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Application of the Concept of Restorative Justice by Police and Indigenous Community Institutions on Middle Crimes

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Abstract

The purpose of this article is to examine and analyze the application of Restorative Justice to minor crimes committed by the community by the Indigenous Peoples Institution and the Resort Police in the Fakfak Regency, West Papua and the obstacles experienced by the Police Agencies and Customary Institutions. The method used is an empirical legal research method because it examines the application of policy concepts and the constraints experienced by police agencies and customary institutions. The interview method used was carried out to the Police Agency and traditional elders in Fakfak. The results show that there has been a policy in the form of collaborative coordination or cooperation between the police and customary institutions in handling cases of minor crimes and even extending to moderate crimes such as one example of theft of nutmeg carried out within the family or outside the family, acts of domestic violence, minor mistreatment. The results of the research on the application of justice restoration to minor crimes in accordance with the 1945 Constitution article 18 B paragraphs 1 and 2 and the Republic of Indonesia Police Regulation Number: 8 of 2021, concerning the Handling of Crimes based on Restorative Justice with alternative solutions using Indigenous Peoples Institutions who live in certain areas as an alternative medium for resolving minor crimes. Mild persecution, the results of research on the application of justice restoration to minor crimes in accordance with the 1945 Constitution article 18 B paragraphs 1 and 2 and the Indonesian National Police Regulation Number: 8 of 2021, concerning the Handling of criminal acts based on Restorative justice with alternative solutions using the Indigenous Community Institutions which live in a certain area as an alternative medium for resolving minor crimes. Regarding the Handling of criminal acts based on Restorative justice with alternative solutions using Indigenous Peoples Institutions who live in certain areas as alternative media for resolving minor crimes.

Keywords: Minor crimes, Indigenous community institutions and resort police in Fakfak district, Restorative justice

1. Introduction

Since 1945, Indonesia has formally declared itself as a state of law as stated in the explanation of the 1945 Constitution explicitly stating "Indonesia is a state based on law and not mere power" so that every organizer in the effort to administer the state of Pancasila law must comply with the four principles of ideals. Indonesian law (rechtsidee) (Pancasila), namely: (1) Maintain the belief in the one and only God; (2) Maintain the integration of the nation and state both ideologically and territorially; (3) Realizing people's sovereignty (democracy) and the rule of law (nomocracy) as well as an inseparable unit; (4) Realizing general welfare and social justice for all Indonesian people; (5) Creating tolerance on the basis of humanity and civility in religious life. The law of a nation is actually a reflection of the social life of the nation itself, so that in the formation of the law itself it should be free from the influence of other countries.

The law enforcement paradigm based on the retributive philosophy does not only feel unfair but can disrupt the sense of peace and justice in the community. The idea that criminal cases can only be handled through court institutions and the theory of punishment (retributive) turns out to be a lot of problems and negative impacts, therefore it is necessary to change approaches or legal breakthroughs that are able to minimize negative impacts that are based on justice (retributive) and support the

principles of criminal law, namely fast and cheap / low cost in the settlement of criminal cases where the handling of criminal cases can be carried out out of court with the principle of restoration of justice.

Restorative justice is an alternate method for settling criminal matters that is intrinsic to the essence of criminal law. Van Bemmelen argued that criminal law is a 'ultimate remedy,' meaning that if other sections of the law are insufficient to uphold the acknowledged standards of the law, then criminal law must be enforced. The criminal threat must remain an ultimun remedium (final drug). This does not imply that the criminal danger will be eliminated; nevertheless, the benefits and cons of the criminal threat must constantly be considered, and the medication administered must not be worse than the sickness. The legal system Criminal cases in the settlement of criminal cases are now governed by Law Number: 8 of 1981 concerning the Criminal Procedure Code, which tends to focus only on the perpetrators' rights.

Article 205 of the Criminal Procedure Code (KUHAP) governs the execution of criminal law against small offenses, as specified by the criminal procedure legislation, for a maximum of three months. This applies to both minor offenses and threats to commit minor offenses. Minor offenses requiring attention include articles 364, 373, 384, 379, 407, and 482 of the Criminal Code. The value of the losses stated in these articles has been modified based on Perpu number 16 of 1960 and later by the Supreme Court number 2 of 2012 to increase the loss by 10,000 times based on the increase in gold's price.

In general, law enforcement understands law enforcement is defined as the same as law enforcement, this understanding implies that the law (law) is the center of attention, even though the problem of law enforcement cannot only be seen from the law but also seen as a whole by involving all existing elements such as, morals, behavior and culture.

Departing from the above background, the author wants to conduct a study on how to apply restorative justice and construction of settlements for minor and moderate crimes by the Fakfak Indigenous Community Institution (LMA) and the Fakfak Resort Police and how the obstacles faced.

2. Literature Review and Hypotheses

Definition of restorative justice

According to the General Judiciary Agency (BADILUM) and the Supreme Court, Restorative Justice is an alternative method for resolving criminal cases that focuses on transforming punishment into a discussion and mediation process. Article 1 letter 3 of Regulation Number 08 of 2021 of the Indonesian National Police (Perpol) said that Restitutional Justice Resolution of criminal actions including offenders, victims, families of perpetrators, families of victims, community leaders, religious leaders, traditional leaders, or stakeholders to collectively seek a reasonable settlement via peace with an emphasis on re-election to the original state.

Definition of police officer

Articles paragraphs 1 and 2, of LAW Number 2 of 2020, concerning the National Police of the Republic of Indonesia Police are all matters relating to the functions and institutions of the police in accordance with the laws and regulations. Furthermore, members of the State Police of the Republic of Indonesia are civil servants in the State Police of the Republic of Indonesia.

Definition of indigenous peoples institutions

Customary Institutions are devices that have the authority to regulate, manage, and resolve various life problems based on customs and customary law, which grow and develop along with the history of Indigenous Peoples.

Definition of custom

The word Adat as in Indonesian legal language comes from the Arabic term "Adah" which means habit. Adat in the big Indonesian dictionary is defined as a rule that is commonly followed or carried out since time immemorial. The word Adat According to Law Number 21 of 2001 concerning Special Autonomy for Papua as in Article 1 paragraph (15) it is stated that Adat is a habit that is recognized, obeyed and institutionalized, and maintained by the local customary community from generation to generation. As for Custom, according to Prof. H. Hilman Hadikusuma, SH. is a habit in society that gradually becomes a habit that applies to all members of society, so it is called adat.

Definition of crime

Crime is a criminal act that can be sentenced. Every act that is threatened with punishment as a crime or violation, both referred to in the Criminal Code and legislation. The term crime comes from the

well-known term in Dutch criminal law, trafbaarfeit. The term is included in the Dutch East Indies WvS or based on the principle of consensus, but the term also applies to the Dutch East Indies WvS (KUHP). However, there is no official explanation of what criminal liability is. Therefore, legal experts try to provide understanding and terminology, but until now there has been no understanding about the meaning of being convicted.

An act is said to be a criminal act or a crime if the act is against the applicable law and is done intentionally. Zainal Abidin Farid stated: "An offense is an act or omission that can be against the law that is done intentionally or unintentionally by someone who can be accounted for by him". Moeljatno translates the term "straftbaar feit" with a criminal act. In his opinion the term "criminal act" is an act that is prohibited by a prohibition law which is accompanied by a threat (sanction) in the form of a certain crime, for anyone who violates the prohibition. Read more Wirjono Prodjodikoro Information: In criminal law, what is called a tort in Dutch or in a foreign language means an act for which a crime can be prosecuted and the perpetrator can be referred to as the subject of a criminal act. In a criminal act there must be outward elements so that it can be said as a criminal act that distinguishes it from ordinary actions. An act is categorized as a criminal act if it fulfills the following elements: (1) There must be a human act; (2) The human action must be in accordance with the formulation in the article of the relevant law; (3) The act is clearly against the law (no excuse for forgiveness). In a criminal act there must be outward elements so that it can be said as a criminal act that distinguishes it from ordinary actions.

Definition of minor crime

In accordance with Book of the Criminal Procedure Code Article 205 paragraph (1), a criminal offense is penalized by imprisonment for a maximum of three months and/or a maximum fine of seven thousand five hundred rupiah. Technically, tipiring is a felony punishable by up to three months in jail and/or a maximum fine of seven thousand five hundred rupiah. According to M. Yahya Harahap's book Discussion of Problems and Application of the Criminal Procedure Code: Judicial Examination, Appeal, Cassation and Review, among others, tipping can be categorized as a breach of rules.

3. Methods

The method used is an empirical legal research method because it examines the application of policy concepts issued by authorized agencies and examines laws and regulations that have relevance to the topics to be discussed in this research, the legislation in question is regulations made by the institution. state or authorized official which is stated in writing and applies binding in general or in particular, a conceptual approach is also used in this study which refers to legal principles or legal doctrines and also by interviewing the Fakfak resort police agency and the National Police Agency. Indigenous Peoples (LMA) Fakfak in handling minor and moderate criminal cases as well as the obstacles faced.

Data source

Considering that the research conducted normative legal research, the source of data obtained was through laws and regulations, the main data source. The data used are divided into: (1) Primary Legal Material. Primary legal materials are legal materials that have binding force, such as applicable laws and regulations, in this case include: (a) The 1945 Constitution Articles 18 and 24 paragraphs (1 and 2); (b) Law Number 12 of 1969 concerning the Establishment of the Autonomous Province of West Irian and Autonomous Regencies in the Province of West Irian (State Gazette of the Republic of Indonesia of 1969 Number 47, Supplement to the State Gazette of the Republic of Indonesia Number 2907); (c) Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua, which is contained in the State Gazette of the Republic of Indonesia of 2001 Number 135, Chapter XIV concerning Judicial Powers, Articles 50 and 51. (d) Law Number 48 of 2009 concerning Judicial Power, which is contained in the State Gazette of the Republic of Indonesia of 2009 Number 157; (e) Law Number 45 of 1999 concerning the Establishment of Central Irian Jaya Province, West Irian Jaya Province, Paniai Regency, Mimika Regency, Puncak Jaya Regency and Sorong City as amended by Law Number 5 of 2000 concerning Amendments to Law Number 45 of 1999 concerning the Establishment of Central Irian Jaya Province, West Irian Jaya Province, Paniai Regency, Mimika Regency, Puncak Jaya Regency and Sorong City Law on the Establishment of West Papua Province; (f) Law Number 39 of 1999 concerning Human Rights, which is contained in the State Gazette of the Republic of Indonesia of 1999 Number 165; (g) Law Number 32 of 2004 concerning Regional

Government, which is contained in the State Gazette of the Republic of Indonesia of 2004 Number 125; (h) Law No. 6 of 20 of 2014 concerning Villages, which is contained in the State Gazette of the Republic of Indonesia of 2014 Number 7; (i) Law of the Republic of Indonesia Number 2 of 2002 concerning the State Police of the Republic of Indonesia; (j) Regulation of the State Police of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice; (k) Government Regulation of the Republic of Indonesia Number 64 of 2008 concerning Amendments to Government Regulation Number 54 of 2004 concerning the Papuan People's Assembly, which is contained in the State Gazette of the Republic of Indonesia of 2008 Number 140; (l) Perdasus 20 of 2008 concerning Customary Courts in Papua, which is contained in the Regional Gazette of the Papua Province of 2008 Number 20;

Secondary legal material

The results of scientific works in the form of research, articles, and literature in the form of books and searches of the presentation of data and information electronically obtained through internet media access.

4. Results

Article 18 B, paragraph 1, of the Constitution states: "The state recognizes and respects special or special regional government bodies that are governed by law." Paragraph (2) The state recognizes and protects customary community units and their traditional rights so long as they are still alive and in conformity with community developments and the unitary state principles of the Republic of Indonesia as prescribed by law.

As a mandate to fulfill the 1945 Constitution Article 18 B paragraphs 1 and 2, as specified in CHAPTER XIV JUDICIAL POWER in Article 51, the Papua OTSUS Law Number: 21 of 2001 was enacted, followed by the second volume of the OTSUS Law Number: 2 of 2021. Customary Courts are peace courts within indigenous peoples having the jurisdiction to analyze and decide civil and criminal customary issues between members of the indigenous peoples.

Inspired by article 51, UU.Otsus Number 2 of 2021, the Fakfak Indigenous Peoples Institution (LMA) was born which acts as a Customary Court which has the authority to examine and adjudicate customary and criminal civil disputes among indigenous peoples, the Indigenous Peoples Institution (LMA) In their daily life, Fakfak has carried out judicial functions that examine and adjudicate not only customary and criminal civil disputes/cases between fellow Fakfak indigenous peoples but have also spread to the archipelago (outside Papua).

Perdasus Number 20 of 2008, Article 14 paragraph (1) Customary courts for managing customary cases can cooperate with the Papua Regional Police Paragraph (2), Polres and Polresta can provide technical support for customary justice administrators in Papua.

The Indigenous Peoples Institution (LMA) Fakfak in examining and adjudicating a criminal case is mild and sometimes moderate in nature such as the theft of nutmeg, land grabbing/hamlet nutmeg, domestic violence, LakaLantas, defamation, unpleasant acts, embezzlement, fraud, mistreatment, misdemeanor Obscenity always puts forward the principle of deliberation in the corridors of local customary law, although many do not go through the settlement route through customary law and enter the general court.

Medium category criminal cases that are often handled by the Fakfak Indigenous Community Institution (LMA) such as the theft of nutmeg and land grabbing or the nutmeg hamlet, often do not get a settlement, so to avoid criminal cases, the Fakfak Indigenous Community Institution (LMA) makes recommendations to be forwarded to a formal court by filing a lawsuit, and it is necessary to know the ownership of the nutmeg fruit along with the nutmeg hamlet and land in general, the Fakfak customary law community does not have formal evidence such as certificates or other legal documents, but the proof of ownership is only based on stories from ancestors and boundaries on objects based only on trees, mountains, valleys, rocks.

Meanwhile, minor and moderate criminal cases by the Fakfak Traditional Community Institution (LMA) between fellow indigenous peoples or the archipelago or indigenous peoples with the archipelago also always prioritize the principle of deliberation, because deliberation is a value system that has been internalized to solve problems, for example, will try to reduce its stance so that it can a meeting point that is beneficial for all parties that leads to consensus.

In an effort to settle both minor and moderate criminal cases as mentioned above, the Fakfak Indigenous Community Institution (LMA) always coordinates with the Fakfak resort police, namely notifying the Resort Police that they are trying to resolve the problem of criminal cases in a family manner and at the same time asking for time, if it reaches the agreement by the Fakfak Indigenous Community Institution (LMA) was made a statement and then submitted to the Fakfak Resort Police, if an agreement

was not reached, the Fakfak Indigenous Community Institution (LMA) made a recommendation/or notification letter to the Police for follow-up.

The work of the Fakfak Indigenous Community Institution (LMA) in resolving minor and moderate criminal cases prioritizing the principle of kinship and consensus deliberation aimed at achieving compromise and legal certainty between the perpetrator and the victim and their respective families has reduced the gap in social relations. and family relations in society, thus essentially the work of the Fakfak Indigenous Community Institution (LMA) has implemented Restorative Justice.

Starting from the Justice Restoration which has been practiced by the Indigenous Peoples Institution (LMA) Fakfak, along with the existing facts where there is a very strong public reaction to law enforcement officers who carry out without selection of minor or moderate criminal cases, it has disturbed the public's sense of justice for methods for resolving minor or moderate crimes that do not provide space for ways to resolve them, the Head of the State Police of the Republic of Indonesia issues Regulation of the State Police of the Republic of Indonesia Number 8 of 2021, Concerning the Handling of Crimes Based on Restorative Justice.

Regulation of the State Police of the Republic of Indonesia Number 8 of 2021 concerning Handling of Crimes based on Restorative Justice, Chapter II Requirements, Article 4, general requirements as referred to in Article 3 paragraph (1) letter a include aspects: Formal and Material, Furthermore, in Article 5 , the general requirements as referred to in article 4 letter a include: (1) Does not cause unrest and/or rejection from the public; (2) No impact on social conflict; (3) No potential to divide the nation; (4) Not radicalism and separatism; (5) Not a repeat offender based on a court decision; (6) Not a crime of terrorism, a crime against state security, a crime of corruption and a crime against people's lives.

With the issuance of the Regulation of the Indonesian National Police Number: 8 of 2021, as a legal basis for the Fakfak Resort Police to resolve minor criminal cases in the concept of Restorative Justice in its jurisdiction, the application of restorative Justice by the Fakfak Police has been carried out on several cases, both minor crimes as well as moderate criminals and also the Fakfak Resort Police often cooperate verbally or collaborate with the Fakfak Indigenous Community Institution (LMA) in handling criminal cases.

The existence of the settlement of minor and moderate criminal cases out of court through the Fakfak Indigenous Community Institution (LMA) and the Fakfak Resort Police is a new dimension that is studied theoretically and practically, over time the increase in the volume of cases with all their forms that go to court, automatically becomes a burden. to the court in handling and deciding cases according to the principles of simple, fast and low-cost justice without having to sacrifice the achievement of legal certainty, expediency and justice.

5. Discussion

Community law mandates that the National Police of the Republic of Indonesia settle criminal acts by prioritizing restorative justice, which emphasizes restoration to its original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not focused on punishment. In addition, the Fakfak Resort Police do not use Restorative Justice without the assistance of the Fakfak Indigenous Community Institution (LMA), particularly in minor and moderate criminal offenses.

From the preceding description, it can be deduced that a criminal act is an unlawful act or omission that has been codified in a legal rule and is accompanied by threats (sanctions) and is committed intentionally or negligently by someone or - who can be referred to as the perpetrator or subject of a criminal act and who can be held accountable. In addition, it is clarified that the legal subjects are intelligent persons and legal entities. Due to the concept of legality (Principle of Legality), which states that no conduct is unlawful and punishable by law if it is not specified in advance in the legislation, the act must be in the form of an error and have been codified as a legal norm (Nullum Delictum Nulla Poena Sine Praevia Lege Poenali).

Administrative violation (tipiring). Technically, tipiring is a felony punishable by up to three months in jail and/or a maximum fine of seven thousand five hundred rupiah. Tipping, according to M. Yahya Harahap's book Discussion of Problems and Application of the Criminal Procedure Code: Judicial Examination, Appeal, Cassation and Review, among others, can be characterized as a breach of rules. Article 205, paragraph 1, of the Criminal Procedure Code contains the following provisions about tipping:

Regarding the crime of light theft, it refers to Article 364 of the crime of light theft. This is motivated by the number of cases or cases of theft which the value of the loss is small but by investigators Article 362 of the Criminal Code is applied and equated with ordinary theft in Article 363 of the Criminal Code.

Efforts to resolve criminal cases both mild and moderate by the Indigenous Peoples Institution (LMA) Fakfak always coordinates with the Fakfak resort police, namely notifying the Resort Police that they are trying to resolve the problem of criminal cases in a family manner and at the same time asking for time, if an agreement is reached by the Indigenous Society (Indigenous Peoples Institution). LMA) Fakfak made a statement which was then submitted to the Fakfak Resort Police, otherwise if no agreement was reached, the Fakfak Indigenous Society (LMA) made a recommendation/or notification letter to the Police for a follow-up legal process in accordance with Positive Law/State Law in force.

Whereas in the application of the concept of restorative justice by the police and the LMA, in general, the handling is still casuistic and temporary, this is not all minor crimes are handled by restorative justice, because there is also no formal cooperation between the Fakfak Resort police and the LMA for the application of the restorative concept. justice.

Another obstacle in handling minor and moderate criminal cases, as in the case of theft of nutmeg, can not be directly processed by the Fakfak Resort police due to the importance of fulfilling accurate/valid evidence, and the existence of egoism among indigenous peoples in relation to their social status background. strata in the Indigenous Peoples. The other thing is that there are no available facilities, funding or guidance by the LMA itself in handling minor and moderate crimes, as well as up to serious crimes.

6. Conclusion

The conclusions are: (1) Whereas the Restorative applied by Law Enforcers, formally refers to the provisions for the settlement of minor crimes based on a memorandum of agreement with the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia and the Indonesian Police, which is often neglected in its application by Law Enforcers; (2) Whereas the Conception of Restorative Justice applied by the Indigenous Peoples Institution (LMA) Fakfak towards the handling of minor crimes is more likely due to the encouragement of a sense of kinship and there is no technical guideline and the handling is mostly temporary.

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