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SETTLEMENT OF CRIMINAL ACTS IN THE MILITARY JUSTICE SYSTEM THROUGH A RESTORATIVE JUSTICE APPROACH

By

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ABSTRACT

Restorative justice in the settlement of crimes in the Military Court is an approach that prioritizes the restoration of relationships between perpetrators, victims, and institutions through dialogue and mediation. The results of the study show that the application of the concept of restorative justice in the settlement of criminal acts in the Military Justice system is applied through mediation to resolve conflicts by involving perpetrators, victims, and related parties to seek a peaceful settlement that focuses on restoring the original state, not just retaliation. The harmonization of law in the implementation of restorative justice in the settlement of criminal acts in the Military Justice system faces a number of challenges and opportunities, mainly due to the unique characteristics of the military justice which is oriented towards discipline and hierarchy. This harmonization effort involves an adjustment between the concept of restorative justice that focuses on restoration and the military justice system that is retributive.

Keywords: Criminal Offenses, Military Justice, Restorative Justice.

PENYELESAIAN TINDAK PIDANA DALAM SISTEM PERADILAN MILITER MELALUI PENDEKATAN KEADILAN RESTORATIF

ABSTRAK

Keadilan restoratif dalam penyelesaian tindak pidana di Peradilan Militer adalah pendekatan yang mengutamakan pemulihan hubungan antara pelaku, korban, dan institusi melalui dialog dan mediasi. Hasil penelitian bahwa penerapan konsep keadilan keadilan restoratif dalam penyelesaian tindak pidana pada sistim Peradilan Militer diterapkan melalui mediasi untuk menyelesaikan konflik dengan melibatkan pelaku, korban, dan pihak-pihak terkait guna mencari penyelesaian damai yang berfokus pada pemulihan keadaan semula, bukan sekadar pembalasan. Harmonisasi hukum dalam pelaksanaan keadilan keadilan restoratif pada penyelesaian tindak pidana dalam sistim Peradilan Militer menghadapi sejumlah tantangan dan peluang, terutama karena karakteristik unik peradilan militer yang berorientasi pada disiplin dan hierarki. Upaya harmonisasi ini melibatkan penyesuaian antara konsep keadilan restoratif yang berfokus pada pemulihan dengan sistem peradilan militer yang bersifat retributif (pembalasan).

Kata Kunci: Tindak Pidana, Peradilan Militer, Keadilan Restoratif.



INTRODUCTION

To create a state of law, not only are legal norms or laws and regulations needed as legal substances, but also institutions or bodies that drive them are needed as legal structures supported by the legal behavior of all components of society as a legal culture. These three elements, by L.M. Friedman, are said to be the makeup of the legal system. The law is the embodiment of the will of the state, but in its membership the State itself is subject to the laws it makes. The restriction aims to control the authority of the rulers so that they cannot act arbitrarily against the people or their citizens. Law can achieve its goals if it can balance legal certainty and justice, or the harmony between general or objective certainty and the application of justice in particular that is subjective.

The principle or principle of legality is expressly stated in the consideration of the Criminal Procedure Code letter a, that "the state of the Republic of Indonesia is a state of law based on Pancasila and the 1945 Constitution which upholds human rights and which guarantees all citizens equal to their position in law and government and are obliged to uphold the law and government without exception". Based on this description, it can be known that the State of the Republic of Indonesia is a State of Law based on Pancasila and the 1945 Constitution, the state guarantees every citizen with his or her position in the law and government and every citizen without exception, is obliged to uphold the law and government.

Martial Law is part of positive law, but Martial Law has no place in the classical division of law that divides law into Private Law and Public Law. Military Law is a part of public law that is *lex specialis*. Indonesian Military Law originates from the Indonesian military (TNI) and is one of the systems of Indonesian national law. Indonesian Military Law has a foundation, sources and scope that are in line with national law. The Military Justice System as stipulated in Law Number 31 of 1997, discusses the Military Criminal Procedure Law. As for the Military Justice, it is not only related to military criminal cases but also cases as stipulated in the Criminal Code.

RESEARCH METHODS

This research is descriptive analysis, namely research that describes, examines, explains and analyzes laws and regulations related to the purpose of this research. The purpose of



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descriptive research is to accurately describe the characteristics of a particular individual, state, symptom or group, or to determine the frequency or spread of a symptom or the frequency of a particular relationship between symptoms and other symptoms in society. The main purpose of the analysis of legal materials is to find out the meaning contained by the terms used in the legal rules conceptually, as well as to know their application in legal practice and decisions.

RESULTS AND DISCUSSION

Restorative *justice* is a shift in punishment in the criminal justice system that prioritizes justice for victims and perpetrators of criminal acts in addition to alternative punishments such as social work and others. Bagir Manan stated that the substance of restorative *justice* contains principles including: building joint participation between perpetrators, victims, and community groups to solve an event or criminal act, placing perpetrators, victims, and the community as *stakeholders* who work together and directly trying to find solutions that are seen as fair for all parties (*win-win solutions*). Rufinus Hutauruk said that restorative *justice* focuses on the criminal accountability process directly from the perpetrator to the victim and the community. If the perpetrator and the victim as well as the community whose rights are violated feel that justice has been achieved through joint deliberation, then it is hoped that the implementation of punishment can be avoided. This shows that the perpetrator is not the main object of the restorative *justice approach*, but the sense of justice and the restoration of the conflict itself are the main object.

Restorative *justice* is a shift in punishment in the criminal justice system that prioritizes justice for victims and perpetrators of criminal acts in addition to alternative punishments such as social work and others. Bagir Manan stated the substance of restorative *justice* which contains principles including: building joint participation between perpetrators, victims, and community groups to resolve an event or criminal act, placing perpetrators, victims, and the community as *stakeholders* who work together and directly trying to find solutions that are seen as fair for all parties (*win-win solutions*). The sense of justice of the community is often disturbed because of the very formalistic way of enforcing the criminal law. His practice in law enforcement places procedures as the basis of legality to uphold justice, even more



important than justice itself. In fact, currently the public feels that law enforcement officials need to carry out criminal law enforcement by selecting cases such as minor crimes, cases of children and women who are facing the law, as well as cases of theft abuse which often invite a wide public reaction. The Supreme Court considers it necessary to implement *restorative justice* which must be carried out by all district court judges and the chief justice of the high court through Supreme Court Regulation (Perma) Number 1 of 2024 which:

- Ordering all district court judges to implement the guidelines for the application of *restorative justice* in an orderly and responsible manner;
- The Chief Justice 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.
- The *restorative justice approach* in Perma 1 of 2024 is carried out through dialogue and mediation between victims, perpetrators, and related parties. The goal is to restore the situation, strengthen the rights of victims, and improve relationships in society.

Restorative justice is a settlement of criminal acts by involving the perpetrator, the victim, the perpetrator's family, and other related parties, to jointly find a just solution by emphasizing restoration to the original state, not retribution (prison sentence). In the appendix to this Decree, it is stated that *restorative justice* in the settlement of cases can be used as an instrument for the restoration of justice and has been implemented by the Supreme Court in the form of the implementation of policies (PERMA and SEMA). But so far, its implementation in the criminal justice system is still not optimal. This decision is intended to encourage the optimization of the implementation of Perma, Sema, and the Decree of the Chairman of the Supreme Court which regulates the implementation of *restorative justice* in the court, in addition to the application of *restorative justice* is to reform the criminal justice system that still prioritizes prison sentences. The development of the penal system no longer relies on the perpetrators, but has led to the alignment of the interests of victim recovery and criminal accountability. Then, the purpose of the issuance of this Decree is to facilitate courts in the general judiciary in understanding and implementing the application of Supreme Court Regulations, Supreme Court Circular Letters and Decrees of the Chief Justice of the Supreme



Court which regulate the implementation of *restorative justice*, encouraging the increase in the application of *restorative justice* which has been regulated by the Supreme Court in the decisions produced by the panel of judges, and the fulfillment of the principles of fast, simple and low-cost justice. The application of *restorative justice* must be enforced and applied by all district courts in Indonesia.

Mahrus Ali said the Court is still considered part of a formal legal system that is independent of society. So from this opinion, the court should change its view. As an institution appointed by the state and even appointed by God, the court can do anything to be able to decide with a conscience entrusted by God and the state as stipulated in Law Number 48 of 2009 concerning Judicial Power. Article 4 Paragraph (1) of Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power explains that "Judicial Conduct is carried out for the sake of Justice Based on the One Godhead. Based on this, the judge is indirectly responsible to God in deciding a case, so that the law requested by the community which is the main part of the state and as the source of the law can be a consideration in terms of deciding, isn't the voice of the people the voice of God (*Vox Populi Vox Dei*).". So that as stipulated in Article 28 paragraph (1) of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, Judges are obliged to explore, follow and understand the legal values and sense of justice that live in society

The *restorative justice approach* is assumed to be the most up-to-date shift from the various models and mechanisms that work in the criminal justice system in handling criminal cases today. *Restorative justice* is a concept of thought that responds to the development of the criminal justice system by focusing on the need for community involvement and victims who are felt to be excluded by the mechanisms that work in the criminal justice system that exist today. On the other hand, *restorative justice* is also a new framework of thinking that can be used in responding to a criminal act for law enforcers and workers.

The rise of criminal cases that are considered minor, such as petty theft cases that are tried based on the provisions (articles) of ordinary theft because there is no longer a value of goods equivalent to "two hundred and fifty rupiah" for goods of economic value, so that the article of minor theft cannot be applied and also has an impact on the detention of the suspect/defendant because he is considered to meet the conditions of detention based on the



provisions of Article 21 of Law No. 8 of 1981.

There are quite a lot of cases of misdemeanor offenses that should be prosecuted based on the provisions of the fast procedural law as referred to in the Sixth Part of Law No. 8 of 1981 concerning the Criminal Procedure Law to be tried and processed legally based on the provisions of the ordinary criminal procedural law which takes a long time.

On February 27, 2012, the Supreme Court issued a written regulation in the form of PERMA RI No. 02 of 2012 as a form of implementation of the Supreme Court's regulatory function contained in Article 79 of the Supreme Court Law. The Perma regulates specific provisions regarding the adjustment of the limits of minor crimes and the amount of fines in the Criminal Code. The purpose of issuing this perma is to make criminal law rules effective in accordance with the development of social dynamics of society. The provisions of the rules regarding minor crimes regulated in the Criminal Code are considered inappropriate to the current social conditions of society. Efforts to reform the rules of criminal law, which are adjusted to the dynamics of changes in social activities in society, also affect the development of the use of terms in the study of criminal law without changing the essence of criminal law itself. The expansion of understanding of misdemeanor offenses actually uses the approach of studying the terminology of Misdemeanor Crimes (Tipiring) in the Criminal Code. The reason for the emergence of a new legal policy is due to the importance factor arising from the number of criminal cases handled by judges so that it also gives rise to efforts to reform the old laws and regulations. Petty Crimes (Tipiring), according to Utrecht, are related to court competition.

A concrete definition of misdemeanor offenses will be difficult to find in the Indonesian Criminal Code, because most of the main content of the legal regulations in the Indonesian Criminal Code is an adoption of the Criminal Code of the Dutch East Indies. During the Dutch colonial period, the Dutch did not include legal rules on misdemeanor offenses in the Dutch East Indies Criminal Code.²⁸ In the Dutch Criminal Code, misdemeanor offenses are better known as misdemeanor offenses, such as: misdemeanor misdemeanor, misdemeanor, embezzlement, and so on.

The understanding of the elements of misdemeanor offenses is further explained in the Criminal Procedure Code (KUHP) No. 8 of 1981 as a formal criminal law provision of the Criminal Code, although this explanation is not a general definition of a misdemeanor



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according to the Criminal Code. The understanding of misdemeanor offenses according to the Criminal Procedure Code is explained in Article 205 paragraph (1) of the Criminal Procedure Code that what is examined according to the examination of misdemeanor offenses is a case that is threatened with imprisonment or imprisonment for a maximum of three months and/or a fine of a maximum of seven thousand five hundred rupiah and minor insult except as specified in Paragraph 2 of this Section. An arrest order can be made by an investigator or public prosecutor against the defendant or suspect for the purpose of investigation if the defendant or suspect commits a criminal act that is threatened with imprisonment of five years or more. That way, the principle of fast, simple, and low-cost justice in the settlement of minor criminal cases will be achieved.

CONCLUSION

Legal regulations for the settlement of criminal acts in the Military Justice system through the restorative justice approach are specifically regulated in the Military Justice Law, but can be accommodated through Supreme Court Regulation (Perma) No. 1 of 2024, which is a general guideline for the application of restorative justice in all judicial environments, including military courts. The application of the concept of restorative justice in the settlement of criminal acts in the Military Justice system is applied through mediation to resolve conflicts by involving perpetrators, victims, and related parties in order to seek a peaceful settlement that focuses on restoring the original state, not just retaliation. This implementation is carried out by adjusting to the characteristics of the Military Justice system that emphasizes discipline, with the aim of restoring the relationship between perpetrators, victims, and institutions without undermining the solidarity of the corps. The harmonization of law in the implementation of restorative justice in the settlement of criminal acts in the Military Justice system faces a number of challenges and opportunities, mainly due to the unique characteristics of the military justice which is oriented towards discipline and hierarchy. This harmonization effort involves an adjustment between the concept of restorative justice that focuses on restoration and the military justice system that is retributive (retributive

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