

IMPLEMENTATION RESTORATIVE JUSTICE CASE CRIMINAL PERSECUTION IN ATTORNEY COUNTRY JEPARA PERSPECTIVE ISLAMIC LAW

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ABSTRACT

Restoratif adalah suatu proses dimana semua pihak terlibat sesuatu mengikuti tindak pidana tertentu bersama-sama memecahkan masalah bagaimana menghadapi akibat dimasa yang akan datang. Penelitian ini mencakup tiga hal, yaitu 1) Kasus tindak pidana kekerasan yang terjadi di Kejaksaan Negeri Jepara ini, pada kasus pertengkaran yang berakhir dengan kekerasan berupa pemukulan tersangka terhadap saksi korban, 2) Penerapan restorative justice pada kasus pidana kekerasan di Jaksa Negeri Jepara dengan mempertimbangkan adanya perdamaian antara korban dan tersangka, yang menyatakan untuk mengakhiri perselisihan yang timbul antara tersangka dan saksi korban. Karena tidak ada satu sama lain yang saling menuntut atau menuntut satu sama lain dalam hal apapun, setelah dengan ditandatanganinya perjanjian tersebut, maka proses perdamaian dapat dilaksanakan dan diselesaikan dengan Restorative Justice, 3) Implementasi Restorative justice di Peradilan Pidana Negara Kabupaten Jepara ini, berperspektif hukum Islam. Restorative justice sangat dianjurkan oleh Syariat Islam, Karena saling memaafkan atas perintah Allah SWT. Dalam Al-Qur'an penyelesaian konflik melalui pendekatan non litigasi menggunakan rancangan al-sulh atau ishlah (perdamaian). Konsep-konsep seperti hakam (arbiter atau mediator) dalam mekanisme tahkim dan al-sulh atau ishlah (perdamaian) merupakan konsep yang dijelaskan dalam Al-Qur'an sebagai media dalam menyelesaikan konflik di luar pengadilan.

Kata Kunci : Keadilan Restoratif, Perkara Pidana Penganiayaan, Hukum Islam .

Abstract

Restorative is a process for all parties involved in a particular crime to jointly provide a solution to the problem of how to deal with its consequences in the future. This study discusses three things, namely 1) Cases of criminal acts of violence that occurred at the Kejaksaan Negeri Jepara, in cases of disputes that end in violence in the form of beatings against witness victims, 2) Implementation of restorative justice in violent crime cases at the Jepara District Attorney taking into account the existence of peace between the victim and the perpetrator. which states to end disputes that arise between the perpetrator and witness victims not to sue or sue each other in any matter, after the signing of the agreement the peace process can be carried out and resolved with Restorative Justice, 3) Implementation of Restorative justice in criminal justice at the Kejaksaan Negeri Jepara, the perspective of Islamic law. Restorative justice is highly recommended by Islamic law, because forgiveness is commanded by Allah SWT. In the Qur'an conflict resolution through a non-litigation approach uses the concept of al-sulh or ishlah (peace). Concepts such as hakam (arbitrator or

mediator) in the tahkim mechanism and al-sulh or islah (peace) are concepts explained in the Al-Quran as a medium for resolving conflicts outside the court.

Keywords: Restorative Justice, Persecution Criminal Cases, Islamic Law.

Pendahuluan

In human life, we cannot be separated from criminal acts and crimes or a criminal act (strafbaat feit). For this reason, the existence of law is very necessary. Of course law become base base moral in escort achieved objective life Which aspired to together sake emergence order social. Of course law Also works prevent, reduce, And eradicate follow criminal (Bambang Waluyo, 2020: 1).

One effort is that the law must be implemented and enforced. Through law enforcement including the resolution of criminal cases. Especially Indonesia as country law, Of course enforcement law No ignore objective law.

LJ Van Apeldoorn, said that the purpose of law is to regulate social relationships humans peacefully. Peace among humans is maintained by law with protect interest law man certain, honor, freedom, life, property against those who harm them (Ade Maman Suherman, 2004: 9).

Restorative justice, namely justice is a process in which all parties involved in a particular crime work together to solve it problem How handle as a result in Century Which will come. Justice Restorative is model solution case criminal Which put forward restoration of victims, perpetrators and society. The main principles of Restorative Justice is the participation of victims and perpetrators, participation of citizens as facilitator in solution case, so that There is guarantee child or perpetrator No again disrupting the harmony that has been created in society (Apong Herlina et al,2004: 203).

Procedural and criminal justice mechanisms that focus on punishment transformed into a process of dialogue and mediation to create agreement on resolution of criminal cases that is fairer and more balanced for the victims and perpetrators. There are several studies that raise Restorative Justice, including: writing Eka Fitri Andriyanti, in Journal Education and development, 2020 about "Urgency Implementation Restorative Justice In Law Criminal Indonesia". Second, Writing Hanafi Arief, Ningrum Ambarsari, Al-Adl: Journal Law, 2018, about "Application principle restorative justice in system Justice criminal in Indonesia". Third writing Rama Wijaya, Journal Law Samudra Perempuan, 2021 concerning "The Role of the Prosecutor's Office in Restorative Implementation Justice for Children in Conflict with the Law in the Prosecutor's Office Country Prabumulih"

Third study on the study covers restorative justice Which expected can give justice Which actually for perpetrator And victim crime,

as well as society in general. Apart from that, there are legal issues arising as a result of the criminal act can be resolved properly by reaching agreement and agreement between the parties. Study This will elaborate furthermore how urgent implementation is restorative justice must receive the attention of all parties. Similarities between these studies with the author's research is the same in the discussion of restorative justice perspective law positive. Difference in study writer is work write This the discussion more focus to implementation restorative justice in handling a criminal case persecution in attorney Country Jepara.

Research methods

An approach is a basic principle or foundation used For appreciate something. As for approach Which done in study This is approach management, whereas in a way specification study Which used is descriptive that is as procedure breaker the problem being investigated, by explaining or describing the condition of the object on moment Now. Based on facts Which looks or as exists (Haidari Nawawi, 1995:73). And study descriptive This is research that is not directed at testing a particular hypothesis, but simply describe What exists about something variable, symptom or circumstances (Suharsimi Arikunto, 2002:310). Interview technique, data obtained using This technique is by asking questions orally and face to face between a or a number of person interviewer with a or a number of person Which interviewed (Wardi Bahtiar, 1997:72). interview with partiesrelated, namely: Head of the Jepara Prosecutor's Office Ayu Agung, SH., S.Sos. and Chief of Staff attorney Jepara Fiqhi Abdullah Baswara, SH. Technique Which used For obtain data regarding the implementation of restorative justice in treatment a criminal case Persecution in attorney Jepara.

RESULTS AND DISCUSSION

In in practice enforcement law often criminal hear term Restorative Justice or Restoration Justice Which in translation Language Indonesiaknown as restorative justice. Restorative or restorative justice Justice is a restoration of relationships and redemption of desired mistakes committed by the perpetrator of the crime (his family) against the victim of the crime (his family) (peace efforts) outside the court with the intention of and objective so that problem law Which arise consequence happen deed criminalthe can resolved with Good with achieved agreement And agreement between the parties. Justice that has been going on for a long time The criminal justice system in Indonesia is retributive justice. Meanwhile the What is hoped is restorative justice, that is, justice is a process where all parties involved in a particular criminal act together The same solve problem How handle as a result in Century Which will

come. Justice Restorative is model solution case criminal Which put forward recovery against victim, perpetrator, And public. Principle main Restorative Justice is exists participation victim And perpetrator, participation residents as facilitators in resolving cases, so that there is security for children or the perpetrator no longer disturbs the harmony that has been created in society (Apong Herlina et al, 2004: 203).

Liebmann in a way simple interpret restorative justice as something a legal system that aims to restore the welfare of victims and perpetrators And public Which damaged by crime, And For prevent violation or action crime more carry on (Marian Liebmann, 2007: 25). Liebmann Also give formulation principle base restorative justice as following:

1. Prioritize support And healing victim
2. Perpetrator violation responsible answer on What Which they do
3. Dialog between victim with perpetrator For reach understanding
4. There is so For put in a way Correct loss Which caused
5. Perpetrator violators must own awareness about How method avoid crime in period front
6. Public duly follow as well as give role help in integrate two split party, Good victim nor perpetrator (Marian Liebmann, 2007: 25).

Restorative Justice (Justice restorative) as development important in thinking man based on tradition justice from Arab ancient, Greece, Roman And civilization Which accepted approach restorative even case murder, the restorative approach of the general assemblies (Moots) of the Germanic society that swept across Europe after the fall of Rome, Hindu India as ancient as Veda Civilization for Who "he Which redeem forgiven," And Buddha ancient, Tao, And tradition Confucianism Which he saw mixed with Western influence day This in North Asia (John Braithwaite, 2002:3).

Restorative Justice Concept

The concept of Restorative Justice is basically simple, namely the measure of justice is no longer based on retaliation in kind from the victim perpetrator (Good in a way physique, psychic or punishment), However deed Which hurtful That healed with give support to victim And requires the perpetrator to be held accountable with the help of the family and public when required.

Law enforcement is not an independent activity, but rather has a close reciprocal relationship with its community. Structure public give influence, Good form provision means social Which possible enforcement law That executed, nor give obstacles that cause it to be unworkable or lacking can be carried out optimally (Satjipto Rahardjo, 1993: 116). There are three principles base to form restorative justice, that is:

1. There be a restoration to those who have been injured (Happen recovery to they Which suffer loss consequence crime)

2. The offender has an opportunity to be involved in the restoration if they desire (Perpetrator own chance For involved in recovery circumstances (restoration)
3. The courts systems role is to preserve the public orders and the community role is to preserve a just peace (Court role For guard order general And public role For conserve peace Which fair) (Wikipedia, the free encyclopedia)

The concept of Restorative Justice has emerged over twenty years ago as an alternative resolution of juvenile criminal cases. Group The United Nations (UN) Juvenile Justice Work defines Restorative Justice is a process for all parties involved with certain criminal acts sit together to solve problems and think about how to overcome the consequences in the future come. Process This on basically done through discretion (policy) And diversion, that is diversion from process Justice criminal to outside process formalto be resolved by deliberation (Research and Development AgencyLaw And Right Asasi Man, 2016: 2).

Restorative justice aim For empowering para victim, perpetrator, family, And public For repair something deed against the law by using awareness and conviction as foundation for improving social life explains that draft Restorative Justice on basically simple (Nikmah Rosidah, 2014:103).

Position Law (Legal standing) To Application RestorativeJustice.

Regarding law enforcement in Indonesia, it cannot be ignored Law Number 8 of 1981 concerning Criminal Procedure Law because Based on the words alone, the term refers to implementation formal law. You could say that what is meant by law enforcement (law enforcement), the form of concreteness is the imposition of a crime or penalty. Related with matter the, according to Sauer There is three understandingbase in law criminal, that is characteristic oppose law, error And criminal(Dwidja Priyatno, 2007:9).

It is said in the description according to Bagir Manan, that law enforcement Indonesia can be said to be "communis opinio doctorum", which means that enforcement law Which Now considered has fail in reach objectives implied by law (Rudi Rizky (ed), 2008: 4). By Because That, be allowed A alternative enforcement law, that is Restorative Justice Systems, Where approach Which used is approach socio cultural and No approach normative.

Program justice restorative based on confidence that party Whichinvolved conflict must in a way active involved in finish And reduce consequence negative. They Also based, in a number of

case, on will For return to building taking decision Andlocal community. These approaches are also seen as tools to encourage peaceful expression of conflict, to promote tolerance And inclusivity, build award on diversity And promote practice public Which responsible answer (Rudi Rizky (ed),2008: 58).

Restorative Justice is an important development in human thought is based on the traditions of justice from ancient Arabia, Greek, Roman and even other civilizations accepted a restorative approach murder cases, the restorative approach of the general assembly (Moots) of Germanic society that swept across Europe after the fall of Rome, Indian Hinduism is as ancient as the Vedas Civilization for whom "he who redeem the forgiven," and the ancient Buddhist, Taoist, and Confucian traditions that he saw mixed with influence West day This in Asia North (John Braithwaite, 2002: 3).

Law Which progressive leave from assumption base that law isFor man, No on the contrary. Law No as institution Which natureabsolute And final, but as institution moral, be conscientious And BecauseThat very determined by his abilities For subserve to man.Law is something institution Which aim For deliver manto life Which fair, prosperous And make man happy. Humanity And justice become objective from everything in Wealive law. So sentence "law For man" meaningful Also "law For justice". This means, that humanity And justice There is inon law. The main thing is is emphasis on enforcement law fairWhich in Indonesia that is creation well-being public or Which oftencalled with "public Which fair And prosperous" (Rudi Rizky (ed), 2008: 58)."Restorative justice" as Wrong business to find a solution conflict in a way peace in outside court Still difficult applied. In IndonesiaMany customary laws can be restorative justice, howeverits existence is not acknowledged state or not codified in lawnational. Law custom Can finish that conflict appear in publicAnd give satisfaction on party Which conflicted. Appearance idearestorative justice as critics on application system Justice criminalwith imprisonment Which considered No effective finish conflict social.The cause, party Which involved in conflict the No involvedin solution conflict. Victim still just become victim, perpetrator Whichimprisoned too bring up problem new for family etc(Setyo Utomo, Pulpit Justitia Faculty Law University Suryakencana, Volume 5 Number 01: 86).

It needs to be stated that the concept of restorative justicecan not only be applied to the Supreme Court (MA). In the process criminal justice in general and the criminal justice process in Indonesia In particular, there are several stages or processes that must be gone through para searcher justice Good in level investigation, investigation, prosecution,

inspection in court until stage dropping decision judge. Even on stages Where para searcher justice do effort law (Goodeffort law normal nor effort law outside normal). With thereby, writer evaluate that Already should adoption And application draft justice restorative (restorative justice) done in various level or process Justice as stated on (Eva Achjani Zulfa, 2009:17). Restorative justice as Wrong business For look for solution conflict in a way peace in outside court Still difficult applied. In Indonesia Lotslaw custom Which Can become restorative justice, However its existence Norecognized country or No codified in law national. Law custom Can finish conflict Which appear in public And givesatisfaction on party Which conflicted. Appearance idea restorative justice as critics on application system Justice criminal with imprisonment Which considered No effective finish conflict social. The cause, party Which involved in conflict the No involved in solution conflict. Victim still just become victim, perpetrator Which imprisoned Also bring up problem new for family And etc (Setyo Utomo, Pulpit Justitia Faculty Law University Suryakencana, Volume 5 Number 01:86).

Case Persecution Handled by the State Prosecutor's Office Jepara

The Jepara District Prosecutor's Office is one of the District Attorneys in Central Java as the ranks of the Indonesian Prosecutor's Office with assigned areas in province Java Middle with wide region reach 32,548 km². The Jepara District Prosecutor's Office is led by Dwianto Prohartono, SH, MH who located at Jl. KH. Fauzan No. 3 Jepara. It's just that in practice it functions the more tend as extension hand Dutch mere. With say other, prosecutor And attorney on period colonialism Dutch carry mission veiled ie between other:

- a. Maintain all regulation Country
- b. Do prosecution all criminal act
- c. Carry out decision court criminal Which authorized. Function as tool ruler That will very obvious, specifically in implement offenses related to hatzaai articles there is in Wetboek van Strafrecht (WvS)

The role of the Prosecutor's Office as the only official prosecuting institution functioned First time by Constitution government era occupation soldier Japan No. 1/1942, Which Then replaced by Osamu Seirei No.3/1942, No.2/1944 and No.49/1944. The existence of the prosecutor's office exists on all level court, ie since Saikoo Hoooin (court grand), Koootooo Hoooin (high court) and Tihooo Hoooin (court country). At that time, it was officially stated that the Prosecutor's Office had power For:

- a. Look for (probing) crime And violation
- b. Demand Case
- c. Operate decision court in case criminal

d. Taking care of work other which is mandatory done according to law.

During the reform era, the Prosecutor's Office received assistance through its presence various new institutions to share roles and responsibilities. Presence new institutions with these specific responsibilities should be seen positive as partner attorney in combat corruption. Previously, effort enforcement law Which done to follow Corruption crimes often experience obstacles. This is not only experienced by Attorney, However Also by Police R.I as well as bodies other. Constraint the between others :

- a. Mode operandi Which classified advanced
- b. Perpetrator get protection from corps, superior, or his friends.
- c. The object complicated (compiled), for example Because related with various regulation
- d. It's difficult collect various proof beginning
- e. Management source Power man
- f. Difference perception And interpretation (in circles institution enforcer law Which there are)Means And infrastructure Which Not yet adequate
- g. Psychological and physical terror, threats, negative news, even kidnapping as well as burning law enforcement house (Interview Mr. Fiqhi Abdillah Daswara, SH., as Kasi Pidum Jepara District Prosecutor's Office on Monday March 23 2022 o'clock. 11.00 WIB).

On Friday 06 December 2019 at approximately 07.00 WIB at Field Bangsri join in Village Bangsri Subdistrict Bangsri Regency Jepara, Victim witness Suwanti Binti Sarmani (deceased) went to Bangsri field to exercise alone in the morning when he arrived at the Bangsri witness field victim jogging, around 4 (four) round suddenly come defendant drive bicycle motorcycle with hitchhiking his son want to taking him to school, in front of witnesses the victim the defendant mocked him with his mouth tilted (grotted) then the victim witness spoke "indeed nice So Widow" Then defendant return approaching witness victim And speak "indeed problem for lol if I Widow" Then suddenly defendant hit witness victim with method hand right defendant clenched his fist with the motorbike keys after which the defendant hit him the victim's eye was on the left side then the victim witness spontaneously grabbed it The defendant's veil said, "If my eyes wander, I won't report it police station in Indonesian what's wrong with my eyes? report it to the police station," to which the defendant replied, "just report it wedi in Indonesian just report it I'm not afraid" then was broken up by residents, witnesses, the victim was taken to the side and the defendant went upstairs In the incident, the victim witnessed bruising around the eyes and eyes defendant until blush And witness victim get it checked to Public health center Bangsr, after that the victim witness reported the incident to the Sector Police Bangsri. As a result of the abuse incident, the victim witness experienced bruises around the eyes, so that the victim's eyes were red and the victim's head was red Dizzy And No Can activity like usually during 10 (Ten) day

so that deed suspect threatened with 351 paragraph (1) Criminal Code (Interview Mr. Fiqhi Abdullah Daswara, SH., As Kasi Pidum attorney Country Jepara on Monday 23 March 2022 o'clock. 13.00 WIB).

Role attorney Country in Implementation Restorative Justice (Justice restorative) In Handling Case Criminal

As is known, in the Indonesian criminal justice system, The police have investigative powers and prosecutorial powers by Attorney, And power judge/judge criminal owned by Court. can held by himself by they who implements it.

Lots of it solution case Which taken through mechanism Justice, in matter This Justice criminal. Lots of it critics to completion cases, in the criminal justice system, are facts that must be faced public. Some facts are detrimental, such as frequent trials eat time Which long, cost Which expensive, complicated And considered Can fulfill society's sense of justice. As a system, of course there are many factors that cause ineffective and inefficient solutions enforcer law (legal structure), product legislation (legal substance) nor customs and legal culture of society (legal culture) (Badan Dan Research Development Law And Right Asasi Man, 2016: 2).

Smoothness process in implementation enforcement law in in Society is largely determined by the values held and applied within it public Which concerned. Mochtar Kusumaatmadja put forward law as a social gift, cannot be separated from the values that apply in it something public, even can said that law That is reflection of the values prevailing in society. Good law is a law that is in accordance with the living law within society, which of course is also appropriate or a reflection of values that prevails in that society. These values cannot be separated from attitudes (attitude) and the qualities that (should) be possessed by people who become member public the (Andi Hamzah, 2017: 19).

prosecutor is Wrong One apparatus country Which given task And authorized by law to carry out law enforcement. In Carrying out their duties and functions, prosecutors are organized in an institution which is named the Prosecutor's Office of the Republic of Indonesia or can be called the Prosecutor's Office. Task main attorney Which held by prosecutor is do prosecution case criminal. In carry out task prosecution, prosecutor given the authority to determine whether or not a case can be submitted to court And chapter What Which accused. Even prosecutor Also can stop prosecution based on opportunity or principle wisdom demand. Principle here it is Which become base for prosecutor For finish criminal cases outside of court using a restorative approach justice (Andi Hamzah, 2017: 1) .

Enforcement law in Indonesia, No will Can regardless from Law Invite Number 8 Year 1981 About Law Program Criminal Because based on



after that, then for him will be punishment which very painful

And in qishaash that's there (warranty continuity) live for you, hi people which sensible, so you pious.”

In something history stated that when Islam hamper It is stipulated that during the Jahiliyah era there were two Arab tribes fighting against each other with each other. Among them there were those who were killed and those who were injured, even they killed slaves and women. They haven't had time to reply yetfeud Because they enter Islam. Each brag himself

Based on Treatise Caliph Omar son Khatab; peace must based on clear corridors. Peace does not justify anything haram or forbidding something that is halal (Ibnu Qayyim Al-Jauziyah, 94). This basis is then seen in the context of criminal law, during this peace accommodate interest second split party, based on on pleasure both of them, understand good and bad And justice, peace can enforced. The application of peace as applied to murder and abuse, have similarities with the implementation of restorative justice in modern criminal law. Regardless of the pros and cons of what type of crime restorative justice can be applied as in the Islamic criminal law system as well as modern criminal law, but it must be acknowledged that Islam has long adhere to justice restorative before law criminal modern use it.

Justice restorative realize justice for para party, No only realize legaljustice, but Also consider socialjustice, individual justice And Also moraljustice. Justice Which Lots applied by apparatus law enforcement is only limited to legal justice. This is proven by many processes resolving criminal cases in society that actually harm the sense of justice in society. Legal when criminal law enforcement is applied based on above what is stipulated by the Criminal Code or other laws. But who doesn't What is realized is the intelligence of law enforcement officers in seeing which cases Which can continued And Which No. That's reason Why he gave authority like discretion nor right opportunity. In doctrine Islam, as confirmed by Marcel A. Boisard: justice is center motion from values moral Which principal (Muhammad Tahir Azhari, 2010: 121)

As one example is what Umar bin once did Khattab by releasing punishment to thieves. As one of a kind hudud crime, theft is the right of God, which means the state is not can follow involved in decided release. However, by his intelligence, Omar release thief udzq (dates by consider time famine which happened period that. Omar also ever release the boys Hatib which steal camel men from Museum. Things the said done after it knowing cause act that because them starving Omar ordered for give replace above price camel to camel owners, even higher than the initial nominal. See Ibnu Qayyim Al-Jauziyah, Guide., 430-431

CONCLUSION

Based on the discussion in this research which discusses about Implementation Restorative Justice (Justice restorative) In Case Handling Criminal (Studies Case Persecution In attorney Country Jepara), so the writer can conclude as following :

1. This case of violent crime occurred at the Jepara District Prosecutor's Office happen where is SUWANTI Binti SARMANI (deceased) as victims and NOVI MOVE ARYANTI Binti SUTIONO as defendant in case

- quarrel Which end with violence Which form beating suspect to witness victim.
2. Implementation Restorative Justice in violent criminal cases at the District Attorney's Office Jepara Where with consider There is peace between Victims and Suspects, where on November 9 2021 there were agreement peace between suspect Novi Get out of here Aryanti with witnessvictim Suwanti as letter statement peace dated 09 November 2021 Which on the main thing is state For end dispute that arise between the suspect and the victim witness not to sue each other or sue One The same other in regarding whatever Also after signed Letter Agreement the process peace can held And resolved with Restorative Justice.
 3. Implementation of Restorative justice in criminal justice at the District Attorney's Office Regency Jepara This very in accordance with values law Islam. Restorative justice is highly recommended by Islamic teachings/Islamic law, namely as follows he ordered afwu / To forgive and let go of everything that happened we experience both those related to relationships with fellow humans nor connection with Allah SWT. In in Al-Quran solution conflict through approach non litigation use it draft *al-sulh* or *ishlah* (peace). Concepts like *Hakam* (arbitrator or mediator) in the mechanism of *tahkim* and *al-sulh* or *ishlah* (peace), is a concept that explained in in Al-Qur'an as media in in finish conflict in outside court.

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