

Restorative Justice Paradigm as A Means In Solving Violent Crimes Against People or Goods

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ABSTRACT

The purpose of this research is to investigate the restorative justice paradigm for resolving violent offenses against individuals or property. The Criminal Justice System uses a repressive approach when it comes to violent crimes, which are defined as acts that are prohibited by law and involve the use of physical force by an individual or group of individuals to cause physical harm to the victim, render them helpless, damage the victim's property, or even result in the victim's death. The study methodology is normative, with a focus on addressing violent crimes against persons or property via the application of statutes and case studies connected to the restorative justice concept. The case approach is an approach that is used to analyze, analyze, and analyze used as a guideline for legal problems to resolve legal cases, whereas the statute approach examines matters pertaining to legal principles, legal views and doctrines, and laws and regulations related to Criminal Acts of Violence Against Persons or Goods and can be held accountable for their truth. This study will be studied using analytical content and will employ secondary data that is backed by source material.

INTRODUCTION

The application of criminal law as a tool to fight crime is a subject of heated controversy and close examination. Despite this, there are still arguments for and against using criminal law to combat crime in the conceptual debate. There is a belief that the application of criminal law as a deterrent to crime cannot come before it, with the understanding that it must remain secondary. In addition, a humane perspective needs to be taken into account if criminal law is to be utilized as a tool to accomplish justice. This is significant not only because crime is inherently human, but also because the criminal justice system inherently involves pain, which has the potential to undermine the most essential goals or ideals associated with human life. It is not possible to define how criminal law should be used to combat crime; rather, it must be combined with tools and strategies used outside of the criminal justice system.

The restorative justice paradigm offers a different approach in solving violent crimes against people or property. In the conventional legal system, the main focus is on the punishment of perpetrators and the restoration of public security. However, the restorative paradigm shifts its focus from mere punishment to improving relationships between perpetrators, victims, and affected communities. This creates space for deeper reconciliation, repentance, and transformation. The term restorative justice or *restorative justice* is now popular, especially among academics, legal practitioners and law enforcement officials as a new paradigm in dealing with a crime or crime.¹ *Restorative justice* is considered a new form of thinking that can be used to respond to various crimes and answer the dissatisfaction and performance of the current criminal justice system.

Muladi contends that the rigorous criminal justice system fails to take into account the State's efforts to use the sentencing process to give the public, particularly those who have been victims of crime, legal protection. The goal of handling cases using this approach is to try to bring justice to cases of children who have already committed crimes to law enforcement officials, as well as to give lawbreakers a chance to turn their bad behavior around by utilizing community resources and non-formal channels. Realizing that criminal acts constitute breaches of relationships as well as the law is one of the key concepts of restorative justice.²

Therefore, effective settlement requires a process that allows all parties involved to actively participate in repairing the damage caused. This includes providing space for victims to share their experiences, listen to the reasons behind the perpetrator's actions, and find solutions that benefit all parties. In violent crimes, the restorative approach provides an opportunity for victims to get more holistic justice. In addition to material compensation, victims can also feel acknowledged and emotionally recovered from the restorative process. This can help in speeding up the healing process of the victim and preventing long-term trauma that may arise as a result of the violence. In addition, restorative approaches also allow perpetrators to understand the impact of their actions directly on victims and communities. Through open dialogue and the learning that takes place in the restorative process, perpetrators have the

opportunity to take responsibility for their behavior and take concrete steps to repair the damage they have caused. This can take the form of an apology, indemnity, or involvement in a rehabilitation program designed to prevent similar incidents in the future.

Children are essential to both the survival of the human race and that of a nation or state. Therefore, in order to achieve child welfare, efforts must be made to safeguard children by guaranteeing that their rights will be fulfilled without discrimination. Since they provide their parents with purpose, children in the family are happy bearers. It is often understood that children are human beings who have not yet attained social, emotional, physical, or cerebral adulthood. According to Law Number 35 of 2014 about Amendments to Law Number 23 of 2002 concerning Child Protection, Article 1 point 1, a child is defined as any individual who is not yet eighteen (age), including unborn children.

In order to confront and overcome these diverse issues, it is important to take into account youngsters who possess all of these unique qualities as criminal perpetrators. Consider all the factors that can persuade kids to conduct crimes rather than only focusing on the actor's ideas, feelings, or volition. As a result, the community at large and parents' roles are necessary. Law enforcement officers must constantly consider the situation of children, as they differ from adults, while dealing with youngsters who have committed crimes. Finding alternative solutions to keep kids out of the formal criminal justice system, out of jail, and away from stigmatizing the position of kids as prisoners can be based on the nature of the kid as a person who is still unstable, the kid's future as an asset of the country, and the status of kids in society who still need protection.

Redirecting or removing juvenile offenders from the criminal justice system is one way to find a solution. This indicates that not all issues pertaining to juvenile cases have to be settled through the official legal system; instead, alternatives can be found that take a restorative justice approach to justice, which considers victim justice as well as the child's best interests. Reducing the rate of criminal act repeat is one of restorative justice's primary benefits. Restorative techniques aim to improve the safety and well-being of society by addressing the underlying causes of conflict and enabling all parties to participate in the healing process. Additionally, it may improve links between families, communities, and individuals—all of which are crucial pillars of long-term stability and wellbeing. The restorative justice paradigm as a way of resolving violent crimes against people or things is the concern in this study, as explained above.

RESEARCH METHODS

The study methodology employed is normative research methodology, which solves violent crimes against persons or property via the application of statutes and case studies connected to the restorative justice paradigm. The case approach is an approach that is used to analyze, analyze, and analyze used as a guideline for legal problems to resolve legal cases, whereas the statute approach examines matters pertaining to legal principles, legal views and doctrines, and

laws and regulations related to Criminal Acts of Violence Against Persons or Goods and can be held accountable for their truth. This study will be studied using analytical content and will employ secondary data that is backed by source material.

RESULTS AND DISCUSSION

1. Basic Concepts of Violent Crime

The word "violence" is often translated from a foreign language. The Latin term *vis*, which denotes power or strength, and the word *latus*, which derives from the verb *ferre*, which means to convey strength or power, are combined to form the word violence. The word "violence" in English comes from the Latin *violentus*, which meaning "power." According to the fundamentals of Roman public and private law, violence is defined as any physical or verbal expression reflecting acts of aggression and attacks on a person's freedom or dignity that can be carried out by an individual or group of individuals. It is generally associated with that person's authority, meaning that when translated loosely, it can be understood to mean that all authority is applicable without consideration for its validity.

Such abusive uses or acts may also be included in this formulation of violence. The roots of violence mean wealth without work, pleasure without conscience, knowledge without character, trade without morality, science without humanity, worship without sacrifice, and politics without principle.² Violence happens almost every minute in this world, be it domestic violence, environmental violence, political violence, or anything else. Violence is defined as an act of intentional suffering inflicted on victims of violence committed by an individual or group of individuals in a strong position (or feeling strong) against individuals or groups of individuals who are in a weaker position (or those who are considered weak or also in a weak state) because of the superior physical strength of the perpetrator. Violence also often occurs because someone vents anger that is already unbearable by him.

Violence is defined as the nature or thing that is hard, force, coercion or pressure, hard urge, so that violence means bringing force, coercion or pressure. Theoretically, mass riots are a form of *la violencia* violence in Columbia that can lead to criminal acts or crimes. "Violence" that can be done in such a way as to cause physical or psychological unrest is violence contrary to the law, therefore it is a crime. Violence is an act carried out by a person or group of people who feel themselves strong to someone or a group they consider weak, which can be done by beating, hacking, and torturing and so on. The organization of violent offenses in the Criminal Code is divided into distinct chapters rather than being combined in one.

The term crime in Indonesian comes from the Dutch word "*strafbaar feit*". The framers of the law used *the word "strafbaar feit" to refer to what is known as a "criminal offence" but the Criminal Code does not provide an explanation as to what exactly is meant by the word "strafbaar feit"*. The word *Strafbaar feit* (criminal act or delict) consists of three words namely *straf*, *baar* and *feit*. *Straf* means criminal and law, *baar* means can and may, and *the word feit* means act, event,

offense, and deed. Elements of criminal acts can be distinguished from at least two points of view, namely from a theoretical point of view and from a legal point of view. The formula's sound reflects the theoretical means, which are founded on jurists' opinions. The way that the actuality of a crime is structured into specific offenses in the articles of current laws and regulations, on the other hand, is the legal aspect.

A variety of definitions of crimes produced by jurists who supported both monism and dualism. A criminal conduct consists of the following components: listening to the formula's sound. Several instances are drawn from the boundaries of criminal behavior by theorists previously discussed: Moelyatno, R. Tresna, Vos, Jonkers, and Schravendijk. According to Moelyatno, non-crime comprises the following elements:

- a. Action;
- b. What is prohibited (by the rule of law);
- c. Criminal threats (for those who violate the ban)

The rule of law may ban human behavior alone. The primary meaning of the compound word "criminal act" is found in the act itself; it is not distinct from the individual. The fact that a crime is being threatened serves as an example of how an act need not always be criminalized. Being under danger of criminality is defined as a broad knowledge, which implies that it is typically considered illegal. Something other than the definition of a criminal conduct is whether or not the individual who did the crime was found guilty in the end. According to R. Tresna's concept, criminal acts are made up of the following elements:

- a. Acts/networks of acts (human);
- b. Which is contrary to the rules of law;
- c. Punitive measures were held.

According to the third aspect, the sentence is regarded as an act of punishment; it is understood as though there were always penalty (punishment) for every forbidden conduct. In contrast to moel yatno, the act is not always and is not, therefore, punished by a crime since the penalty is threatened with criminality. These aspects do not convey the sense that a person must meet any (subjective) requirements in order to be found guilty of a crime, despite the notion that breaking the law is always followed by a crime. According to Professor Van Hattum, the word "strafbaar feit" implies that the term "punishable person" has been eliminated. When someone breaks down an offense into its component parts, they typically focus on the legal definition of those elements and overlook other circumstances that may also result in punishment, or what is also known as "bijkomende voorwardeen voor vervolgbaarheid."

Including conditions relating to the person of the perpetrator himself. Violent crime is an act prohibited by law by a person or group of people using physical force so as to cause physical damage to the victim, helplessness of the victim, damage to the victim's property / property, even lead to death. Violent Crime has the following elements:

- a. The existence of unlawful acts
- b. There is an element of intentionality

- c. There is an element against rights
- d. The presence of an element of error
- e. There are consequences caused

Violent crime refers to any type of behavior that involves the use of physical, psychological, or verbal violence against people or property. This can include, but is not limited to, domestic violence, sexual abuse, rape, mobbing, murder, robbery, and physical assault. In many jurisdictions, violent crimes are treated as serious violations of the law that can result in prosecution, detention, and imprisonment. Law enforcement measures and penalties for perpetrators of violent crimes vary based on local law and the specific circumstances of the case. Violent criminal acts often have serious repercussions both physically and emotionally for victims and society as a whole, and it is important to take appropriate prevention, law enforcement, and rehabilitation measures to deal with these issues. Numerous nations have policies and initiatives in place to deter violent crimes, assist victims, and inform the public about the negative effects of violence and constructive methods to deal with it.

2. Restorative Justice Paradigm as a Means in Resolving Violent Crimes Against People or Goods

The ultimate goals of this concept of restorative justice are to decrease the number of prisoners in jail; eliminate stigma and restore criminals to normal human beings; allow offenders to acknowledge their mistakes and lessen the burden on law enforcement, prosecutors, courts, and prisons; save state finances without inciting resentment because the victim has already forgiven the offender and received compensation promptly; empower communities to combat crime; and reintegrate evildoers into society. The term "out-of-court settlement" refers to a policy implemented by law enforcement officials who possess the following authority: to determine the outcome of a dispute, conflict, dispute, or violation; to exercise discretion or dismiss a criminal case brought by a particular party; and to request compensation for victim losses from those who have violated the law. The practice of "peace" in criminal law infractions is a widely used broad word.

Restorative justice was once meant to be used exclusively for specific crimes, such as misdemeanors (small crimes) or crimes involving minors, but in reality, it may be used for any type of crime. Restorative justice has been used in Indonesia to settle criminal cases involving a variety of juvenile abusers; the only difference is that restorative justice is only used to these particular offenses. The spirit or legal idea of restorative justice guides the settlement of criminal cases by bringing together victims, offenders, their families, and other relevant parties in order to collaboratively seek a just conclusion that prioritizes restoration to the pre-crime condition rather than retaliation. Restorative justice is a concept concerning the development of responsive thinking in the criminal justice system that focuses on the need for community engagement and victims who feel left out of the processes that apply in the existing criminal justice system.

The purpose of punishment is not only to punish children, but also by providing opportunities for children to improve themselves, by returning

children to parents, in the hope that children can improve themselves and can continue formal education in order to achieve their goals. Children are part of the citizens who must be protected because they are the next generation of the nation who will continue the leadership of the Indonesian nation. In addition to being required to attend school, all children are also required to get moral education in order to develop into capable members of their community and the state. The Convention on the Rights of the Child, which the Indonesian government ratified through Presidential Decree Number 36 of 1990, as well as the provisions of Law Number 4 of 1979 concerning Child Welfare, Law Number 23 of 2002 concerning Child Protection, and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, all specify general principles of child protection, including non-discrimination, respect for children's participation, survival and development, and best interests for children.

A sentencing paradigm known as restorative justice has arisen in tandem with the criminal justice system's failure due to changes and advances in criminal law. Offenders are urged to make amends for the harm they have caused to victims, their families, and the community under restorative justice. The primary program serves as "a meeting place for people" to discover ways to mend broken relationships and the harm created by criminal activity. Justice is administered according to the "Just Peace Principle" as restorative justice's moral foundation is the peace of offenders, victims, and society. This idea serves as a reminder of the essential interdependence of justice and peace. Justice without peace is a new kind of persecution and tyranny, and peace without justice is oppression. Also known as "Just Peace Ethics," restorative justice takes a crime-recovery method that attempts to restore the harm caused by criminal activity by bringing offenders, victims, and the community together.

In sentencing children perpetrators of criminal acts, such as cases of violence against people or property, it is important to consider the child's background, including his daily life, parental upbringing, and social interactions. In this case, the confession of the perpetrator's parents regarding the lack of supervision of the child's social environment is a factor that influences the offense committed. However, parents are committed to making changes and ensuring better supervision to prevent similar incidents in the future. The child grows up in a simple but loving family, where good relationships with parents and family are the moral foundation. Taking into account that this was the child's first offense and the presence of genuine remorse, the judge decided to return the child to the parents' laps in the hope that the act would not be repeated again.

Law Number 11 of 2012 has prioritized a restorative justice approach and the diversion process as an effort to resolve criminal acts committed by children, even though formal legal procedures have been clearly and firmly regulated. This means that the application of restorative justice will provide answers to important issues in solving criminal cases, such as: first, criticism of the criminal justice system that does not provide opportunities, especially for victims (criminal justice system that disempowers individuals); second,

elimination of conflicts, especially between perpetrators and victims and the community.

The law must respect human dignity, be just, ensure equality and freedom, assist in the development of man in line with his nature, and advance the general welfare. The 1945 Constitution's Article 28B, paragraph (2) declares that "Every child has the right to survival, growth, and development as well as the right to protection from violence and discrimination." Law Number 39 of 1999 about Human Rights and Law Number 23 of 2002 concerned Child Protection both include descriptions of this. The application of the principle or concept of restorative justice is covered not only by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, but also by a number of other regulations, including Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System, Joint Decision of the Chief Justice of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of the National Police of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, and Minister of Women's Empowerment and Child Protection of the Republic of Indonesia Number: 166A/KMA/SKB/XII/2009, 148 A/A//JA/12/2009, B/45/12/2009, M.HH The General Court Agency Number 1691/DJU/SK/PS.00/12/2020 Decree of the Director General pertaining to Guidelines for the Application of Restorative Justice in the General Court Setting.

The advantages of restorative justice include its capacity to administer justice while preserving victim rights, healing trauma for victims, and preserving children's rights as co-perpetrators of criminal acts. Additionally, the presence of diversion can help restore the conditions of juvenile offenders so that they can resume their previous activities. Because restorative justice takes into account the expediency principle on the part of both victims and offenders, it is also thought to be a useful tool for solving crimes. Children can pursue their education and future goals with restorative justice, and victims' needs are met. The aforementioned explanation suggests that restorative justice is a crucial strategy for dealing with violent crimes perpetrated by minors against persons or property. For all parties impacted by the crime, restorative justice can offer justice, safety, and prevention.

CONCLUSION

Based on the description above related to the *Restorative Justice* Paradigm as a means in solving violent crimes against people or goods as follows:

1. Violence, in its various forms such as physical, psychological, or verbal violence, refers to acts that violate rights and cause intentional suffering to individuals or property. With its roots in the Latin words "*vis*" and "*latus*", as well as its concept in Roman law, violence reflects an abuse of power or aggression against a perceived weaker. Although it occurs in diverse contexts, from domestic violence to political violence, violence always has serious repercussions both physically and emotionally. It is important to have effective prevention, law enforcement, and rehabilitation measures in

place to address these issues, as well as provide support for victims and raise public awareness of the consequences of violence.

2. Restorative justice is a concept that aims to reduce the number of prisoners in prison, eliminate stigma against perpetrators of crimes, facilitate awareness of perpetrators of guilt, reduce the workload of law enforcement agencies, provide recovery to victims, and reintegrate perpetrators into society. This concept involves perpetrators, victims, families, and communities in finding just solutions and not just punishment. Based on the principles of human rights and the best interests of children, restorative justice provides opportunities for child perpetrators to improve themselves while still paying attention to the losses experienced by victims. Through this approach, the hope is that people can get comprehensive justice and sustainable peace.

REFERENCES

- Andi Sofyan and Nur Azisa, 2016, Criminal Law, Makassar: Pustaka Pena Press, p. 96.
- Bemmelen, J.M. Van, 1986, Criminal Law 3. Special Section Special Delicts, translation of Hasnan, Binacipta.
- Gultom, Maidin., 2014. Legal Protection of Children in the Juvenile Criminal Justice System in Indonesia, Bandung: Refika Aditama,
- Howard Zehr, 1990, *Changing lenses: A New Focus for Crime and justice*, Waterloo: Herald Press
- Josephin Mareta. 2018. *Application of Restorative Justice through the Fulfillment of Restitution for Child Crime Victims*, Indonesian Journal of Legislation, Volume No. 4-December 2018, pp. 309-319.
- Kaimudin, Arfan. 2015. *Legal Protection Victims of Misdemeanor Theft in Penitentiary Diversion Proceedings*, Legal Arena, Volume 8, Number 2 August 2015, pp. 147-399
- Mahrus Ali, Fundamentals of Criminal Law, cet .2, Jakarta: Sinar Grafika, 2012, p. 111.
- Makarao, M. T., 2013, Legal Study on the Application of *Restorative Justice* in the Resolution of Crimes Committed by Children. (In BPHN Kemenkumham RI).
- Marshall, Tony., 1999, *Restorative Justice: An Overview*, London: Home Office Research Development and Statistic Directorate.
- Minor, Kevin and J.T. Morrison, *A Theoretical Study and Critique of Restorative Justice*, in Burt Galaway and Joe Hudson, eds. 1996, *Restorative Justice: International Perspectives*, Monsey, New York: Ceiminal Justice-Press and Kugler Publication.
- Muhammad Mustofa. Punishing Without Imprisonment: Actualizing the Idea of "*Restorative Justice*" in Indonesia, Papers. Department of Criminology, Faculty of Social and Political Sciences, UI and Australia Agency for International Development, Jakarta, 2011. p. 4
- Romli Atmasasmita. 1992. *Theori dan Kapita Seleakta Criminologi*, Bandung: Eresco, hlm. 55
- Soekanto, Soerjono., 1986, Introduction to Legal Research, Jakarta: Rineka Cipta
- BPHN Translation Team, Criminal Code, Jakarta: Sinar Harapan, 1983, p. 75.
- Waluyo, B. 2016. Design of the Prosecutor's Function in *Restorative Justice*. (Eagle Press).
- Wignyosoebroto. 1981. Social Symptoms of Today's Changing Society, Surabaya: Anxiety Symposium, p. 18