

An Implementation of Restorative Justice in Settlement Framework Criminal Acts Fraud and Employment to Provide Useful And Fair Legal Guarantee (Study In Police Regional North Sumatra)

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ABSTRACT

The settlement of criminal cases of fraud and embezzlement is generally the application of compensation by the perpetrator and his family to the victim or his family to avoid the consequences of revenge. The main principle of Restorative Justice is the participation of victims and perpetrators, the participation of citizens as facilitators in resolving cases so that there is a guarantee that the child or perpetrator will no longer disturb the harmony created among the community. This research is aimed at legal arrangements for fraud and embezzlement through restorative justice efforts, to analyze the application of restorative justice in the settlement of fraud and embezzlement crimes and forms of legal remedies provided by the police in resolving criminal acts of fraud and embezzlement through restorative justice in this study at regional Police of North Sumatra which is related to the problem of this thesis. This research uses research specifications, namely analytical descriptions that describe or describe events as stated by the respondent in writing or verbally, as well as actual behavior, which is researched or studied in its entirety. In the application of restorative justice and penal mediation, 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 feel left out by the mechanisms that work in the current SPP. Police efforts by taking preventive and repressive actions in dealing with embezzlement and fraud.

ABSTRAK

Penyelesaian perkara pidana penipuan dan penggelapan pada umumnya adalah penerapan ganti rugi oleh pelaku dan keluarganya kepada korban atau keluarganya untuk menghindari akibat dari balas dendam. Prinsip utama Restorative Justice adalah partisipasi korban dan pelaku, partisipasi warga sebagai fasilitator dalam penyelesaian kasus sehingga ada jaminan bahwa anak atau pelaku tidak lagi mengganggu kerukunan yang tercipta di tengah masyarakat. Penelitian ini bertujuan untuk pengaturan hukum penipuan dan penggelapan melalui upaya restorative justice, menganalisis penerapan restorative justice dalam penyelesaian tindak pidana penipuan dan penggelapan serta bentuk upaya hukum yang diberikan oleh kepolisian dalam menyelesaikan tindak pidana penipuan dan penggelapan melalui restoratif. keadilan dalam penelitian ini di Kepolisian Daerah Sumatera Utara yang terkait dengan masalah skripsi ini. Penelitian ini menggunakan spesifikasi penelitian, yaitu deskripsi analitis yang menggambarkan atau menggambarkan peristiwa seperti yang diungkapkan oleh responden secara tertulis atau lisan, serta perilaku yang sebenarnya, yang diteliti atau dipelajari secara keseluruhan. Dalam penerapan restorative justice dan penal mediation, restorative justice merupakan konsep pemikiran yang merespon perkembangan Sistem Peradilan Pidana dengan menitikberatkan pada perlunya keterlibatan masyarakat dan korban yang merasa ditinggalkan oleh mekanisme yang bekerja dalam SPP saat ini. . Upaya kepolisian dengan melakukan tindakan preventif dan represif dalam menangani penggelapan dan penipuan.

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I. INTRODUCTION

Restorative Justice is a popular alternative in various parts of the world for handling a crime of fraud and embezzlement or also for someone who is in trouble with the law because it offers a comprehensive and effective solution. Restorative Justice aims to empower victims, perpetrators, families, and communities to correct an act against the law by using awareness and conviction as a basis for improving community life and explaining that the concept of restorative Justice is simple. The restorative justice approach has been the dominant juvenile criminal justice system model for most of human history.

The settlement of criminal cases of fraud and embezzlement is generally the application of compensation by the perpetrator and his family to the victim or his family to avoid the consequences of revenge. The restorative justice settlement model is a process outside the formal justice system. Restorative Justice is a criminal case settlement model that prioritizes recovery for victims, perpetrators, and the community. The main principle of Restorative Justice is the participation of victims and perpetrators, the participation of citizens as facilitators in resolving cases so that there is a guarantee that the child or perpetrator will no longer disturb the harmony created among the community. Restorative Justice requires the cooperative efforts of the community and government to create an environment where victims and perpetrators can recommend their conflict. Restorative Justice returns conflict to the most affected parties (victims), perpetrators, and their "community interests" and prioritizes them.

Restorative Justice also emphasizes human rights and the need to recognize the impact of social injustice and, in simple ways, restore them, rather than giving perpetrators of formal or legal Justice and victims not getting any justice. Restorative Justice also seeks to restore security victims, personal respect, dignity, and, more importantly, the sense of control of the Indonesian National Police (POLRI), a state instrument that plays a role in maintaining public security and order.

As time goes by, there is an increase in the volume of cases with all their forms and variations that go to court, so the consequences are a burden for the courts in examining and deciding cases according to the principle of "simple, fast, and low-cost justice" without having to sacrifice the achievement of the objectives of the judiciary, namely legal certainty, expediency, and Justice. Thus, in pen.

To tackle criminal acts of fraud and embezzlement, the police must act as a third person who can reconcile the perpetrator and the victim. The National Police, as the responsible party, in a professional manner, seeks to reconcile the parties who experience fraud and embezzlement using penal mediation, better known as mediation for perpetrators and victims. The existence of the settlement of cases out of court through restorative Justice or penal mediation is a new dimension studied from the theoretical and practical aspects. Judging from the practical dimension, penal mediation will correlate with the achievements of the judiciary. Meanwhile, the legal basis or legal umbrella for the National Police for the settlement of criminal cases outside the court is alternative dispute resolution by way of peace.

Literature Review, Law enforcement officers have authorized body officers related to judicial matters whose task is resolving conflicts or legal cases. Law can be created when people are aware of the law without causing harm to others. Law must be part of the life of the Indonesian people, and law no longer needs to be a "monopoly" for law scholars, at least Indonesian people must start with a disciplined attitude because of legal needs. The essence of law enforcement is a process to bring legal wishes or ideas into reality.

Restorative Justice is an approach to handling criminal acts by holding meetings between victims and perpetrators and sometimes involving representatives of the community in general. The goal is to mutually consult about the criminal acts committed by the perpetrators and the losses suffered by the victims to then find a middle way by creating conditions like before the crime occurred. This condition is usually achieved through the provision of compensation to the victim, an apology, or preventive measures so that the perpetrator does not repeat it. This concept was born as a response to the criminal justice system's failure to tackle crime and provide a sense of Justice for the community.

The definition of fraud, according to the opinion above, is clear that what is meant by fraud is a trick or a series of lies so that someone feels deceived because of what seems to be true. Usually, someone who commits fraud is to explain something as if it was true or happened, but in fact, his words are not in reality because the goal is only to convince the target person to acknowledge his wishes. In addition, because the nature or qualification of the criminal act of fraud is a legal - material case, then theoretically juridical also needs proof that the victim of fraud in submitting an object and so on to the perpetrator must be truly causal (related and caused by the -the way of the perpetrator of fraud) as specified in Article 378 of the Criminal Code, is simple in the practice of proving in court. Therefore, the reality of a case of default should not be simplistic (simple) drawn and qualified as a fraud crime.

Furthermore, regarding the crime of embezzlement, the Criminal Code has regulated it in Book II Chapter IV, which is contained in 6 (six) articles, from Article 372 to Article 377 of the Criminal Code. However, the provisions regarding embezzlement (the major crime) are contained in Article 372 of the Criminal Code, which stipulates as follows: "Anyone who intentionally and unlawfully owns an object wholly or partly belongs to another person, which is in his control not because of a crime, is threatened with embezzlement by imprisonment for a maximum of 4 (four) years or a fine of a maximum of Rp. 900.

II. RESEARCH METHODS

In this study, research specifications are used, namely, analytical descriptions that describe or describe events and events stated by the respondent in writing or verbally, as well as their actual behavior, which is researched or studied as a whole. Based on the object of research, positive law, the method that will be used is normative juridical, namely examining relevant legal rules and forms in decisions related to the title of this research. Documents or library materials". This research is sourced from the Library (Library Research) descriptive analysis. Thus, this research is not only intended to describe legal phenomena or phenomena related to legal certainty in the role of the Police in criminal acts of fraud and embezzlement but is more aimed at analyzing these legal phenomena and then describing them systematically according to the law. With the author's rules.

To solve a problem so that conclusions can be drawn by utilizing the data that has been collected and then analyzed first by using qualitative analysis, which discusses the results of research that are described comprehensively, by trying to see the factors behind specific programs, cultures, and policies, for example, the restoration of principles:- Relevant legal principles, theories and norms, doctrines, and articles contained in statutory regulations. Moreover, the data will be systematized according to the subject matter and formulation of the problem. The data were analyzed qualitatively to conclude so that the main issues studied could be answered in the form of a narrative that was analyzed through the description of the results and discussion.

III. RESULT AND DISCUSSION

The legal arrangement of investigators who apply restorative justice in cases of fraud and embezzlement is the Circular Letter of the Chief of Police Number: SE/8/VII/2018, concerning the application of restorative justice. By fulfilling material and formal requirements. but in the principle

of restorative justice it cannot be interpreted as a method of peacefully terminating cases, but more broadly in fulfilling the sense of justice of all parties involved in criminal cases through efforts that involve victims, perpetrators and the local community as well as investigators or investigators as mediators, while the settlement of cases is one of them. in the form of a peace agreement and revocation of the right to demand from the victim, it is necessary to ask for a judge's determination through the public prosecutor to abort the authority to demand from the victim and the public prosecutor.

Embezzlement is an act of dishonesty by hiding other people's goods/assets by one or more persons without the knowledge of the owner of the goods with the aim of expropriating theft, possession, or use for other purposes. Meanwhile, Fraud is a lie that is made for personal gain but harms others, although it has a deeper legal meaning, the exact details vary in different jurisdictions. Then in the Criminal Code, the difference is explained in Article 372 concerning Embezzlement "Whoever intentionally and against the law owns something which wholly or partly belongs to another person, but who is in his power not because of a crime is threatened for embezzlement,

Whereas in Article 378 concerning Fraud, "Whoever with the intent to benefit himself or another person unlawfully, by using a false name or false dignity, by deceit, or a series of lies, moves another person to hand over something to him, or to give something to him. debts or write off receivables, are threatened with fraud with a maximum imprisonment of four years."

In the settlement of cases, the settlement of cases of criminal acts of fraud and embezzlement through restorative justice at the investigation level does not eliminate criminal acts, because the investigation is only terminated on the grounds that sufficient evidence is not found. The termination of the investigation is stated in the Decision Letter on the Termination of Investigation which is followed up by the Order of Termination of Investigation (SP3). The urgency of resolving cases by prioritizing the principle of restorative justice is absolutely necessary, so that in addition to saving investigation costs, it can also create commutative justice.

Based on data on criminal cases and the number of settlements of criminal acts by the North Sumatra Regional Police Ditreskrimum in 2021 and 2022 in January to August are as follows.

Table 1.
Data Of Criminal Cased

Data of Criminal Cases							
NO	YEAR	JTP	JPTP				KET
			STAGE II	SP3	RESTORATIVE JUSTICE		
					Investigate	PRINT	
1	2	3	4	5	6	7	8
1	2021	1.025	119	419	50	19	69
2	2022	686	80	244	30	14	44
AMOUNT		1,711	199	663	80	33	113

Table 2.
Data Of Restorative Justice

NO	YEAR	CRIMINAL ACT	AMOUNT	KET
1	2			
		Fraud	22	
		Embezzlement	14	
		Domestic Violence (KDRT)	8	
		Obscene acts against children	6	
		Insult	5	
		Because of Wife / Children	4	
I	2021	Destruction	2	
		Severe Persecution (Anirat)	2	
		Marriage Obstacle	2	
		Rape	1	
		Violent Theft (Curas)	1	
		Deprivation	1	
		Mild Abuse (Aniring)	1	
		AMOUNT	69	

		Fraud	15
		Embezzlement	8
		Letter Forgery	6
		Destruction	4
		Severe Persecution (Anirat)	2
		Soil	2
II	2022	Because of Wife / Children	2
		Domestic Violence (KDRT)	1
		Obscene acts against children	1
		Carrying underage children	1
		Mild Abuse (Aniring)	1
		Depriving Independence (Criminal Etc.)	1
		AMOUNT	44

Based on the above analysis, 22 cases of fraud and embezzlement were resolved through restorative justice, and the North Sumatra Police handled 14 cases. In the application of restorative justice and penal mediation, it 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 feel left out by the mechanisms that work in the current SPP. Applying the principles of restorative justice carried out by the police aims to consider sociological factors, both for perpetrators and victims, so that both parties get justice. The principle of restorative justice was initially started as an attempt to rethink the unmet needs in the normal judicial process. Restorative justice expands the circle of stakeholders or parties involved in the event or case.

Laws that have reflected a sense of truth and justice in the community must first understand the true meaning of the law. In principle, the meaning of the law is to realize justice and truth in human life. This meaning will be realized with the courage to include the principles of justice in the rules of living together. Justice in law is justice that can provide peace and happiness for the community. The extent to which justice can be realized is usually tested through the practice of implementing the law, including whether the judge has been able to provide justice in his decisions.

Not only the government and perpetrators but also victims and community members, such as the head of the environment, Babhinkamtibmas, and so on. A prominent characteristic of the principle of restorative justice is that crime is a symptom of social action and not just a violation of criminal law. Crime is seen as an act that harms others and damages social relations. In contrast to criminal law, which has drawn crime as a state matter, Moreover, only the state has the right to punish, although indigenous communities may impose sanctions.

Applying the principles of restorative justice in practice has helped reduce the number of law enforcement cases piling up at the Medan Police Satreskrim. In addition, no less important is the low cost of law enforcement and the creation of a sense of justice between both parties, both perpetrators and victims. However, the efforts made at this time are still found to be several obstacles, so the application of the principles of restorative justice that is carried out is not running optimally

IV. CONCLUSION

A Legal arrangements In criminal acts of embezzlement and fraud have been regulated in article 372 and article 378 of the Criminal Code (KUHP). Meanwhile, in the legal setting, investigators who apply restorative justice in fraud and embezzlement cases are the Circular Letter of the Chief of Police Number: SE/8/VII/2018, concerning the application of restorative justice. By fulfilling material and formal requirements. However, in the principles of justice, restorative justice cannot be interpreted as a method of peacefully terminating cases but more broadly in fulfilling the sense of justice of all parties involved in criminal cases through efforts that involve victims.

The application of restorative justice is an application of the principle of peace carried out by the police, which aims to consider sociological factors, both for perpetrators and victims, so that both parties get justice. The principle of restorative justice was initially started as an attempt to rethink the unmet needs in the normal judicial process.

Restorative justice expands the circle of stakeholders or parties involved in the event or case. In the efforts of law enforcement in dealing with criminal acts of embezzlement and fraud by carrying out repressive efforts and preventive efforts by improving the handling of criminal acts of fraud and embezzlement, conducting counseling and other supporting efforts.

Referensi

Peter Mahmud Marzuki, Introduction to Legal Studies, Jakarta: PT. Main Son Charisma.

Sadjijono, Understanding Police Law, Laksbang, Surabaya, 2009.

Andi Hamza. 2014. Indonesian Criminal Procedure Code. Jakarta: Sinar Graphic.

Adam Chazawi. 2016. Criminal Law in Indonesia. Jakarta: Rajawali.

Abdul Latif. 2014. Administrative Law in the practice of criminal acts. Jakarta: Pranada Media Group.

Aziz Syamsuddin. 2014. Special Crimes. Jakarta: Sinar Graphic.

Ahmad Rifai. 2010. Legal Findings by Judges in the Perspective of Progressive Law. Jakarta: Sinar Graphic.

Bambang Waluyo. 2016. Law Enforcement in Indonesia. Jakarta: Sinar Graphic.

CST Kansil. 2001. Regional Government in Indonesia. Jakarta: Sinar Graphic.

Hartono. 2012. Investigation and Enforcement of Criminal Law. Jakarta: Sinar Graphic.

HAW. Widjaja. 2012. Village Autonomy is Genuine and Whole Autonomy. Jakarta: PT RajaGrafindo Persada.

Moeljatno, Principles of Criminal Law, Citra, Jakarta, 1987.

T Riza Zarzani, Bambang Fitrianto & Anton Simanjuntak, Analysis of Legal Studies Against Normative Studies of Truth and Justice, Seminar Of Social Sciences Engineering & Humanities SCENARIO 2020.

Irwan Jasa Tarigan, Tengku Riza Zarzani & Irma Fatmawati, Enhancement Technology The Prevention Systems Of Narcotics Circulation In Correctional Facility Indonesia, International Journal of Civil Engineering and Technology (IJCIET), Volume 10, Issue 03, March 2019

Bambang Fitrianto, Tengku Riza Zarzani, Anton Simanjuntak, Analysis of Legal Studies Against Normative and Justice Studies, Soumatara Law Review (<http://publikasi.iidikti10.id/index.php/soumlaw>) Volume 4, Number 1, 2021

T Riza Zarzani, Criminal Law Reconstruction In The Efforts Of Countering Terrorism In Indonesia Based On Justice Values, International journal of advanced Science and Technology, Vol.29 No 7, 2020.

Olma Fridoki, alvi syahrin, Sunarmi, Marlina, Application of Restorative Justice in the Settlement of Criminal Acts of Fraud and embezzlement at the Medan Police, Res Nullius law Journal, vol.4 No 1 January 2022

Jona Wira Karya, T Riza Zarzani, Ismaidar, Legal Brief, Volume 11, No.4 (2022) ISSN 1979-522X

Countryside. "Duties and Functions of the Village Head",<http://www.berdesa.com>. Accessed on November 14, 2021, at 10.00 WIB

BPN, "Law Number 6 of 2014",<http://www.bpn.go.id>. Accessed on November 8, 2021, at 08.09 WIB.

WikiPedia Indonesian. "The Crime of Accident Theft", <http://id.Wikipedia.org/wiki>. Accessed on November 12, 2021. At 09.15 WIB.

Legal Status. "Indonesian Law Enforcers", <http://status Hukum.com/ Enforcement Law.html>. Accessed on November 10, 2021, 12:38 WIB