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Analysis of the Implementation of Restorative Justice in Domestic Violence Crimes

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ABSTRACT

Domestic violence is actually any act against a person, especially women, which results in physical, sexual, psychological misery or suffering and/or neglect of the household including threats to commit acts, coercion or unlawful deprivation of liberty within the scope of the household. The purpose of this study is what form of restorative justice approach and efforts to implement the concept of restorative justice approach in handling cases of domestic violence. The research method used is a normative legal research method using a statutory and conceptual approach. The restorative justice approach is realized through dialogue between parties known as "Musyawarah Mufakat". and an approach through a penal mediation mechanism. The application of Settlement with restorative justice is in line with the theory of legal benefits and is in contrast to retaliation, namely a criminal sanction, namely the law must be measured from the good and bad consequences resulting from the application of the law.

Keywords; Restorative Justice, Domestic Violence.

INTRODUCTION

Domestic violence is one of the many forms of violent crime that occurs frequently and has received national and international attention. Domestic violence is not new and it can happen to anyone, especially women. However, because it is considered a disgrace, families and victims or relatives always keep it a secret or cover it up for years of violence that has been experienced.

Domestic violence does not only involve violence committed by husbands, wives, or people who have family relationships but also people who work as domestic workers who live in the household. Handling of domestic violence cases that are resolved through ordinary Criminal Procedure courts will certainly end with criminal sanctions for imprisonment for the perpetrators, so that they cannot achieve the expected goal of justice because the victims of the criminal acts committed by the perpetrators will be neglected because the perpetrators have been subject to imprisonment and cannot compensate for the victim's losses.

Domestic violence is actually any act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering and/or neglect of the

household, including threats to commit acts, coercion or unlawful deprivation of liberty within the household. Cases of domestic violence are very common in Indonesia. Like the case of domestic violence experienced by an influencer named Cut Intan, where she was abused by her husband so that it caused bruises on her face.

Domestic Violence Crime is a development of the Criminal Code (hereinafter referred to as the Criminal Code) and domestic violence crime is a specific crime regulated outside the Criminal Code. Law of the Republic of Indonesia Number 23 of 2004 regulates the Elimination of Domestic Violence. Because domestic violence crimes can be punished by law, the existence of this law encourages the public to be more open and brave in reporting the violence they have experienced.

Currently, domestic violence cases are handled according to the same criminal procedure standards as other criminal cases. If the defendant is found guilty of committing the crime charged by the Public Prosecutor, this process ends with the imposition of a sentence. Article 4 of the Law on the Elimination of Domestic Violence actually aims to: 1) Prevent all forms of domestic violence; 2) Protect victims of domestic violence; 3) Take action against perpetrators of domestic violence; and 4) Maintain the integrity of a harmonious and prosperous household. Seeing this, a household should actually have a good, harmonious and prosperous relationship and be free from problems so that a sense of comfort and peace is created in a family. The process of resolving domestic violence cases is carried out through the criminal justice system. The criminal justice system shows a working mechanism in dealing with crime that uses a systems approach. In accordance with the mandate of Law Number 23 of 2004 which starts from investigation/inquiry, prosecution, examination in court to the implementation of punishment in correctional institutions.

The Law on the Elimination of Equality in Households actually aims to make a household intact. In fact, this criminal punishment is not a way to resolve behavior in the household considering the severity of the situation. By holding a deliberation between the perpetrator and the victim, or by using restorative justice as a peaceful resolution in cases of domestic violence. It can also be seen in the juvenile criminal justice law, namely the existence of a resolution through diversion with the conditions stipulated in the law, the consequences of which must be carried out.

Restorative justice is an act of empowering alternative solutions outside the court through peaceful efforts that prioritize the principle of win-win solutions, and can be used as a means of resolving disputes through the court process. Settlement of criminal cases through mechanisms outside the court is currently increasingly common and acceptable to the community because it is felt to be more capable of reaching a sense of justice. The application of this mediation model in criminal cases is very easy to do, this is because there is still a relationship between the two parties in accordance with the Eastern customs that are rooted in society where they prioritize the establishment of ties between families and the community.

Given the severity of the relationship between the perpetrator and the victim, acts of violence within the family or household are considered inappropriate to be addressed through the criminal justice system. Judging from Law No. 23 of 2004, it is necessary to make restorative justice because this is also a personal scope, namely there is a relationship in a household where the law will later provide benefits to a household. The purpose of this study is to determine what the restorative justice approach looks like and efforts to implement the concept of a restorative justice approach in handling domestic violence cases.

RESEARCH METHODS

The method to be used in this research is a normative legal research method using a statutory and conceptual approach. This method conceptualizes law as what is written in statutory regulations or conceptualizes law as a normative rule in the benchmark for human behavior that is considered appropriate. In this normative legal research, the approach used is a statutory approach and a conceptual approach. The statutory approach is carried out by examining statutory regulations and various regulations related to the legal issues discussed. While the conceptual approach is intended to provide a perspective on analyzing problem solving in legal research by looking at the aspects of the legal concepts that underlie it or the values contained in the norming of a regulation that is related to the concept used. So in the legal issue that I wrote, I want to find results that reveal whether the application of the restorative justice system can resolve cases and pay attention to the rights of victims of domestic violence.

DISCUSSION

1. Restorative Justice Approach to Realizing Justice and Balance for Victims of Domestic Violence

Domestic violence as a social phenomenon is a serious problem. Domestic violence can destroy harmony and the integrity of a household. The household is no longer a safe haven or shelter from the outside world, but instead becomes hell for family members. At the personal level, violence has a permanent psychological impact on the victim. When victims form their own families, because they have internalized the value of violence as something normal, they tend to do the same thing. Even though they have the knowledge and understand that the act is wrong. In addition, due to the violence experienced, victims can be triggered to commit other crimes in society, with the tendency for one violence to perpetuate and trigger other violence.

The law must function to regulate society, resolve disputes in an orderly and fair manner and aim to create peace in society. Restorative Justice is a term that has been known in Indonesian law since the 1960s as one of the stages in the conventional criminal justice system. Initially, Restorative Justice was a concept of case resolution

that had been used by indigenous peoples in Indonesia as a method of resolving cases that occurred in the indigenous peoples concerned without involving state officials.

The concept of Restorative Justice emphasizes a justice based on peace where in resolving a case there is no justice based on revenge or punishment for the perpetrator. The application of this concept is a form of development in the criminal justice system that emphasizes the involvement of the perpetrator and victim in resolving a case where this is not one of the mechanisms known in conventional criminal procedure law at this time.

The Restorative Justice approach in resolving a criminal act provides an opportunity for the parties involved, especially the perpetrator and victim, to participate in resolving the case so that there is a transfer of the function of the perpetrator and victim where in conventional criminal procedure law, the perpetrator and victim only function as witnesses in the resolution of the case carried out by law enforcement officers.

The principle of this approach is to resolve legal violations that have occurred by bringing together the victim and the perpetrator, emphasizing a mediation pattern, not only to implement the principle of punishing the perpetrator.

The consultative nature of this approach is manifested through dialogue between parties known as "Musyawarah Mufakat". Where domestic violence is a crime, the act is violence that leads to criminal acts with different forms and characteristics, so that judges in deciding cases related to domestic violence also have different legal considerations. Because the perpetrators and victims of domestic violence have an inner bond that is created in a relationship that is basically love. This can be a benchmark that the legal process that is determined cannot be equated with other criminal cases.

In addition, the approach of Restorative Justice values in efforts to resolve domestic violence crimes, namely by implementing Restorative Justice values through the penal mediation mechanism, can be implemented in the Indonesian criminal justice system, because it depends on the situation and conditions in the mediation process, such as mediation between the perpetrator and the victim either by meeting, negotiating, discussing with the victim. So that both parties between the perpetrator and the victim can find the best way to resolve it. Thus, the settlement through the Penal Mediation mechanism can realize the expected principles of justice and achieve them, namely the principles of fast, simple and low-cost justice. In principle, Restorative Justice seeks peace outside the court involving the perpetrator of the crime (his/her family) against the victim. In Restorative Justice, the resolution of a legal problem that occurs between the perpetrator and the victim of a crime can be achieved if there is an agreement or deal between the parties so as to provide the perpetrator with the opportunity to be responsible for all his/her actions by compensating for the losses resulting from the crime he/she committed.

2. Implementation of Restorative Justice in Resolving Domestic Violence Crimes

Restorative justice aims to empower victims, perpetrators, families and communities to correct an unlawful act by using awareness and realization as a basis for improving community life. It explains that the concept of restorative justice is basically simple.⁸ Restorative justice can be interpreted as an alternative resolution of a criminal case.

The implementation of restorative justice will cause a shift in the direction of criminalization which is to punish the perpetrator which should be to repay the fine to be done by means of healing to the original state before the criminal incident. Restorative justice is an approach that focuses on the needs of both the victim and the perpetrator of the crime. The concept of Restorative Justice no longer measures justice based on the victim's appropriate retribution to the perpetrator either physically, psychologically or criminal punishment but painful actions are healed by providing support to the victim and requiring the perpetrator to be responsible, with the help of family and society if needed.

Law Number 23 of 2004 is a positive legal breakthrough in the Indonesian state system where private issues have entered the public domain. In the Criminal Law in Indonesia regarding domestic violence, there is no provision, even the word violence is not found in the Criminal Code. Cases of beatings committed by husbands against wives or parents against children are resolved with articles on abuse which are then difficult to find elements of evidence so that the reported cases are no longer followed up.⁹ Seeing this, this law is actually an important breakthrough in efforts to enforce human rights, especially in the household.

The process of resolving criminal acts through restorative justice by the police and prosecutors is in line with the objectives of the theory of its benefits, providing welfare and peace by considering the interests of victims and other protected legal interests, avoiding negative stigma, avoiding retaliation from the criminal system with absolute theory, response and harmony of society; and propriety, morality, and public order. It is important to emphasize that if the requirements have been met, it does not necessarily mean that a case will be resolved with a restorative justice approach. In the event that there is a variable that should be considered or considered but is not met, even though the requirements are met, resolution by means of restorative justice cannot be carried out.

One example of a case that uses restorative justice in resolving domestic violence cases is domestic violence experienced by Lesti Kejora which was carried out by her husband Risky Bilar, where Lesti Kejora withdrew her report and agreed to make peace. Looking at the case experienced by Lesty Kejora which was carried out by Rizky Billar, this restorative justice approach can be carried out and seen as a solution in terms of its benefits. Because in fact in a household that is going through a husband and wife if the couple divorces, it is not only a loss for the family but also the state, not only

does it profit, but the prison becomes full of people's capacity and the costs are also borne by the state.

Restorative justice arises from human emotions that seek to reject or avenge the suffering experienced by themselves and others. The sense of justice rebels against loss and suffering, not only because of individual interests but more comprehensively than others with whom we compare ourselves, so that the nature of justice includes all moral requirements that are essential to the well-being of humanity.

CONCLUSION

Restorative justice is an approach to justice that focuses on the needs of victims and perpetrators of crimes, where the goal is to achieve the fairest possible justice for all parties involved in it, not just prioritizing punishment for perpetrators of domestic violence. By encouraging victims to play an active role in the public sphere, it can realize equal justice by the victims themselves by realizing penal mediation.

The application of restorative justice in resolving domestic violence crimes which usually must be carried out in the name of public interest (opportunity), but in reality the public interest that must be protected does not always require every criminal case to be processed criminally even though the evidence is sufficient. Domestic violence is one of the crimes that meets the general requirements for resolving cases through restorative justice at the investigation/investigation stage, prosecution by considering special requirements, namely that it must be agreed by the victim and the perpetrator so that if an agreement is reached in the process, the authorized institution will stop the prosecution based on restorative justice through its decision letter, while if the peace agreement is not successful, it will be continued to the next process, namely the court process.

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