlement will be carried out in accordance with applicable legal procedures.
 - h. If a criminal act is repeated, a legal process must be carried out in accordance with applicable regulations/laws.
2. Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice

With the birth of Republic of Indonesia Police Regulation Number 08 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, this is an effort to resolve cases within the police. In Article 2 paragraph (1) of Perkap No. 08 of 2021 concerning the handling of criminal acts based on restorative justice, the handling of criminal acts based on Restorative Justice is carried out on:

- activities in carrying out the Criminal Investigation function;
- investigation; or
- investigation.

The implementation of the Criminal Investigation function as intended is carried out by the Community Development and Samapta Polri function in accordance with their duties and authority. Meanwhile, the inquiry or investigations as intended are carried out by National Police investigators.

The requirements for handling minor crimes based on Restorative Justice at the inquiry and investigation stage must meet certain requirements regulated in Police Regulation Number 8 of 2016.

3. Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

Based on RI Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, hereinafter referred to as Perja Number 15 of 2020 clearly states

how restorative justice seeks to involve perpetrators, victims and the community in the process of resolving criminal cases. In implementing the restorative justice approach based on the Republic of Indonesia Prosecutor's Regulation no. 15 of 2020 shows that the regulation focuses on the peace agreement between the perpetrator and the victim and how the procedural law then recognizes the existence of the peace agreement as an agreement that has legal force. As a concrete investment in a criminal paradigm not for retaliation but as recovery, the Prosecutor's Office took a strategic step by issuing the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Justice. In other matters, RI Prosecutor's Regulation no. 15 of 2020 also contains restrictions on the implementation of restorative justice so that it is not only interpreted as merely a peace agreement because if that is the case the ongoing process will actually be trapped in carrying out its procedural functions only so that truth (especially material truth) and justice cannot be achieved.

This regulation is also considered as legal substance, formulated to eliminate rigid positivistic understanding by prioritizing progressive law labeled restorative justice. Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration back to the original condition and not retaliation.

4. Decision of the Directorate of General Justice of the Republic of Indonesia Supreme Court No. 1691/DJU/SK/PS.00/12/2020 concerning Implementation of Guidelines for Implementing Restorative Justice.

This was followed by the issuance of Decree of the Directorate of General Justice of the Republic of Indonesia Supreme Court No. 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice on 22 December 2020. This regulation, which was signed by the Badilum Directorate of MA Prim Haryadi, regulates the application of restorative justice only in the scope of minor criminal cases, cases children, women's cases in conflict with the law, and narcotics cases.

"Order all district court judges to implement guidelines for implementing restorative justice in an orderly and responsible manner. "The Chairman of the High Court is obliged to supervise, monitor and evaluate, as well as report on the implementation of restorative justice in the jurisdiction of the High Court concerned," reads the second and third points of the Supreme Court Badilum Directorate Decree No. 1691/DJU/SK/PS.00/12/2020.

Restorative justice referred to in the provisions above is the resolution of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration back to the original condition, and not retaliation.

The Role of Notaries in Resolving Criminal Cases Based on Restorative Justice

Guidelines for implementing the resolution of criminal cases based on restorative justice, especially at the inquiry and investigation stage of the Republic of Indonesia Police, are regulated in Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice.

The main point of resolving criminal cases based on restorative justice is written in the "letter of peace agreement between the parties" and the "statement letter of the criminal perpetrator" which in the process of implementing restorative justice, at the investigation and inquiry stage is regulated in Police Regulation Number 8 of 2021 namely in Article 6 paragraph (1) and paragraph (2), which explains that the formal requirements for resolving criminal cases based on restorative justice are peace between both parties, except for drug crimes and fulfillment of the rights of victims and the responsibilities of perpetrators, except for Drug Crimes. And this peace is proven by a peace agreement letter signed by the parties.

To prepare a peace agreement signed by the parties, of course it must be formulated in writing and can be drafted and signed in the presence of an authorized official. This is where the role of a Notary can be used in preparing a peace agreement letter through a peace deed that is drawn up and signed before a Notary.

To support the preparation of the peace agreement letter and to fulfill the rights of the victim and the responsibilities of the perpetrator, there is a letter of peace agreement and a statement of fulfillment of the rights of the victim and the responsibilities of the perpetrator, the format of the letter is regulated in the Attachment to Police Regulation Number 8 of 2021. However, to strengthen its validity the peace agreement letter and the need for legal protection to provide guarantees in fulfilling the rights of the victim, to avoid acts of default on the peace agreement between the criminal and the victim, can be formulated through an authentic deed, namely a peace deed made and signed before a Notary.

The authority of a notary in making authentic deeds must be carried out in accordance with Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. A notarial deed is an authentic deed made by or before a notary.

Authentic deeds are regulated in the Civil Code Book IV concerning Evidence which contains the Law of Evidence. The requirements for an authentic deed to be used as evidence are regulated in Articles 1868 and 1870 of the Civil Code. Article 1868 states: "An authentic deed is a deed made before public officials who are authorized to do so, in the place where the deed is made." Here we see several elements: first, that the deed was drawn up and formalized (*verleden*) in a form according to law. Second, that the deed was made by or in the presence of a public official. Third, that the deed was made by or in the presence of an official authorized to make it in the place where the deed was made, so the deed must be made in the place of authority of the official who made it. A deed is a writing created intentionally to serve as evidence of an event and signed by the maker.

Regarding authentic deeds, namely:

- 1) a deed made by/in the presence of an official authorized to do so by the authorities, according to the provisions that have been determined, either with or without the assistance of those interested in being recorded therein;
- 2) a letter which from the beginning was deliberately officially made as proof if a dispute arises in the future. A private deed is a deed that is deliberately made for proof by the parties without the assistance of an official.

In relation to the Notarial deed, namely a peace deed which can support the implementation of resolving criminal cases based on restorative justice, peace stated in a notarial deed is a peace deed. All provisions that the parties consider necessary are included in the peace agreement. The legal status of the peace deed is the same as a judge's decision, namely that it has permanent legal force as regulated in Article 1858 of the Civil Code. Therefore, the peace deed made by a Notary has permanent legal force and executorial power with a decree issued by the chairman of the district court containing an execution order so that the peace deed can be implemented. One of the powers of a Notary is to make a peace deed or *dading*. Peace is an agreement between two parties which contains the contents of handing over, promising or retaining an item. The peace agreement resulting from a dispute resolution process must be stated in written form with the aim of preventing the re-emergence of the same dispute in the future.

With a notary's deed of peace between the victim and the perpetrator, it can be used to support the implementation of resolving criminal cases based on restorative justice. The nature of the authentic deed of the peace deed made by the Notary has general deed functions, namely: 10

1. Formal Function (*Formality Causa*) The formal function of a deed means that for a legal act to be complete or perfect (not valid) a deed must be made for that legal act. The parties who carry out a legal action must make it in written form, either an authentic deed or a private deed.
2. Function of Evidence (*Probationis Causa*) From the beginning the parties deliberately made a deed (authentic or underhand) for future proof. The written nature of an agreement does not make the agreement valid, but so that the deed made can be used as evidence if a dispute arises in the future.

By paying attention to the function of the peace deed, it is clear that the notary's peace deed can also function as an effort to handle criminal cases based on restorative justice. Because it is considered that it can contribute to the formulation of the material and contents of peace agreements in several forms of deeds, for example regarding the formulation of material regarding the rights and obligations of the parties in relation to proof and execution rights in the event of default. To achieve the principles of justice and legal protection in a restorative justice peace process, the existence of a peace deed by a notary is very helpful for the parties carrying out the peace process.

The urgency of a peace deed by a notary can be based on resolving criminal cases based on restorative justice. A notary's deed of peace serves as a legal basis and legal protection for the parties (victim and perpetrator) in the criminal case peace agreement that is made. A notarial peace deed can be used as evidence of execution if there is a breach of contract regarding the agreement to fulfill the rights and obligations of the parties in peace efforts and resolution of criminal cases based on restorative justice.

CONCLUSION

The urgency of resolving criminal cases based on restorative justice is essentially the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to the original condition, and not retaliation.

The main point of resolving criminal cases based on restorative justice is the existence of a peace agreement between the victim and the perpetrator of the crime. Peace agreement and fulfillment of the rights of victims of criminal acts.

To prepare a peace agreement signed by the parties, of course it must be formulated in writing and can be drafted and signed in the presence of an authorized official. If necessary, this is where the role of a Notary can be used in drafting a peace agreement through a peace deed made and signed before a Notary. To strengthen the validity of the peace agreement letter and the need for legal protection, guarantees in fulfilling the rights of the victim, to avoid acts of default on the peace agreement between the criminal perpetrator and the victim, it can be formulated through an authentic deed, namely a peace deed made and signed before a Notary.

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