

Implementation of The Principle of Restorative Justice in The Criminal Case Settlement Process at The Denpasar District Court

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ABSTRACT

Objective: To analyze the legal arrangements related to the application of restorative justice in the settlement of criminal cases at the Denpasar District Court. **Method:** The study uses a legal analysis approach, referencing Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Prosecuting Criminal Cases Based on Restorative Justice (PERMA RJ), and examining a specific case decision (No. 1226/Pid.Sus/2024/PN Dps) to assess the application of restorative justice. **Results:** The implementation of restorative justice is seen through the involvement of victims, their families, defendants, and other related parties, with the aim of recovery instead of mere retaliation, as illustrated in the court decision. **Novelty:** The interpretation and application of restorative justice as defined in PERMA No. 1 of 2024 in criminal case settlements, especially in the Denpasar District Court, highlighting its goal of restorative rather than punitive outcomes.

INTRODUCTION

Restorative justice is a concept of criminal justice settlement aimed at "restoring the relationship damaged by criminal acts between victims and perpetrators" by means outside the court, so in the criminal law system, the meaning of restorative justice is the concept of criminal justice that views criminal acts against the community as crimes against the state and to create obligations for victims and society to improve the Restorative Justice System is a Efforts to resolve criminal cases with the approach used in the conventional criminal justice system. This approach emphasizes the direct participation of perpetrators, victims and the community in the settlement of criminal cases. Handling criminal cases with a restorative justice approach, offers a different approach in understanding and handling a criminal act. In the restorative view, the meaning of criminal acts is basically the same as the view of criminal law in general, namely attacks on individuals and society as well as community relations [1], [2], [3].

Problem Formulation

By looking at the above background, the formulation of the problem can be taken first, the legal arrangements related to the application of restorative justice in the settlement of criminal cases in the Denpasar District Court, second, the implementation of the principle of restorative justice in the process of resolving criminal cases in the Denpasar District Court

Purpose of Writing

This research aims to find out in depth the legal arrangements related to the application of restorative justice in the settlement of criminal cases, and the

implementation of the principle of restorative justice in the criminal case settlement process at the Denpasar District Court.

RESEARCH METHOD

The research in the context of writing this thesis is normative research supported by empirical legal research (field). Normative legal research finds the truth based on the logic of legal science from its normative side. The empirical approach is research based on practice that occurs in the field, especially in the Denpasar District Court. Johnny Ibrahim argues that normative legal research is a form of scientific research aimed at finding the truth based on legal scientific logic reviewed from the normative part, or in the form of an effort to find law that is tailored to a certain case [4], [5].

RESULTS AND DISCUSSION

Legal Arrangements Related to the Application of Restorative Justice in the Settlement of Criminal Cases at the Denpasar District Court

Restorative Justice is a way to solve the problem of criminal acts outside the court as a way to justify the relationship between victims and perpetrators and the loss of crime victims is expected to be the basis for consideration for court judges to alleviate the perpetrators of criminal acts in imposing criminal sanctions. Some of the definitions of restorative justice explained by experts include: a. Howard Zehr's opinion: "Restorative justice is the process of involving as much as possible, all parties involved and a particular offense and to identify and explain the threats, needs and obligations in order to heal and place them as much as possible in their place". b. Tony Marshall's opinion: "Restorative justice is a process in which all parties fighting in a particular offense come together to solve the problem collectively of how to make an agreement on the (bad) consequences of a crime and its future implications."

According to Eva Achjani Zulfa, the purpose of implementing restorative justice is twofold, namely: a. The main purpose of the implementation of restorative justice is the opening of access for victims to become one of the parties in determining the final settlement of criminal acts. b. Another expected goal of restorative justice is the willingness of the perpetrator to take responsibility for the criminal act he committed [6].

According to Russ Immarigeon, in the recovery process, a broad relationship is needed between the perpetrator, the victim and the community, to understand the consequences of their actions that may foster a sense of remorse for the perpetrator, so as to create a situation where they can provide each other with information, learn from each other, and to jointly reach an agreement on a punishment and sanction. Restoration must be interpreted as the return of the rights of victims through compensation made by the perpetrator and the granting of rights to the perpetrator to be accepted as part of society [7].

Trials of criminal cases carried out by law enforcement components, including by a panel of judges, prosecutors, defendants, or those who are also represented by their attorneys or lawyers, aim to enforce the law, to seek and find a sense of justice. After the

District Court receives the letter of transfer of the case from the public prosecutor (District Attorney's Office), the Chairman studies whether the case falls within the authority of the court he presides over (Article 147 of the Criminal Code). If the Chief Justice of the District Court is of the opinion that the criminal case does not fall within the authority of the court he presides, then a "determination letter" is issued containing the reasons. After the "determination letter" is issued, the case transfer letter is handed back to the public prosecutor (Article 148 of the Criminal Code).

The principle of legality that prioritizes legal certainty in a certain case is felt to be very burdensome to the community, for example, cases that have occurred of a grandmother who allegedly stole several cocoa fruits, a child who allegedly stole sandals belonging to members of the National Police and so on but is still processed in accordance with the applicable criminal procedure law in Indonesia, so that it is increasingly causing excitement, disappointment, and far from the sense of justice that the community craves. Normatively, the handling of criminal cases consists of several stages handled by each authorized official, ranging from investigation, investigation, prosecution and trial in court. This needs to be carried out as well as possible because criminal law is closely related to a person's rights known as the concept of *the Criminal Justice System* or the criminal justice system [8].

Regarding the situation of the case being closed for the sake of the law, according to Yahya Harahap, the case is closed for the sake of the law if the case is included in the case that is *nebis in idem*, the suspect dies and the case has expired.

After the investigation is completed, the process continues with the prosecution stage as stipulated in Article 1 number 7 of the Criminal Code, which is the public prosecutor's action to delegate criminal cases to the district court to be examined and decided by the judge at the court hearing. A case that has been declared to have been prosecuted is whether the case has been delegated to the competent court either based on relative competence or absolute competence or has not been delegated [9].

However, similar to investigations, in certain cases it is not uncommon for obstacles to occur in the prosecution process which are also limited to the situation regulated in the Criminal Code as in Article 140 paragraph (2) letter a, among others, there is not enough evidence, the incident does not constitute a criminal act, the case is closed for the sake of the law. If you pay attention to the two reasons for the termination of the investigation by the investigator and the termination of the prosecution by the Public Prosecutor mentioned above, there is no restorative justice as one of the reasons that can be used to stop a criminal case either at the investigation level or at the prosecution level [10].

Because of the emptiness of rules that strictly regulate related to restorative justice, it has led to the emergence of rules that are internal in nature and with different indicators. So it is not uncommon in practice for cases that have been submitted a Notice of Commencement of Investigation (SPDP) from the investigator to the public prosecutor suddenly a Investigation Termination Order (SP3) suddenly appears because the investigator considers that the case can be resolved based on restorative justice, but the

public prosecutor is of the view that the case is not a case that can be resolved with restorative justice and vice versa.

There was a case that had been delegated to the public prosecutor by the investigator, but then a Decree of Termination of Prosecution (SKPP) was issued because the case was resolved with restorative justice, causing it as if the performance of the investigator was in vain. In this position, the author is of the view that, if you really want to settle a case based on restorative justice, then it must be completed first before entering the investigation or prosecution stage, because when it has entered the investigation or prosecution process, it must respect and follow everything that has been regulated in the Criminal Code, including in terms of termination of investigation or prosecution.

This situation is increasingly discussed with various criminal justice subsystems that make some kind of regulation or rule that regulates the implementation of restorative justice at each stage, for example at the Police Level there is the Regulation of the National Police of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, then at the Prosecutor's level there is the Regulation of the Prosecutor of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative justice, and at the court level, the Supreme Court has its own instruments through guidelines and policies on the application of restorative justice, the latest through the Decree of the Director General of the General Judiciary of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice. Based on the guidelines for the application of restorative justice in the general justice environment, what is meant by restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state rather than retaliation. Based on the above, the policy of implementing restorative justice is related to the efforts of the government and law enforcement from the stage of regulation or formulation of a regulation, implementation, and evaluation. The policy of implementing restorative justice in law enforcement in Indonesia focuses on the policy of regulation on the application of restorative justice, especially in criminal cases.

The Supreme Court through PERMA Number 1 of 2024 concerning Guidelines for Prosecuting Criminal Cases Based on Restorative Justice (PERMA RJ), where this rule applies in the general court or district court, defines restorative justice as an approach in handling criminal cases, which is carried out by involving parties, both victims, victims' families, defendants/children, defendants/children's families, and/or other related parties, with a process and goal that seeks recovery, and not just retaliation. As an approach, the application of restorative justice in the Denpasar district court trial is operationalized as a mechanism, method, and means to achieve the goals of victim recovery, restoration of victim-defendant relationships, fulfillment of defendants' responsibilities, and avoidance (especially children) from deprivation of independence. Procedurally, the Denpasar District Court refers to Article 7 of the Perma Restorative Justice, on the first day of the hearing, after the attorney of the public prosecutor or the

public prosecutor reads the minutes of the examination or the record of the indictment or indictment and the defendant states that he understands the minutes of the examination or the record of the indictment or the content of the public prosecutor's indictment, the judge gives the opportunity to the defendant to justify or not justify the acts charged against him.

The result of the restorative justice approach is a peace agreement, as Article 12 paragraph (3) and Article 13 of the RJ Perma, which can be in the form of the defendant compensating for damages, the defendant carrying out an act and/or the defendant not carrying out an act. The agreement is prohibited from containing provisions that are contrary to law, public order, and/or morality, violate human rights, harm third parties or cannot be implemented. Meanwhile, the implication is that the application of restorative justice refers to Article 14 of the Perma RJ. If the case is in the form of a complaint, the agreement can be in the form of doing or not doing an act and the victim withdraws the complaint, as long as it is still within the time limit determined by law. A complaint withdrawal agreement, as formulated in the peace treaty, is legally considered to have been executed, when the agreement is signed in front of a judge, so that the judge has the authority to declare the prosecution null and void. Referring to Article 19 of the Perma RJ, that the peace agreement and/or the defendant's willingness to be responsible for the victim's losses and/or needs, are reasons that mitigate the punishment and/or are considered for imposing conditional/supervisory sentences in accordance with the provisions of laws and regulations. In imposing conditional/supervision sentences, the judge may apply general terms and/or special conditions to impose an alternative punishment other than imprisonment to the defendant and/or ensure the fulfillment of the agreement between the defendant and the victim, as well as recover the victim's losses.

The general condition for the imposition of conditional sentence/supervision by the judge, in the event that the criminal act committed can be given conditional punishment/supervision and the defendant deserves to be sentenced to conditional punishment/supervision, the defendant has carried out all agreements as referred to in Article 9 paragraph (2) of the RJ Perma or the defendant has reached an agreement with the victim as referred to in Article 10 paragraph (3) of the RJ PERMA. As for the special conditions, the imposition of conditional penalties/supervision that can be imposed by the judge, in the event that the defendant has reached an agreement with the victim, but has not implemented all or part of the content of the agreement or the defendant and the victim cannot reach a peace agreement.

Implementation of the Principle of Restorative Justice in the Criminal Case Settlement Process at the Denpasar District Court

Based on the data obtained from the Denpasar District Court, it is known that the cases handled at the Denpasar District Court that have been decided in restorative justice are as shown in the table below :

Yes	Month	Quantity	Type of Matter
1	January	2	Special Criminal Cases
2	February	5	Fast Criminal Cases
		2	Common Criminal
		4	Cases
			Special Criminal Cases
3	March	5	Fast Criminal Cases
4	April	-	
5	May	2	Special Criminal Cases
6	June	5	Fast Criminal Cases
7	July	7	Fast Criminal Cases
		1	Common Criminal
			Cases
8	August	1	Fast Criminal Cases
9	September	1	Fast Criminal Cases
		1	Special Criminal Cases
10	October	3	Fast Criminal Cases
11	November	1	Fast Criminal Cases
12	December	3	Fast Criminal Cases
		1	Special Criminal Cases
Total Cases		44 Criminal Cases	

Source : PN Denpasar

Based on the data above, it can be seen that the Denpasar District Court has carried out the settlement of criminal cases based on the principle of restorative justice throughout 2025 as many as 44 criminal cases. This shows that the existence of restorative justice is urgently needed for case resolution, especially in cases of minor crimes. One example of a case about the application of restorative justice in a court decision is in Decision Number 1226/Pid.Sus/2024/PN Dps. The sitting case is as follows: the defendant DENNIS LOC NGUYEN on Sunday, October 13, 2024, at approximately 13.10 WITA or at least at other times in October in 2024, located at the International Arrival Terminal of I Gusti Ngurah Rai Tuban Airport, Kuta District, Badung Regency. or at least in a place that is still included in the jurisdiction of the Denpasar District Court (based on Article 84 paragraph (2)), without the right or against the law to produce, import, export, or distribute Class I [11], [12]

Narcotics in the form of Class I narcotics of the Hasis type. Which act is the defendant, as regulated and criminally threatened in accordance with Article 113 paragraph (1), and Article 127 paragraph (1) letter a of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics; After the Judge saw the facts in the field, in his legal consideration, the Judge stated that against these elements, namely the elements of each abuser; The element of abusing class I narcotics for oneself. Based on the facts mentioned above, which are in accordance with the Defendant's testimony at trial, the Panel of Judges is of the opinion that the Defendant has been proven to be an abuser of Class I Narcotics of the Delta-9-Tetrahydrocannabinol type (Ganja) and also an active addict with a moderate category as mentioned in the Recommendation Letter of the

Integrated Assessment Team (TAT) of Bali Province Number: R/REKOM-69/X/2024/TAT, dated October 18, 2024; Thus, the element of abusing class I narcotics for oneself has been proven; So that in its decision, the Panel of Judges decided: 1. Declaring that the defendant DENNIS LOC NGUYEN mentioned above, is legally and convincingly proven guilty of committing the crime of "Abuse of Class I Narcotics for Yourself" as referred to in the third alternative indictment of the Public Prosecutor; 2. Imposing a criminal penalty therefore on the Defendant in the form of an order to undergo treatment and treatment through medical rehabilitation for 6 (six) months at the HIV/AIDS Rehabilitation and Information Center [13], [14]

Anargya Sober House with the address of Tukad Badung XB Street No. 15, Denpasar City, Bali; 3. Stipulating that the period of undergoing rehabilitation is considered as the period of serving a sentence; 4. Stipulate that the period of arrest and detention that the Defendant has served is entirely deducted from the sentence imposed; And so on... If you pay attention to the decision of the Denpasar District Court mentioned above, compared to the implementation of restorative justice in the police or prosecutor's office, it can be seen that the implementation of restorative justice can be seen in the content of the decision not in the form of an action to reach a peaceful settlement like mediation, but the criminal justice process is still running, only the verdict given by the judge provides restorative justice. By reviewing data and the implementation of justice in order to implement restorative justice, the Denpasar District Court has carried out justice based on Perma No. 1 of 2024 [15].

CONCLUSION

Fundamental Finding : Legal arrangements related to the application of restorative justice in the settlement of criminal cases at the Denpasar District Court are based on Supreme Court Regulation Number 1 of 2024 (PERMA RJ), which defines restorative justice as an approach to handling criminal cases. **Implication :** The implementation of restorative justice in criminal case settlements at the Denpasar District Court aims at recovery and reconciliation, which is demonstrated in court decisions, such as the ruling in Case Number 1226/Pid.Sus/2024/PN Dps. **Limitation :** This analysis is limited to the application of restorative justice within the Denpasar District Court and the interpretation provided by PERMA No. 1 of 2024, with no exploration of its application in other jurisdictions. **Future Research :** Future research could explore the broader impact of restorative justice in other district courts and assess its long-term effectiveness in promoting reconciliation and reducing recidivism.

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